2023:DHC:6272

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.02.2023
Judgment pronounced on: 01.09.2023

\+ **CRL. A. 618/2000**

MAHAL SINGH ..... Appellant

Through: Mr. Anurag Andley, Mr. Kshitij Arora, Mr. Vikalp Sharma, Advs.

versus

STATE OF DELHI ..... Respondent

Through: Mr. Mr. Ajay Vikram Singh, APP for State with SI Naresh Kumar, PS Anti Corruption Branch

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This criminal appeal has been filed by the appellant/accused being aggrieved by the judgment of conviction dated 27.09.2000 and order of sentence dated 29.09.2000 passed by Special Judge, Delhi in Case No. 283/1994, whereby the appellant has been found guilty for the commission of the offences under section 7 and section 13(i)(d) of the Prevention of Corruption Act, 1988 (in short 'the Act') and sentenced to undergo Rigorous Imprisonment for 1 year on each count and also to

pay a fine of Rs. 500/- on each count. Both the sentences were to run concurrently.

THE FACTUAL PRISM

2. As per the prosecution, on 29.05.1991, Complainant's (Smt. Lata Monga) brother namely Krishan Kumar had a quarrel with her neighbours i.e. Laxmi Narain and Manoj Kumar in which Manoj Kumar had given sword blow to the Krishan Kumar while Laxmi Narain caught hold of Krishan Kumar and thereafter Krishan Kumar received injury on the right side upper part of the eye. On the complaint, investigation was entrusted to the appellant/accused SI Mahal Singh PS Gandhi Nagar. When the appellant visited the house of the complainant on 03.06.1991 at 11:45 pm, the complainant asked the appellant as to why Manoj Kumar had not been arrested till yet. On her query, appellant demanded Rs. 2000/- and would do the work in their favour. As the complainant was unable to pay this much amount in one go, the Appellant asked the complainant to pay Rs. 1000/- next day on 04.06.1991 at about 6:00 pm in the evening at tea shop near police station and give balance amount later on. She was against giving bribe but agreed to pay the said bribe amount out of helplessness.
3. Complainant talked to SHO of PS Gandhi Nagar about this but he did not pay any heed. Thereafter, the Appellant demanded the above bribe money and told her that it was being done as per desire of SHO.
4. On 04.06.1991, Complainant went to Anti – Corruption Branch, where her statement was recorded (Ex. PW2/A) in presence of panch witness namely Hemant Singh Bani. Thereafter, complainant produced GC

notes Rs. 1000/- in the denomination of Rs. 100/- each, the number were mentioned in the raid report. Phenolphthalein powder was applied to the GC notes which were got touched with the right hand of the panch witness. Right hand of the panch witnesses was dipped in the solution of sodium carbonate which turned pink. Significance of both the chemicals were explained to the panch witness and the complainant stating whosoever would touch these GC notes or keep the same in his pocket, his hand or pocket if dipped in solution of sodium carbonate, the said solution would turn pink. Requisite instructions were imparted to both the complainant and the panch witness stating that the complainant was to give bribe money to the person concerned on specific demand and that she would talk with the appellant in such manner that the panch witness might hear the conversation and see the transaction of passing of the bribe money and panch witness was directed to remain close with the complainant and give signal by moving his hand over his head only on his satisfaction that the money had been received by the appellant as bribe.

5. The GC notes were handed over to the complainant who kept the same in left pocket of her kurta. Raid party was organised consisting of complainant, panch witness, Raid officer, Inspector BM Sharma, HC Balbir Singh, Constable Anand Mani and Rajinder Singh, and reached the spot, while on reaching the spot, complainant and panch witness went inside the shop and after seeing the shop, they went to Police Station Gandhi Nagar while the raiding team waited for the signal from the panch witness.

6. At about 6:25 pm, one sikh gentlemen in white clothes came along with

complainant and panch witness out of the police station and went to Krishna restaurant and sat therein. The signal of the panch witness was still awaited. At about 6:40 pm, panch witness came out of the restaurant and gave pre-arranged signal. Raiding team reached inside the restaurant where the complainant pointed toward the appellant and stated that he is the same person who had taken and kept the bribe money of Rs. 1000/- in the right side back pocket of the pant worn by him.

