

**HIGH COURT OF DELHI****Bench: Justice Rajnish Bhatnagar****Date of Decision: 27th May 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 768 OF 2013

**SUBODH ANAND ... APPELLANT****VERSUS****C.B.I. ... RESPONDENT****Legislation:**

Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

Section 374 of the Cr.P.C.

**Subject:** Criminal appeal challenging the judgment of conviction and sentence under the Prevention of Corruption Act, 1988. The case involved allegations against the appellant, a Sub-Inspector, for demanding and accepting a bribe in connection with the investigation of a case.

**Headnotes:**

Criminal Law - Demand and Acceptance of Bribe – Conviction and Sentence – Appeal against conviction under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 – Allegations of demanding and accepting bribe by a Sub-Inspector from the complainant for favoring him in a case investigation – Prosecution failed to prove the demand of bribe beyond reasonable doubt – Inconsistencies in testimonies of prosecution witnesses – Non-production of crucial evidence like the bribe money and the scooter during the trial – Benefit of doubt given to the appellant – Conviction and sentence set aside. [Paras 1-45]

**\*\*Proof of Demand – Analysis – Held – Demand of illegal gratification must be proved beyond reasonable doubt – Mere recovery of currency notes not sufficient without proof of demand – Prosecution's evidence inconsistent and**

contradictory – Legal presumption under Section 20 of the Prevention of Corruption Act not applicable in absence of proven demand. [Paras 14-32]

**\*\*Acceptance and Recovery of Bribe – Insufficient Evidence – Held – Prosecution failed to produce the case property (scooter and keys) during the trial – No independent public witnesses involved during the recovery – Doubtful recovery of currency notes – Prosecution failed to establish acceptance and recovery of bribe conclusively. [Paras 33-38]**

Decision – Conviction and Sentence Set Aside – Appeal allowed – Appellant acquitted of charges under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act – Judgment of conviction and sentence by the trial court reversed due to lack of sufficient evidence proving demand and acceptance of bribe. [Paras 43-45]

**Referred Cases:**

- P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr. (2015) 10 SCC 152
- Kabul @ Khudia v. State of Rajasthan (1992 CRILJ 1491)
- Jai Narayan vs. State (CRL.A. 259/2007, Judgment Dated 06.09.2023)
- Neeraj Dutta MANU/SC/1617/2022

Representing Advocates:

Mr. Piyush Pahuja for appellant

Mr. Atul Guleria, SPP for CBI with Mr. Shubham Gupta for respondents

**JUDGMENT**

**RAJNISH BHATNAGAR, J.**

1. By this Judgment, I shall dispose of the present appeal U/s 374 of Cr.P.C read with Section 27 of Prevention of Corruption Act which has been filed against the judgment of conviction dated 10.05.2013 and order on sentence dated 15.05.2013 passed by the Ld. Special Judge, CBI-03 (PC Act), Tis Hazari, Delhi. The Special Court under the Prevention of Corruption

Act, 1988, (for the short PC Act) convicted the Appellant for the offence punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The appellant was sentenced to undergo rigorous imprisonment for two years alongwith a fine of Rs. 50,000/- for offence punishable under Section 7 of the PC Act, 1988 and further sentenced to undergo rigorous imprisonment for two years alongwith a fine of Rs. 50,000/- for offence punishable under Section 13(2) readwith 13 (1)(d) of the PC Act, 1988.

2. It was observed by the Trial Court that all the substantive sentences shall run concurrently and benefit of period of detention already undergone be given. Fine stood paid.

3. The prosecution case, in brief, is that the appellant was holding the post of Sub-Inspector, Delhi Police and was posted at Police Station Karol Bagh during the year 2000 & 2001 and was investigating the case FIR No. 246/2000 registered under Section 406/420 IPC against the complainant namely Somnath/PW-4, and his nephew namely Hemant. The case FIR No. 246/2000 was registered on the basis of a complaint dated 12.07.2000 by one Ramesh Soni of Mumbai. The Complainant in the present case, was in the business of sale and purchase of diamonds having his shop at 1619/32, Naiwala Gali, Karol Bagh, Delhi, and said Ramesh Soni, on whose complaint, case FIR No. 246/2000 U/S 406/420 IPC was registered at PS Karol Bagh, Delhi, was also in the business of jewellery, functioning from Mumbai, The complaint was made by Ramesh Soni on the ground that PW4 Somnath in the present case, had received diamonds worth Rs. 5,30,000/- from him, but did not make the payment for the diamonds received. Thereafter, the case FIR no. 246/2000 P.S. Karol Bagh, was registered on 13.07.2000.

