



2025:DHC:1618



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

Reserved on: 8th November, 2024

Pronounced on: 12th March, 2025

+ CRL.A. 638/2014
MEGHRAJ SINGH

.....Appellant

Through: Mr. Sushil Bajaj, Mr. Bhavook
Chauhan, Mr. Tushar Yadav & Mr.
Aadithya Aravindh, Advocates.

versus

CBI

.....Respondent

Through: Mr. Atul Guleria, SPP, Mr. Pankaj
Kumar with Mr. Aryan Rakesh,
Advocates for CBI.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed assailing the impugned judgment of conviction and order on sentence dated 03.05.2014 and 12.05.2014 respectively, passed by learned Special Judge, P.C. Act (CBI-09), Central District Tis Hazari Courts, Delhi, whereby, the present appellant has been convicted in Corruption Case No. 89/2011 arising out of RC No. 48(A)/04, under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, (for short, 'PC Act'), registered with CBI.



2. *Vide* the aforesaid judgment of conviction and order on sentence, the appellant has been convicted for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. The appellant was sentenced to rigorous imprisonment for a period of 3 years alongwith a fine of Rs. 25,000/- for the offence punishable under Section 7 of the PC Act and also sentenced to rigorous imprisonment for a period of 3 years alongwith a fine of Rs. 25,000/- for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act.

FACTUAL BACKGROUND

3. Brief facts, necessary for the disposal of the present appeal, are as follows:

i) The present appellant was posted as Head Constable with the Excise Department of GNCT of Delhi during the year 2003. Another co-accused person, Ram Kumar, who was posted as Constable with the same Department and was jointly tried alongwith the present appellant, was acquitted by the learned Trial Court.

ii) During 2002 and 2003, one Chetan Prakash s/o Babu Lal (hereinafter referred to as, 'complainant/PW-4') had captured several personnel of Delhi Police and Excise Department in a video taking money from bootleggers in the area under the jurisdiction of Police Station Uttam Nagar and the areas adjacent to it, in order to expose their corrupt practices. He had, then, filed a writ petition, i.e., **W.P.(CRL) 367/2004**, before this Court stating that he had recorded videos of police personnel and other government officials taking bribe from bootleggers and thereby seeking protection and direction for



investigation by CBI in this regard. *Vide* order dated 04.10.2004, a Coordinate Bench of this Court directed the CBI to investigate the present matter. Accordingly, in compliance of the order passed by this Court three separate Regular Cases were registered with CBI, ACB, New Delhi *vide* FIR Nos. RC DAI 2004 A 0048; RC DAI 2004 A 0049; RC DAI 2004 A 50.

iii) The proceedings in the present case arises out of RC DAI 2004 A 0048 as this RC is in respect of the incidents falling within the territorial jurisdiction of PS Uttam Nagar.

iv) The complainant/PW-4 had provided one VHS video cassette and five HI-8 (small) video cassettes to CBI through High Court which then, formed the basis of the present investigation. One of the places where complainant captured the video films, in a clandestine manner, was in front of the residential premises of Shri Jasbir Sansi and his wife, Smt. Bina Sansi, who allegedly used to sell liquor bottles illegally from the premises of their residence. Several cases under the Excise Act were also stated to have been registered against the said Sansi couple at PS Uttam Nagar.

v) During the course of investigation, it was revealed that video films in question were prepared by the complainant/PW-4 on HI-8 video cassettes and he had copied its contents in VHS video cassette. Five such HI-8 and one VHS cassettes were kept in possession of CBI in sealed condition. The contents of these video films were shown to the complainant/PW-4 and several Police personnel of Delhi Police and the persons being featured in the video films were identified.



vi) The appellant alongwith the co-accused were posted and functioning as public servants with the Excise Department of GNCT of Delhi at the relevant point in time and when the said video film was captured, they were identified as being featured in that video. The appellant was alleged to have been found sitting in front of the residential premises of the aforesaid Jasbir Sansi on a chair and the co-accused was found standing near him. The appellant has, then, alleged to have been caught in the said video accepting bribe from Smt. Bina Sansi in front of their residential premises. He is stated to have accepted Rs. 100/- currency note, and then, keeping the same in his pocket subsequently. The co-accused was featured standing near to the appellant when the said alleged illegal transaction of bribe had taken place.

vii) The said video clipping in question was shown to the complainant/PW-4 and several police personnel of Delhi police and they allegedly identified the appellant and the co-accused in the said video clipping. The voice specimen of the appellant was procured and the said videocassettes along with the voice specimen of the appellant were sent to CFSL for voice spectrograph examination. The CFSL, New Delhi *vide* its report Nos. CFSL-2007/P –0171 and CFSL–2007/P–0185 dated 16.04.2007 had opined that the voice specimen of the appellant was a match with the voice which was there in the said video clippings. The co-accused was stated to not have said anything while the said video was captured. Therefore, he was not subjected to voice spectrograph examination.

viii) The original HI – 8 cassettes were forwarded to CFSL, Chandigarh for obtaining report on editing and tempering aspect. CFSL, Chandigarh *vide* its report No. CFSL/1255/06/Phy/187/06/1091 dated 19.12.2006 has opined that



the video recordings in the said cassettes were camera originals and free from editing.

ix) Thus, after the completion of investigation, the appellant was stated to have committed offences punishable under Section 120B of the IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. The sanction for prosecution of the appellant as well as the co-accused were obtained separately from the competent authorities and the same were annexed with the charge sheet in original. Learned Trial Court, *vide* order dated 25.09.2010, had framed the charges for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act against both the appellant and the co-accused.