7. Inspector disclosed his identity and challenged the appellant that he had accepted bribe money from the complainant, and then the appellant started apologising. Raiding officer over-powered the appellant and offered his personal search to the appellant but he declined and then raid officer recovered the GC notes of Rs. 1000/- consisting of 10 GC notes of Rs. 100/- each from the back hip pocket of the pants.

8. Numbers of the recovered GC notes were tallied with the ones already noted. Thereafter the right and left hand of the accused were taken in the solution of Sodium Carbonate which was already prepared separately and the said solution turned pink. Then the solution was transferred into four bottles which were sealed and labelled, and the labels were signed by the witnesses. Bottles were marked as RHW I, RHW II, LHW I and LHW II.

9. Back pocket of the pant of the appellant was also dipped in freshly prepared solution of Sodium Carbonate which also turned pink and this solution was also transferred into two bottles which were sealed and labelled and the labels were signed by the witnesses. The said labels were marked as PPWI and PPW II. Raiding team on seeing the above

facts of the case was of the view that the accused had committed offence punishable under section 7 and 13 of the Act. Rukka was prepared for registration of the case against the Appellant. Inspector BM Sharma who recorded the statement of the witnesses, obtained the sanction order to prosecute the accused and on completion of all the formalities, charge sheet was filed before the Court.

10. Cognizance was taken on the chargesheet by the Court against the Appellant and thereafter the charges were framed under section 7 and 13 of the Act against the Appellant, who denied the charges and claimed trial.

11. The prosecution examined total 9 witnesses in support of their case. PW1 is ACP KP Singh who deposed to have kept in his custody the exhibits and returned the same to the IO of the case on the next date 05.06.91 for depositing the same in the CFSL office for analysis. PW2 HC Balwan Singh deposed to have recorded FIR Ex.PW 2/A on receipt of rukka.PW3 Ashok Kumar has produced service record of the appellant and deposed that appellant had joined Delhi Police on 18.01.1968 as a constable by the order of Commandant DAP.PW4 HC Rishi Pal who deposed to have received 10 GC notes, 3 sealed bottles and one parcel from Inspector BM Sharma Vide entry Ex. PW 4/A at serial No. 1501 on 04.06.91 and Inspector BM Sharma deposited 3 bottles and one envelope sealed with seal of CFSL vide entry Ex. PW4/B at serial No. 1776 deposited with Malkhana on 30.10.91. PW5Rajesh Kumar, DCP being competent authority who deposed to have granted to sanction Ex.PW 5/A to prosecute the accused.

12. PW6 Lata Monga is the complainant and the prosecution has heavily

relied upon her testimony which will be examined later on. PW7 Hemant Singh Bani is the panch witness. He has partly supported the prosecution case upto the extent of pre-raid proceedings which took place in AC Branch and the raiding party reached the spot but he did not support the prosecution case on conversation, their talks between the accused and the complainant and on the point of the recovery. PW8 is Raid Officer who completed the pre raid proceedings by giving demonstration and instructions to the complainant and panch witness. He also deposed about the post trap proceedings in respect of taking hand wash and pants pocket wash, seizing of exhibits, pants, tainted money etc. PW9 I.O. BM Sharma who recorded the statement of the witnesses and collected CFSL report and sanction order to prosecutethe accused.

13. Thereafter, the statement of the appellant under section 313 of Cr.P.C. was recorded in which he denied the case of prosecution and pleaded his false implication in this case. Appellant did not adduce any evidence in his defence.

14. After appreciation of the evidence and taking into consideration the submissions of the parties, learned trial court by the impugned judgement held the appellant perpetrator of the crime and sentenced him accordingly. Being aggrieved and dissatisfied, this criminal appeal has been preferred assailing the impugned judgement.

SUBMISSIONS ON BEHALF OF THE APPELLANT

15. Mr. Anurag Andley, learned counsel for the appellant submits that the conviction primarily rests upon the presumption under section 20 of the

Act. FIR was lodged to satisfy the ulterior motive as the appellant did not arrest the person namely Manoj Kumar.