4. Somnath/ Complainant came to know about the registration of case FIR No. 246/2000, PS Karol Bagh, against him, so he filed application for anticipatory bail before the Court of Sessions, and his bail application was dismissed by the Court of Ld. A.S.J. on 30.10.2000. An application for seeking anticipatory bail before Hon'ble High Court, was filed on 02.11.2000 and said application for anticipatory bail, was also dismissed by Hon'ble High Court on 19.04.2001.

Thereafter, Complainant Somnath filed a Writ Petition before Hon'ble High Court being Criminal Writ Petition No.447/2000 for quashing of FIR No.246/2000, PS Karol Bagh.

5. On 03.08.2001, complainant Somnath, approached CBI at its office alleging that Sub-Inspector Subodh Anand, the Appellant, being Investigating Officer of case FIR No.246/2000 PS Karol Bagh, had demanded a bribe of Rs.1 Lac from him for a favour in the case, out of which Rs.20,000/- was to be paid as the first instalment on 03.08.2001.

6. After registration of a regular case in the matter, investigation was entrusted to Inspector A.K. Malik of C.B.I., A.C.B., New Delhi. Preparations were made to lay a trap. Two independent witnesses one namely Bhajan Lal, LDC/PW-6 and another namely Kranti Kumar, UDC/PW-7, both from D.D.A, were joined in the proceedings. In pre-trap proceedings, complainant Somnath, was made to talk to Appellant Subodh Anand on his mobile and conversation was recorded. CBI team alongwith independent witnesses i.e. PW-6 Bhajan Lal & PW-7 Kranti Kumar, complainant Somnath/PW-4 as well as his brother Naresh Kumar/PW-10, reached at shop of complainant, where again complainant talked to the Appellant on his mobile, who told the complainant that he shall be reaching the shop after about 10-15 minutes. The Appellant Subodh Anand, reached the shop of the complainant in Naiwala Gali, Karol Bagh, Delhi and after talking to the complainant, asked him to reach Hotel Alaska, Faiz road, Karol Bagh, Delhi. Complainant Somnath was present in the shop alongwith shadow witness Kranti Kumar/PW-6 and his brother Naresh Kumar/PW10, when Appellant, Subodh Anand, reached the shop of the complainant. Thereafter, CBI team reached Hotel Alaska, Faiz Road, Delhi. Appellant Subodh Anand was found present, sitting, at the reception of Hotel Alaska, when complainant Somnath/PW-4, his brother Naresh Kumar/PW-10 and shadow witness Kranti Kumar/PW-6, entered the Hotel. Other members of the CBI team remained outside the Hotel after having taken positions at appropriate places. Later on, Appellant

Subodh Anand, complainant Somnath/PW-4, and also shadow witness Kranti Kumar/PW-6 and brother of complainant namely Naresh Kumar/PW-10, came out of Hotel and on the directions of Appellant Subodh Anand, complainant Somnath/PW-4, placed a sum of Rs.20,000/- in the dickey of the scooter No.DL-5S-J-5563 of appellant Subodh Anand, and in this way, Appellant Subodh Anand was charged for having made the demand and having accepted the bribe money of Rs.20,000/- from complainant Somnath, which was for extending favour while submitting the status report before Hon'ble High Court in Criminal Writ Petition No.447/2000.

7. Currency notes of Rs.20,000/- were provided by the complainant, Somnath, to Insp. A.K. Malik, whose numbers were recorded and the currency notes were also treated with Phenolphthalein powder. After being treated with Phenolphthalein powder, the currency notes were given to the complainant Somnath, to be given to the appellant on his demand of the bribe money. The numbers of currency notes, after recovery was made from the dickey of the scooter, were tallied with the number of the currency notes recorded and they tallied with the same. Dickey wash was also taken and same turned pink.
8. During trial of the present case, the prosecution had examined 14 witnesses to prove their case:-
- i) PW-1 Dr. Rajinder Singh, Senior Scientific Officer, CFSL, New Delhi (Scientific witness)
  - ii) PW-2 R.S. Krishna, Deputy Commissioner of Police, Central District (Accorded the sanction for prosecution under Section 19 of PC Act)
  - iii) PW-3 Mahabir Prasad (First I.O. of case FIR no. 246/2000)
  - iv) PW-4 Somnath (The complainant)
  - v) PW-5 Inspector Data Ram, S.H.O. Police Station Karol Bagh (confirmed the posting of appellant as IO in FIR case FIR no. 246/2000)

- vi) PW-6 Kranti Kumar, UDC, D.D.A (The shadow witness) vii) PW-7 Bhajan Lal, LDC, D.D.A (The shadow witness) viii) PW-8 Ram Avtar Sharma, UDC, N.P.R.S. Rohini Zone, Vikas Sadan, Delhi (The witness of specimen voice recording of the appellant)
- ix) PW-9 Ramesh Kumar (The witness of specimen voice recording of the appellant)
- x) PW-10 Naresh Kumar (the brother of complainant Somnath)
- xi) PW-11 Inspector A.K. Malik (the IO. of the present case) xii) PW-12 Subhash Chand (the friend of complainant Somnath) xiii) PW-13 Ms. Shobha Dutta, Deputy S.P, CBI (the second IO of the present case). xiv) PW-14 S.Balasubramony, Inspector CBI (the third IO of the present case)

9. Thereafter, the appellant also led the Defence Evidence, after his statement under section 313 Cr.P.C. was recorded. Eight witnesses have been examined by the appellant in his defence:

- i) DW-1 Sanjeet Kumar, LDC, Record Room (Session), Tis Hazari Courts.
- ii) DW-2 Prabhat Vishkarma, Asstt. Ahlmad in the Court of Sh. Ajay Garg.
- iii) DW-3 ASI HarbhajanLal, concerned staff of Sanction order issuing authority.
- iv) DW-4 Anil Kumar, Junior Judicial Assistant, High Court of Delhi.
- v) DW-5 ASI Haridwar Ram Chander Kale with record of FIR no.3/2002 at PS Lok Manya Tilak Marg registered against Jugal Raj Kumar & ors.
- vi) DW-6 HC Pappu Ram, P.S. Kotla Mubarakpur with record of FIR no.299/92 registered against Somnath.
- vii) DW-7 Ct. Udaiveer Singh with record of FIR no. 744/95 P.S. PaschimVihar registered against complainant Somnath.

viii) DW-8 HC Satish Kumar with record of FIR no. 278/1999, 246/2000 and 646/2002, all registered at P.S. Karol Bagh against the complainant Somnath.

10. The Ld. Trial Court, after considering the evidences and materials available on record, had found the demand of bribe and acceptance of bribe stands proved by the prosecution and thus, the Ld. trial court held that the appellant herein is guilty for the offence under section 7 of Prevention of Corruption Act as well as Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act for substantive offences and convicted the appellant accordingly.

### **SUBMISSIONS**

12. The learned counsel Mr. Piyush Pahuja appearing for the appellant had submitted that the proof of demand for illegal gratification and the acceptance thereof, by a public servant are *sine qua non* for the offences punishable under Sections 7 and 13(1)(d) of the PC Act. The Ld. Counsel argued that the prosecution had failed to prove any demand for the alleged illegal gratification involved and thus, the essential ingredient of the offences both Under Sections 7 and 13 of the Act, being conspicuously absent, therefore the Appellant ought to have been acquitted of the charge on both counts. The Ld. Counsel argued that since the prosecution has failed to prove demand and acceptance of gratification, mere possession or recovery of currency notes is not sufficient to constitute the offence; hence presumption under section 20 of PC Act cannot be drawn against the appellant. He submitted that during the trial, neither the said audio cassette of Sony HF-60 was produced before the Ld. trial court, nor the same was sent to FSL for experts opinion and rather instead of Sony HF-60, a cassette “TDK D-60” was produced before the trial court and the same was sent to the FSL and as such the evidence of tape recording of alleged conversation between the complainant/PW-4 and the appellant is not reliable piece of evidence. He submitted that even the case property i.e. the scooter of the appellant and keys of its dickey neither being produced during the trial at the stage of evidence, nor the same was got identify by any of the prosecution witnesses. He submitted that the prosecution had not proved the ownership of appellant over the scooter from which currency notes were being

recovered, as neither the RC nor any other document of said scooter was being placed on record to prove the ownership of appellant over the said scooter. He further submitted that the findings of the Ld. Trial Court are based on surmises and conjectures.