16. He strongly relied upon the judgement of the Hon'ble Supreme Court in the case of **P. Satyanarayana Murthy vs. District Inspector of Police, State of A.P. and Another, (2015) 10 SCC 152**, wherein it was held as under:

> *"**22.** In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1) (d) (i) & (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1) (d) (i) & (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was*

emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise."

17. Learned counsel urges that in order to prove the charges under section 7 of the Act, it is necessary to prove the illegal demand followed by the acceptance. He points out from the statement of PW6/Complainant that Manoj Kumar appeared in the Court on 01.01.1991 (typographical error in the examination, it should be 01.06.1991) and was granted bail on the same day. Hence, there was no reason as such for the appellant to demand bribe from the complainant on 03.06.1991 and 04.06.1991.

18. He further submits that as per the allegations, when the appellant went to the house of the complainant at 11:30 – 11:45 pm on 03.06.1991, entire family was present in the house, none of the family members have been made witnesses nor any investigation was carried out in this regard.Moreover, complainant's sister namely Kamini Chauhan is not a witness who was present at the time when the appellant reached the house of the complainant. Also, the alleged crime happened in arestaurant, there is no independent witness in this regard.

19. He further submits that complainant has a strong motive to get the accused involved in some false case as the complainant was having grudge against the appellant for not arresting the person namely Manoj Kumar. Complainant is unsavoury witness and has 3-4 cases pending against her. In such circumstances, her testimony requires independent corroboration and reliance is placed on **Sat Paul vs. Delhi Administration, (1976) 1 SCC 727**.

20. He lastly submits that testimony of PW7/independent witness cannot be relied upon as witness had not seen the complainant giving money to the appellant and he only acted upon the signal made by the complainant. He further admits that he had not seen any recovery made from the appellant.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

21. *Per Contra,* Mr Singh,learned APP supported the impugned judgement and argues that the appellant admits the recovery. He submits that the demand of bribe is proved by PW6. Furthermore, on the basis of circumstantial evidence, the demand and acceptance are both proved beyond reasonable doubt.
22. He then submits that once the demand and acceptance are proved by the prosecution beyond reasonable doubt, then the presumption under section 20 of the Act has to be drawn against the appellant.
23. He further submits that when both the hands of the appellant were washed, the solution of both the hand washed turned pink. Both the hand washes were transferred into two bottles and the bottles were then seized. He particularly relied on the CFSL report.
24. Lastly he submits that no interference is required for with the impugned judgement.

ANALYSIS, REASONING AND CONCLUSION:

25. I have heard the rival submissions of the learned counsel for the parties and perused the material available on record.
26. Recently, the Constitution Bench of the Hon'ble Supreme Court in

Neeraj Dutta vs. State of NCT of Delhi (2023) 4 SCC 731, observed as follows:-

> *"**74.** What emerges from the aforesaid discussion is summarised as under:*
>
> ***(a)** Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.*
>
> ***(b)** In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*
>
> ***(c)** Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
>
> ***(d)** In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*
>
> > ***(i)** if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per*

Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) *On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant; it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.*

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and inturn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act."

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) *In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.*

(g) *In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20*

does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

(h) *We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature."*

27. In **K. Shanthamma vs. The State of Telangana (2022) 4 SCC 574**, the Supreme Court has held as under:-

> ***"10****……..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."*

28. By referring to the above cited judgments, it is clear that in order to prove the charges under section 7 and 13 (1)(d) (i) and (ii) of the Act, it is sine qua non to establish the demand followed by acceptance of illegal gratification. This is a foundational fact which has to be proved by relevant oral and documentary evidence. The proof of demand and acceptance need not be necessarily proved only by direct evidence but also can be proved by circumstantial evidence.