13. Mr. Atul Guleria, Special Public Prosecutor appearing for CBI, supported the judgment. He argued that the evidence of the prosecution witnesses, taken as a whole, demonstrably proved the demand, acceptance and recovery of the illegal gratification sought for and as such no interference with the appellant's conviction is warranted. He argued that since the tainted money was recovered from the dickey of scooter of the appellant, legal presumption under section 20 of the PC Act stood against the appellant and the same could not be rebutted by him during cross-examination or defence evidence. He further argued that all the foundational facts and chain of events have been proved against the appellant by the prosecution, beyond reasonable doubt. He argued that once the demand and acceptance are established, there is presumption that the acceptance of gratification proves the existence of motive or reward.

#### **FINDING ON PROOF OF DEMAND**

14. After careful consideration to the submissions. I have perused the depositions of the prosecution witnesses. The offence Under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence Under Section 7 of the PC Act. In the case of ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr. (2015) 10 SCC 152***, the Hon'ble Supreme Court has summarised the wellsettled law on the subject in paragraph 23 which reads thus:

*"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence Under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere*



*acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two Sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence Under Section 7 or 13 of the Act would not entail his conviction thereunder.”*

15. In brief, the case of prosecution is based upon four illegal demand of gratification being made by the appellant. PW-4 complainant had made a complaint Dated 03/08/2001 to the CBI against the appellant, thereby given the details of initial two demands made by the appellant in his complaint exhibited as **Ex. PW-4/A**. Thereafter in pre-trap proceedings, third demand was made by appellant from the PW-4 complainant telephonically and the said conversation was got tapped by the CBI in the presence of two shadow witnesses and the same got recorded in audio cassette of Sony-HF-60, as per telephone conversation recording Memo Dated: 03/08/2001, which is exhibited as **Ex. PW-4/B**. The last and final demand was made by the appellant from the PW-4 complainant in the presence of PW-10 Naresh Kumar, PW-6 Kranti Kumar and PW-12 Subhash inside the Hotel Alaska, Karol Bagh, Delhi.

16. Now it is to be analyzed and examined, whether the prosecution was able to prove the demands of illegal gratification being made by the appellant, beyond reasonable doubt.

17. The first demand was made by the appellant for a sum of Rs. 1,00,000/- (One lakh) by telephonically calling the complainant PW-4 on his shop contact number as per Ex- PW-4/A. On this aspect, PW-4 Complainant was cross examined by the counsel for the appellant. His version about the demand is relevant which reads thus:

***“I had not mentioned in my complaint Ex. PW-4/A given to CBI that I had received a telephone call from the accused demanding Rs. One Lac***

***confronted with portion A to A1 of Ex. PW-4/A where it is so recorded. I do not remember whether I had written in my complaint Ex. PW-4/A that “I told the accused that I cannot pay Rs. One lac and the matter had been postponing, confronted with Ex. PW-4/A where it is not so recorded”.***

18. Thus, the prosecution could not prove the first demand being made by the appellant. Therefore, the prosecution case about the demand of bribe by the appellant telephonically, appears to be highly doubtful.

19. The second demand was made by appellant on 02.08.2001 from the brother of the complainant namely Naresh Kumar PW-10, when he met the appellant in the Police Station. On this aspect, Naresh Kumar PW-10 was cross examined in detail by the counsel for the appellant. His version about the demand is relevant which reads thus:

***“We had talked with Subodh Anand on 1<sup>st</sup> August on telephone. Telephonic talks between Somnath and Subodh Anand. After 29<sup>th</sup> July till filing of the complaint with the CBI We had not gone to the Police station. On 28.07.2001 I had not gone to the Police station. I had not told the CBI in my statement that on 28.07.2001 I alongwith Subhas had gone to the PS (confronted with the portion D to D of his statement Ex.PW-10/DA wherein it is so recorded. I had not told the CBI that on 02.08.2001 I alongwith Subhas again met the accused in Police station (Confronted with portion E to E of his statement ExPW-10/DA where it is so recorded)”.***

PW-10 Naresh Kumar further deposed that ***“I do not remember when, where and how Subodh Anand had contacted me first time. I had told CBI in my statement that accused had asked me to do “Kuch Sewa Pani”. (Confronted with his statement Ex.PW-4/DA wherein it is not so recorded). I had told CBI in my statement that accused had demanded Rs. 1,25,000/-. (confronted with his statement Ex.PW10/DA wherein it is not so recorded). I had not stated in my statement before CBI that I had***

***asked accused to reduce his demand from Rs. 1,25,000/- to Rs. 1,00,000/-."***

20. Thus, the Naresh Kumar PW-10 could not corroborate and support his own testimony. Therefore, the prosecution is not able to prove the Second demand being made by the appellant from the PW-10 Naresh Kumar.