29. In the present case, only persons who have deposed about demanding the bribe and accepting the same are PW6 and PW7.

30. As regard the 'demand'of bribe is concerned, the evidence of PW6/complainant has alleged 4 instances which read as under:-

i. At her house:

> *"On 3-6-91, when the accused came to my house, my*

father, mother and brothers were present the house. The accused talked to me inside the house, while sitting in the room. When the accused demanded the money, my sister Kamini Chauhan was present in that room. She was about 30 years of age at that time, As soon as the accused came to our house, he entered the drawing room and started talking about money. In the meantime, my sister also came there and I did not have any occasion to call my father or brother. I did not tell my father or brothers about the demand made by the accused after the accused left. I had not brought Kamini Chauhan to the A.C. Branch when I made my report. Statement of Kamini Chauhan was not recorded during investigation nor I produced her before the I.O. of the A.C. Branch, as she had no concern with the case. She had just come to the room where Mahal Singh was talking to me. She had not participated in the conversation nor she heard our talks. She had only seen the accused sitting in the drawing room. ....."

ii. At Krishna Restaurant

"As we sat down, the accused demanded money. I asked the accused about the case of my brother and his B.C. file. The accused assured me in the presence of the panch witness that he would close the B.C. file of my brother and would arrest Manoj Kumar. We were sitting on a bench. The accused was sitting on the left side. The panch witness was

sitting opposite to us. I took out the money and gave the same to the accused. The accused accepted the money in his right hand, counted it with both of his hands and then kept it in the right side hip pocket of pants. While taking the money, the accused assured me that the work will be done. He would arrest Manoj and told me that he will take the balance amount after the work done..... Inspector then recovered the money from the pocket of the accused. Numbers of currency notes were tallied and found to be the same as recorded in the pre-raid report."

iii. On the way to the restaurant:

"I and the panch witness were sent ahead. We went to the restaurant but the accused was not found present there. On enquiring from the owner of the restaurant, we were told that Mahal Singh had just gone from there. I and Panch witness went to the police station. Accused was sitting in the room of the SHO and we learnt that some meeting was going on. The accused asked us to wait in a room and told us not to talk about the money with any other person. After 2/3 minutes accused came there and enquired me about the panch witness. Before that the accused had asked me if I had brought the money and I reply in affirmative. I told the accused that the panch witness had also some problem in the police station. The accused told me that he would get problem of the panch witness also sorted out. All this talk

took place while we were talking towards the restaurant. When we reached Krishna restaurant, the accused asked me what I would like to eat."

iv. **Informed the Inspector Ravi Kaushik, SHO, PS Gandhi Nagar:**

"I had met the SHO before the raid. He did not call accused Mahal Singh in my presence. Mr. Kaushik was the SHO. It is wrong to suggest that I had met the SHO on 2-6-91 and the SHO called the accused Mahal Singh. It is wrong to suggest that I had requested the SHO to transfer the investigation of the cases regarding the quarrel to some other officer. The SHO never told me that the accused had been transferred and had given charge to the record moharrer and that there was a farewell party fixed of the accused on 4-6-91."

.....

"..... I had met the SHO on 22nd or 23rd May 91, and he had told me that Mahal Singh was the I.O. and I should talk to him. I had not stated in my complaint that the SHO had called Mahal Singh, when I met the SHO (Confronted with portion X to X of statement Ex. PW6/A where it is so recorded)."

31. During the cross examination of PW6, she has further deposed as under:-

"During the quarrel which took in May 91, myself, my

brother Krishan Kumar and Ashok Kumar and also Raj Kumar had sustained injuries. FIR was registered on the statement of my brother Krishan Kumar being FIR No. 118/91 u/s. 323/324/34 IPC against Laxmi Narain, Daya Krishan and Manoj Kumar. Laxmi narain and Daya Krishan were arrested at the spot, and were released by the accused on police bail. The accused had not arrested Manoj Kumar. We wanted Manoj Kumar to be arrested because he was the main accused. But we did not have the grudge against the accused. It is correct that Manoj Kumar had appeared in the court of Shri. P.D. Jharwal, MM on 01.01.91 (typographical error in the evidence, it should be 01.06.1991) and he was granted bail, on the same day. Volunteered, the accused had however been telling us even till 4-6-91 that he would arrest Manoj Kumar only if we pay him money. It is wrong to suggest that the accused had not told me that he would arrest Manoj Kumar if we paid him money."

32. It is the case of the prosecution that the complainant had alleged in her complaint exhibited as EX. PW 2/A that the demand of bribe was made for arresting Manoj Kumar. Further, the close scrutiny of the testimony of PW6 makes it apparently clear that the complainant knew about the fact that Manoj Kumar appeared in Court and was granted bail on the same day.

33. The evidence of PW7/panch witness with regard to the demand of bribe reads as under:-

"We went to Krishna Restaurant but the accused was not found there. I and the complainant then went to the police station. Lata Monga went inside the police station while I waited outside. After about 10/15 minutes Lata Monga came out with the accused, and we all went to Krishna Restaurant. We ordered cold drinks. There was lot of suffocation inside the restaurant. As we were taking cold drinks, Lata Monga signalled to me with her eyes that the work had been done. I came out and gave signal. Members of the raiding party came inside the restaurant and accused was apprehended. I did not see any recovery being made to from the accused, but I was shown the money and then we were all brought to the anti-corruption branch."

34. According to me, the proof of demand has not been substantiated by PW6 and PW7 by the following reasons:-

I. First the demand made at the house of the complainant, it is admitted by the complainant that her sister Kamini Chauhan was present at the time of alleged demand of bribe, but she has not been named in the case as a witness and not examined. Also, at the relevant time, the brothers, father and mother were all present in the house, yet no one had been cited or made a witness. In addition, it is difficult to acceptthat nobody cared to be present in the room where the alleged demand was made despite a policeman entering the house at 11:30 – 11:45 pm in the night.

II. Second alleged demand was made at the Krishna Restaurant, where the complainant was sitting with the appellant and PW7/panch

witness, where PW7 has categorically denied that he did not see or hear the appellant demanding bribe nor did he see the complainant give any money to the appellant while they sat on the same table in the restaurant.Further he also deposed that he has not seen the recovery being made from the appellant. This fact is also admitted by the learned trial court that PW7 has not furnished any corroboration to the testimony of PW6. In this regard, the evidence deposed by PW7 reads as under:-

> *"5 or 7 persons could sit around the table where we were sitting in the restaurant. The size of the table might by 3ft x 4 ft. Lata Monga and accused were sitting opposite to me, and I was sitting across the table. I did not hear Lata Monga asking the accused to quickly arrest Manoj Kumar and set right the case of her brother. I did not give such statement to the police. (Confronted with statement Ex, PM6/A where it is so recorded). I did not hear the accused saying Lata Manga that he will do her work and asking her if she had brought the money. It is wrong to suggest that I am deposing falsely as I have been mixed up with the accused. I did not give such statement to the police. (Confronted with Ex, PW7/A where it is se recorded). I did not see Lata Monga giving money to the accused. I did not state to the police that Lata Monga had given money to the accused which accused took in her right hand, counted the money with both hands and kept it in the right side back packet of his*

pants. (Confronted with EX.PW7/A where it is se recorded). I had told the police that I had not seen anything but Inspector Jai Singh did not write this saying that it will spoil the entire case, I did not make any complaint to the DCP, Anti-corruption Branch or to my senior officer to the effect that Inspector Jai Singh had not recorded my statement correctly. It is wrong to suggest that I did not make any complaint because my statement had been correctly recorded by Inspector Jai Singh. It is wrong to suggest that accused told Lata Monga that she need not worry. I did not hear her saying so. Nor I stated so to the police. (Confronted with EX. PW7/A where it is so recorded).”

III. Third, on the way to restaurant but the same is refuted in the further cross-examination by the complainant herself that the demand was made but only after they reached the restaurant in this regard the evidence reads as under:-

“..... The accused came out after some time. I had told the police that the accused had asked me to wait in the room and told us not to talk about the money with any other person. (Confronted with Ex. PW6/DA where it is not recorded). The accused demanded the money after we had reached the restaurant. He had not demanded the money while going from the police station to the restaurant.”

IV. Fourth as per the complainant, she approached the Inspector Ravi

Kaushik, SHO PS Gandhi Nagar before the raid proceedings and informed him about the demand of bribe by the appellant. However, the SHO, though a cited witness as per the chargesheet at serial no. 4 in the list of witnesses, but the SHO has not thrown any light on any such information being passed onto him. Prosecution has failed to prove any such occurrence through him.