21. The third demand was made by the appellant from the complainant PW-4 telephonically, which was also got tapped by the CBI in blank audio cassette of Sony HF-60 as per Telephonic Conversation recording Memo, which is Ex. PW-4/B. However, the prosecution has miserably failed to produce the blank audio cassette of Sony HF-60 during the trial and even the same was not sent to the FSL for expert opinion and instead of Sony HF-60, a cassette "TDK D-60" was produced before the trial court and the same was sent to the FSL and as such the evidence of tape recording of conversation between the complainant and the appellant is not reliable piece of evidence. Thus, tampering with the cassette in the present scenario cannot be ruled out and the same has also been correctly observed by the Trial Court.

22. The forth & last demand was raised by the appellant from the complainant PW-4 for a sum of Rs. 1,00,000/- inside Hotel Alaska in presence of PW-6 Kranti Kumar, PW10 Naresh Kumar & PW-12 Subhash and in furtherance of same, got ready to accept Rs. 20,000/- as initial bribe installment. On this aspect, the chief examination of the PW-4 Complainant about the demand is relevant which reads thus:

***"I had talked with accused and I told to the accused that I had not brought Rs. one lac and I have brought Rs. 20,000/-. The accused didn't agree and came outside the room. There was one another person, who had come with the accused. Accused talked with the said person near his scooter and again entered in Hotel and called me. Accused sat on his scooter and I was standing in front of scooter. Accused demanded***

***the money of Rs. 20,000/- from me. I tried to handover the said currency note of Rs. 20,000/- but the accused told me, I should keep the said currency notes in the dikky of the scooter. I kept the said currency notes in the front dickey of scooter of the accused.”***

23. On this aspect, PW-4 Complainant was cross examined in detail by the counsel for the appellant. His version about the demand is relevant which reads thus:

***“I don“t recollect whether I had told to CBI in my statement that after entering the room, I had talk with the accused and I told the accused that I have not brought Rs. One lac and I have brought Rs. 20,000/- only. (Confronted with Ex. PW-4/DA where it is not so recorded).”***

***“I don“t remember if on my saying that I have not brought one lac and brought Rs. 20,000/- “accused did not agree and came out of the room. I don“t remember whether I state these facts in my statement (Confronted with Ex. PW-4/DA where it is not so recorded).”***

***“I don“t remember whether accused demanded the money of Rs. 20,000/- from me. Confronted with Ex. PW-4/DA where it is not so recorded”.***

24. Thus, as per the prosecution case, the appellant demanded a sum of Rs. 1,00,000/- from the complainant at Hotel Alaska, however, the complainant PW-4 in his testimony, nowhere stated that appellant had demanded Rs. 1,00,000/- from the complainant and to the contrary, the complainant had stated that the appellant had demanded Rs. 20,000/- from the complainant and even the said fact had not been corroborated by the complainant in his testimony. Thus, the version of the Complainant PW-4 in his evidence about the demand made by the appellant from time to time is an improvement and thus, the PW-4/complainant could not corroborate and support his own testimony.

25. So far as testimony of the **PW-10** Naresh Kumar is concerned, the chief examination of the PW-10 about the demand and recovery starting from point A to A1, is relevant which reads thus:

***“The number of GC notes of 20000/- were noted down.***

***Demonstration was given of the powder treated notes and thereafter the notes were put into the pocket of my brother Somnath. Two independent witnesses namely Kranti Kumar and BhajanLal were also present and thereafter we left for our shop in Karol Bagh as Subodh Anand had asked that he will come at our shop to receive the bribe amount. After reaching the shop my told that he is coming to the shop to collect the bribe amount. After a short while Subodh Anand came to our shop but he had seen independent witness Kranti Kumar hence he asked us to come to hotel Alaska. This fact was told to the CBI officers. Thereafter all of us along with CBI team reached hotel Alaska. Pen like recording instrument was given to my brother again said some recording instrument was given. I along with my brother and independent witness Kranti Kumar went inside the hotel along with Subhodh Anand in a room. Subodh Anand was asking for more money and there were talks about reducing the bribe amount between my brother and Subhodh Anand. Thereafter we all came outside the hotel Subodh Anand set on his scooter and we were standing close to him. After talking about the bribe money he said "Zitne Hai utnaih Hee De Do" and he directed my brother SomNath to put the bribe money of Rs.20,000/- in to the scooter dicky. He also asked about amount on which we informed that it is 20,000/- In the meanwhile independent witness gave a pre appointed signal to the CBI team. The CBI team approached towards us and at that time Subodh Anand felt some doubt and became apprehensive and started running after leaving the scooter. He was caught hold by the CBI officer. The CBI officer disclose their identity. The keys were taken from SubodhAnand and Dicky was opened. The money was recovered from the dicky, the wash of dicky was taken which turned into pink in colour and the same was transfer to glass bottle. Thereafter SubodhAnand was taken to the hotel Lobby and all other team members were also present. Thereafter the search of SubodhAnand was taken and during search one Revolver and some***

***money, some documents were seized. A list A of the same was prepared.”***

26. On this aspect, PW-10 Naresh Kumar was cross examined in detail by the counsel for the appellant. His version about the demand is relevant which reads thus:

***“Now I do not remember whether I had told to the CBI the facts as stated by me in my examination in chief recorded in this court from point „A“ to „A1“ on 16.09.2019. (Confronted with his statement Ex. PW-10/DA, where it is not so recorded)”***.

27. Even, the brother of the complainant PW-10/ Naresh Kumar could not corroborate and support his own testimony regarding demand & recovery of bribe.

28. As far as testimony of the **PW-6** Kranti Kumar is concerned, even he could not corroborate and support his own testimony as he had deposed in his cross examination that ***“On 02.08.2001 information was received from office with regard to joining of CBI investigation at about 10 AM on 03.08.2001. Information was conveyed to me about 04:50 or 5 PM on 02.08.2001”***.

29. As per the prosecution’s case, the complainant PW-4 himself gave a written complaint dated 03.08.2001 against the appellant to the CBI by visiting their office on 03.08.2001 and on the same day, on receipt of the complaint, the CBI officials registered the present case and thereafter two independent witnesses namely Bhajan Kumar /PW-7 and Kranti Kumar/ PW-6 from DDA, was called to join the investigation on the same day i.e. 03.08.2001. As such it creates doubt upon the prosecution version that the

CBI had called the independent witness /PW-6 Kranti Kumar, one day prior even to the receipt of the complaint dated 03.08.2001 and registration of present case/FIR and as such the same is fatal to the case of prosecution.

30. As far as testimonies of the PW-7 Bhajan Lal & PW-12 Subhash Chand are concerned, both the witnesses had not stated in their examination in chief that the appellant had demanded the bribe from the complainant/ PW-4 in their presence and as such both the witnesses had not supported and corroborated the prosecution's story with respect to demand of bribe by the appellant.

31. The evidence of other witnesses being not essentially related to the aspect of demand, receipt and recovery of the amount of illegal gratification with which the Appellant had been charged, does not call for a detailed reference.

32. In my opinion, keeping in view the aforesaid discussion and depositions, the prosecution has failed to establish the demand that the Appellant has demanded money and accepted the demanded money. There is no consistency in the statements of the witnesses and inter-se deposition of the witnesses. Every witness is parroting differently.

### **FINDING ON ACCEPTANCE AND RECOVERY OF BRIBE**

33. As per the prosecution's story, the complainant /PW-4 had put the bribe/money of Rs. 20,000/- in the dickey of scooter of appellant and thereafter the appellant locked the dickey and kept the keys with him and then the CBI apprehended the appellant from spot and thereafter the bribe money was recovered by the CBI, after unlocking the dickey of scooter with its keys.