35. It is settled law that in order to prove the guilt of the appellant, it is the quality of evidence that matters not the quantity and reliance is placed on **Laxmibai & Anr. vs. Bhagwantbuva & Ors., (2013) 4 SCC 97** which reads as under:-

> *"39. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced, do not carry*

any weight……..”

36. In addition, the complainant has improved her statement with respect to the demand of bribe by adding that the name of her brother would be remove from the list of BC (Bad Character) maintained by the Police Station. This fact was not mentioned in the complaint Ex. PW2/A. Relevant portion deposed by the complainant in this regard reads as under:-

> *“I had met Mahal Singh several times in connection of the said case. On 3-6-91, Mahal Singh accused came to our house at about 11-30 or 11.45 p.m, and told me that if I paid him 2000/- as bribe, he would remove the name of my brother from the list of BCs and would make the case in our favour. He also said that in case I paid the money, he would arrest Manoj Kumar, I told Mahal Singh that my brother had been injured and therefore, why should I pay the money.”*
>
> .....
>
> “..... *I had stated in my complaint that the accused had demanded money for arresting Manoj Kumar, but i had not mentioned in my complaint that accused had demanded money for removing the name of my brother from the list of the accused persons. .....”*

37. In the case of **Harbeer Singh v. Sheeshpal, (2016) 16 SCC 418,** the Hon’ble Supreme Court has observed as under:

> ***“15.*** *…… Thus, while it is true that every improvement is not fatal to the prosecution case, in cases where an*

improvement creates a serious doubt about the truthfulness or credibility of a witness, the defence may take advantage of the same. (See Ashok Vishnu Davare v. State of Maharashtra, (2004) 9 SCC 431; Radha Kumar v. State of Bihar, (2005) 10 SCC 216; Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657 and Baldev Singh v. State of Punjab, (2014) 12 SCC 473) ......"

38. Now the question is whether, on the basis of the evidence on record, the prosecution has proved the demand of bribe by the appellant/accused beyond reasonable doubt.

39. The Hon'ble Supreme Court in **N. Vijayakumar v. State of T.N., (2021) 3 SCC 687**, and more particularly para 26 has held as under:-

*"**26**. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification*

and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."

(*emphasis supplied*)

40. Therefore, the demand of bribe followed by its acceptance must be proved beyond reasonable doubt. The burden of proving its case beyond all reasonable doubt lies squarely on the prosecution.

41. I refer to the paragraphs with respect to the analysis done by the learned trial court which reads as under:-

*"**15**. As regards motive of removing the name of her brother from the list of B.Cs..it is correct that this motive of removing the name of her brother from the list of BCs does not find mention in the complaint Ex.PW 6/A. But the motive of giving bribe to the accused as per complaint is that accused would show favour in investigation of the case of the brother of the complainant and arrest Manoj Kumar, opposite party which is mentioned in the same statement of PW 6. Therefore, it cannot be said that the bribe has not been given for the motive mentioned in the statement. Statement of the complainant to the effect that the accused had demanded money for removing the name of her brother*

from the list of BC, when he was not the BC at the time demanding bribe money does not appear to be improbable. Complainant by this only meant that his brother who was B.C. had ceased to indulge in the activities attributed to B.C. but his name still existed in the police record as B.C.

16. *Perusal of the testimony of this witness shows that some criminal cases are pending against her and there are some contradictions in her testimony. She stated before the Raid Officer that the accused made demand when he was accompanying her to restaurant but subsequently in her cross examination she denied that the accused had made such demand while going from the police station to the restaurant whereas she stated so in her examination in chief. Thus, this is minor contradiction as to place of demand. In addition to this, she also stated that she gave her complaint in writing to the Inspector Jai Singh but there is no such complaint in writing by the complainant on record. These circumstances and contradictions as well as antecedents above are of little significance in view of the factum of recovery of the tainted money from the hip pocket of the pants of the accused. Testimony of PW 7 panch witness has not furnished any corroboration to the testimony of PW 6. P.W. 8 Jai Singh ACP, the then Inspector in AC Branch has supported the case of the prosecution and claims to have recovered tainted money*

from the right side hip pocket of the pants of the accused. Statement of PW 6 complainant to the effect that PW 8 recovered the money from the right side hip pocket of the pants of the accused, stands corroborated by the testimony PW 8. Another incriminating circumstance against the accused is CFSL report which shows the presence of phenolphthalein powder in the presence testimony PW 8. Another incriminating circumstances against the accused is CFSL report which shows the presence of phenolphthalein powder in the presence of hand wash and pants pocket wash, and the same goes to show that the accused had accepted the tainted money but the washes of the right hand and pants pocket shown in the court are white in colour. The factum of initial demand is also mentioned in the complaint Ex.PW 6/A furnished corroboration to the testimony of PW 6 complainant on this aspect. However, testimony of the complainant that the money was recovered from the right hand side hip pocket of the accused has been corroborated by the testimony of raid officer who recovered the tainted money. Thus, the recovery of tainted money from the right side hip pocket of the pants of the accused is of material importance and gives credence to statement of the complainant that the accused demanded bribe from her and received and obtained (accepted) the tainted money as bribe. Report of CFSL containing the presence of phenolphthalein powder alongwith sodium carbonate also

furnishes corroboration to the fact that the accused accepted and received the tainted money. Colour of substance in the bottles containing right hand wash and wash of the right hip pocket of the pants of the accused might have faded or turned white due to passage of time or due to lack of quantity of phenolphthalein powder either in the right hand or in the pants pocket. Left hand wash contained in the bottles is still pink in color."

42. Learned trial court has failed to appreciate that the prosecution must prove the demanding and acceptance of bribe by primary or secondary evidence by the appellant. In the present case, PW7 has not supported the case of the prosecution. The evidence of PW6 is untrustworthy as Icannot lose sight of the fact that the veracity and credibility of the complainant is in question as the appellant has assailed the character of the complainant on the ground of improvement and further she has several criminal antecedents, which needs independent corroboration. In this regard, her cross examination reads as under:-

"Earlier I was married to Gokal Chand at Aligarh. I got divorce from Gokal Chand in 1981. I do not remember the name of the court. I know Vinod Kumar. Case u/s. 309 was registered against me on 15-8-1993 and I had mentioned the name of Vinod Kumar in that case, Vinod Kumar had been sent to me by Mahal Singh and he wanted me to withdraw this case against Mahal Singh, I did not live with Vinod Kumar. A case u/s. 376/506 I.P.C. was registered against Vinod Kumar on my complaint at P.S. Shakarpur. I

had stated in my complaint that I was living In House N. 64-A, Laxmi Nagar. I had not mentioned in the FIR that I was living in that house with Vinod Kumar as his wife. That case against Vinod Kumar is pending in court. My statement has been recorded in that case.

Proceedings u/s. 107 were initiated against me at P.S. Shakarpur. It is wrong to suggest that proceedings u/s. 107 were initiated against me on 4-3-92, 6-4-92 and 22-3-92. Only once such proceedings were initiated u/s. 107/150 when there was a quarrel with the landlord.

I know Ram Rattan. I had no quarrel with him. It is correct that case FIR No. 174/92 dated 23-7-92 u/s. 160 IPC was registered against me and Ram Rattan. I was arrested in that case and released on bail by the court.

No case under the N.D.P.S. Act for possession of charas has been registered against me.

I own a Yamah motor cycle. On 11-7-97, someone had put smack in my vehicle. Somebody informed the police. Inquiry into that incident is being conducted at P.S. Anand Vihar. My vehicle was taken to the police station. I was also called for enquiry. No one has been arrested in that case."

43. It is apposite to refer to a judgement of the Hon'ble Supreme Court in ***Sat Paul v. Delhi Admn.*, (1976) 1 SCC 727**wherein it has been held as under**:**

***"23.** It is true that there is no absolute rule that the evidence of an interested witness cannot be accepted without*

corroboration. But where the witnesses have poor moral fibre and have to their discredit a heavy load of bad antecedents, such as those of PWs 1, 2, 7 and 8, having a possible motive to harm the accused who was an obstacle in the way of their immoral activities, it would be hazardous to accept their testimony, in the absence of corroboration on crucial points from independent sources. If any authority is needed reference may be made to R.P. Arora v. State of Punjab wherein this Court ruled that in a proper case, the Court should look for independent corroboration before convicting the accused person on the evidence of trap witnesses."