34. However the prosecution was not able to support and corroborate its own version as *firstly*, the said scooter was neither produced before the court at

- the stage of evidence, nor the same was got identify by any of the prosecution witnesses i.e. PW-4, PW-6, PW-7, PW-10, PW-12 or Investigation officer himself.
35. **Secondly**, even the keys of dickey of scooter was neither produced before the court at the stage of evidence, nor the same was got identify by any of the prosecution witnesses i.e. PW-4, PW-6, PW-7, PW-10, PW-12 or Investigation officer himself.
36. **Thirdly**, even the keys of the dickey of scooter was not sent to FSL to verify & ascertain, whether the same belongs to the said dickey of scooter and lock can be open from the same keys or not.
37. **Fourthly**, even the prosecution had not proved the ownership of the appellant over the said scooter as neither the RC and/or any other document of said scooter was filed on record, nor any witness was called from the transport department to prove the ownership of appellant over the said scooter. Even, the ownership of appellant over the said scooter was disputed by the appellant during the trial.
38. **Fifthly**, the whole episode of demand & recovery of bribe money from the appellant had occurred inside and just outside the hotel Alaska, Karol Bagh, Delhi; but still neither any hotel staff nor any public witness was requested to join investigation and made witness of prosecution' proceedings. Since no independent public witness had joined in the investigation at the time of demand or recovery of bribe from the dickey of scooter, hence recovery of the currency notes had become doubtful; thus prosecution had failed to prove the recovery of currency notes.

Thus prosecution had failed to prove the acceptance and recovery of currency notes from the dickey of scooter of the appellant.

39. In ***Kabul @ Khudia v. State of Rajasthan (1992 CRILJ 1491)***, the High Court of Rajasthan has observed that non-production of the case property in Court gives serious infirmity and creates doubt about the investigation.



40. In **Jai Narayan vs. State (CRL.A. 259/2007, Judgment Dated**

**06.09.2023)**, this Hon'ble Court observed and held as follows:

*“29. The law is thus settled that in order to attribute an offence under Section 7 of The Prevention of Corruption Act, 1988, the demand of gratification has to be proved by the prosecution beyond all reasonable doubt. It is also no longer res integra that there has to be a demand of gratification and not merely a simple demand of money. The presumption under Section 20 of the PC Act can be invoked only if the factum of demand of gratification and acceptance thereof, is proved. It is correct that even in the absence of the testimony of the complainant the offence under Section 7 of PC Act can be proved but for that there must be other reliable cogent and trustworthy evidence on record.*

*30. It is a settled proposition that the graver the offence the more onus there is on the prosecution to prove its case beyond reasonable doubt. Though, the concept of „beyond reasonable doubt“ cannot be stretched beyond a point, but at the same time, in cases of corruption, which can tarnish the reputation of a person, it is vital that the offence must be proved beyond all reasonable doubt. The evidence in such cases must be of sterling quality and unimpeachable in nature. On the basis of weak evidence or mere presumptions and conjectures a person cannot be convicted for the offence under Section 7 of Prevention of Corruption Act, 1988. I consider that the learned Trial Court has failed to appreciate the evidence correctly in the absence of any cogent and trustworthy evidence with respect to the demand of gratification which is a sine qua non for attracting an offence under section 7 of PC Act.”*

41. That the Trial court had wrongly applied the presumption of Section 20 (1) of Prevention of Corruption Act, 1988 against the appellant in present case. It is well settled law that presumption under section 20 of PC Act can be invoked only on proof of facts in issue namely demand of gratification and its acceptance. Moreover, the Constitution Bench in the case of **Neeraj Dutta MANU/SC/1617/2022** has reiterated that the presumption Under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the Accused and the acceptance thereof.

42. Thus as explained above, since the prosecution has miserably failed to prove demand and hence no presumption under section 20 of PC Act can be drawn against the appellant. Moreover, in the absence of demand of gratification, mere possession or recovery of currency note is not sufficient to constitute the offence.

### **CONCLUSION**

43. Learned trial judge has not properly appreciated the evidence which is in favour of the Appellant. He has gone wrong to reach at the opinion and therefore, convicted the Appellant.

44. Thus, this is a case where the demand of illegal gratification by the Appellant was not proved by the prosecution. Thus, the demand which is *sine qua non* for establishing the offence Under Section 7 was not established.

45. Hence, the impugned Judgments will have to be set aside.

Accordingly, the appeal is allowed. The conviction of the Appellant for the offences punishable Under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act is set aside and the Appellant is acquitted of the charges framed against him.

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\*Disclaimer: Always compare with the original copy of judgment from the official website.