44. In the case of **Kanhaiya Lal & Ors. etc. v. State of Rajasthan, (2013) 5 SCC 655**, and more particularly para 24 and 25 reads as under:-

***"24.** In Hari Obula Reddy v. State of A.P. [(1981) 3 SCC 675: 1981 SCC (Cri) 795] a three-Judge Bench has opined that it cannot be laid down as*

> *"An invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically*

> *reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon." (SCC pp. 683-84, para 13)*
>
> ***25.** In Kartik Malhar v. State of Bihar [(1996) 1 SCC 614: 1996 SCC (Cri) 188] this Court has stated (SCC p. 621, para 15) that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason."*

45. Perusing the entire testimony of the complainant, it is clear that the evidence of PW 6 is not of sterling quality. PW6 has poor moral fibre and there are several material contradictions and improvement which go to the root of the credibility of this witness. The complainant herself is an accused in the FIR 120/91 along with her brothers of which the appellant was the IO. She is an accused in various criminal cases and they are(1) Case u/s 309 IPC as accused; (2) Case u/s 107/150 IPC as accused; (3) FIR No. 174/92 u/s 160 IPC along with co-accused Ram Rattan where she was arrested; (4) Enquiry in an NDPS case where smack was found in the motorcycle owned by the complainant. Hence, it is not safe to convict the appellant solely on the testimony of the complainant which is not corroborated by any other witness/evidence and most importantly PW7.

46. Consequently, the evidence of PW6 does not inspire confidence and is

uncorroborated by any other witnesses, and the credibility of witness itself is in doubt as the complainant wantsto satisfy her ulterior motives only to get the Manoj Kumar arrested and to get favours in the investigation. The solution turning pink in the absence of demand will have no bearing as the law is settled in this regard. Hence the demand of bribe either by primary or by secondary evidence has not been proved.

47. Another aspect that the learned trial court has relied upon is the presumption under section 20 of the Act to convict the appellant. In this regard, the observations made by the learned trial court reads as under:-

> *"19. In the instant case, the accused is a public servant working as A.S.I being employee of the Delhi Police. This fact stands proved from the statement of PW3, PW5, PW6 and PW7 and is not denied by the accused himself that he was acting as a Asstt. Sub Inspector at the relevant time. It is also proved that the accused has received or obtained the tainted money of Rs. 1000/- from the complainant PW6 as discussed above but the accused has failed to prove to the contrary that he accepted the tainted money as legal gratification.* ***In the absence of any such proof that the accused has obtained the legal gratification from the accused and on proof of the above fact that the accused has accepted the above illegal gratification while he was acting as Public Servant i.e. ASI in the police department, I have no option but to presume that he accepted the illegal gratification of Rs. 1000/- from the complainant*** *for*

doing favour in the investigation of case FIR No. 118/91 u/s 324/326/34 IPC PS Gandhi Nagar and for arresting Manoj Kumar, the opposite party of her brother, Hence, this issue is decided accordingly."

48. I am unable to agree with the said finding of the learned trial court as the Hon'ble SC in ***Neeraj Dutta (Supra***) has held that presumption under section 20 of the Act will only arise once the foundational factsi.e. demand and acceptance are proved.

49. By referring to the above mentioned testimony of the witnesses i.e. PW6 and PW7, and the analysis undertaken hereinabove qua section 7 and 13(1)(d)(i) and (ii) of the Act, it leaves no manner of doubt that the prosecution in the instant case has failed to prove the demand and acceptance of bribe either through direct or indirect evidence which constitute the foundational facts and thus, it would be unsafe and impermissible to sustain the conviction of the appellant.

50. As a result, the instant Criminal Appeal is allowed and the conviction and sentence recorded by the learned Special Judge, Delhi in Case No. 283/1994 is set aside. The sentence was already suspended.

51. Copy of this order be communicated to the concerned jail Superintendent and the Trial Court.

JASMEET SINGH, J

SEPTEMBER 01, 2023 /(MSQ)

Click here to check corrigendum, if any