x) The prosecution in order to prove the aforesaid charges levelled against the appellant as well as the co-accused had examined 17 witnesses and in order to dispel the case of the prosecution the appellant had also led defence evidence comprising of one witness, namely Inspector Vijay Nagar. Learned Trial Court after analysing the prosecution evidence, the statement of the accused/appellant recorded under Section 313 of the CrPC and the defence evidence led by the present appellant had found the latter guilty of the charges levelled against him and sentenced him accordingly. Hence, the present appeal has been filed assailing the impugned judgment of conviction and order on sentence passed by the learned Trial Court.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Learned counsel appearing on behalf of the appellant, in support of the present appeal, has made the following submissions: -



- i) Learned Trial Court had erroneously convicted the appellant on the basis of the prosecution evidence placed on record during the course of trial. The fundamental basis for the conviction of the appellant has been the alleged video recordings and perusal of the record pertaining to the said video recordings would show that they were fabricated and tampered.
- ii) It has been argued that the prosecution had tendered two expert reports, Ex. PW-5/A and Ex. PW-8/A, in respect of the relevant video recordings pertaining to the present case and both these reports are substantially in contrast to each other. It is the case of the appellant that there are various discrepancies in the said video recordings relied upon by the prosecution and the learned Trial Court had wrongly relied upon them to convict the appellant. Reliance has been placed on **Tulsiram Kanu v. The State, AIR 1954 SC 1**, to content that when there is a difference of opinion in the reports relied on by the prosecution, a duty is casted on the latter to explain the difference and mere a production of the report does not, under any circumstance, would prove anything against the concerned accused.
- iii) It is submitted that the said two sets of scientific reports have given contradictory findings, thereby falsifying the case of the prosecution. The contradiction in the said reports would cast serious doubt on the authenticity and credibility of the said video recordings. In view of the same, it is contended that the said video recordings alongwith both the expert reports are liable to be discarded.
- iv) It is pointed out that PW-5, expert witness, in his report (Ex. PW-5/A) had stated that there were a number of re-recordings in the cassettes used in



the present case. Perusal of the said report given by PW-5 would show that there was over recording in order to delete some portion of the recorded video in camera itself by which the video clippings in the present case were claimed to have been captured. It is further the case of the appellant that the alleged video recordings are not substantive piece of evidence and can only be used for corroboration purposes.

v) It is further submitted that there is no witness, other than the complainant, who had made any allegation or supported the case of the prosecution in respect of the demand and acceptance of bribe by the appellant, and thus, the testimony of the complainant/PW-4 could not form the basis of conviction as the same is hearsay. As pointed out hereinabove, the video recordings cannot be used for corroborating the testimony of the complainant as the same are itself not cogently proved by the prosecution. It is further submitted that the complainant is not a credible witness as he is involved in a number of criminal cases and is himself into the business of selling illicit liquor. A number of cases have also been registered under Excise Act against the complainant.

vi) It is further contended that that the lady, Bina Sansi, from whom the appellant is stated to have demanded and accepted the illegal gratification has neither been cited as a witness nor examined by the prosecution during the course of trial. It is the case of the appellant that he used to procure information about the illegal trade of liquor from various sources by providing them money. The said currency note of Rs. 100/- was returned by Bina Sansi on the instructions of her husband, PW-7, as he was not able to provide information to the appellant regarding a vehicle transporting illegal



liquor. It is further submitted that the case of the appellant in this regard has been corroborated by the testimonies of PW-6, PW-10 and DW-1.

vii) It is further submitted that the charge levelled against the appellant was for the demand and acceptance of illegal gratification in respect of an incident occurred on 12.11.2003, whereas the expert report (Ex. PW-5/A) shows that the subject recordings for which expert analysis was sought were in respect of the two incidents being dated 13.11.2003 at 04:00 PM and 14.11.2003 at 02:26 PM. It is, therefore, contended that none of the aforesaid incident regarding which the expert report was given relates to the day of the incident for which the present appellant is alleged to have demanded and accepted bribe.

viii) Thus, the evidences on record does not show that the appellant had demanded any illegal gratification from the said lady. Therefore, the charge of demand of illegal gratification against the appellant stand falsified.

ix) Insofar as the sanction for prosecution (Ex. PW-3/1) against the appellant is concerned, it is submitted that PW-3, the person competent to grant the sanction, had in his cross-examination stated that he did not remember whether any video cassette/recording was produced before him for the grant of sanction. Attention of this Court has been drawn towards the testimony of PW-17 (Investigating Officer) to show that he had stated that the recordings, which forms the basis of the case of prosecution, were not placed before the sanctioning authority. Reliance has been placed on **Tirath Prakash v. State, 2001 SCC OnLine Del 646: 2001 Cri LJ 4028**, to contend that the validity of the sanction depends upon the material placed before the



sanctioning authority and the fact that all the relevant facts, material evidence have been considered by the sanctioning authority which must apply its own independent mind to the said relevant material facts of the case and the evidences collected during the course of investigation. Any case instituted without a proper sanction must fail because it strikes at the root of the case of the prosecution and renders the entire proceedings *void ab initio*.

x) Thus, it was prayed that the impugned judgment of conviction and order on sentence be set aside and the appellant be acquitted.

SUBMISSIONS ON BEHALF OF THE RESPONDENT/CBI

5. *Per contra*, learned SPP for CBI has made the following submissions: -

i) PW-15, Dhirender Nath, had identified the present appellant through the said video recordings captured by the complainant/PW-4 and thereby substantially proved the fact that the appellant was posted in the excise department at the relevant point in time. It is submitted that PW-15 at that time, i.e., during 2002-2004, was posted as Sub-Inspector in the Excise Department on deputation from Delhi Police and the present appellant was posted with him in the same department. It is further the case of CBI that the concerned video cassettes and CDs were meticulously preserved and presented during the trial before the learned Trial Court as the same can be seen from Ex. PW-4/C and Ex. PW-4/D.

ii) Testimonies of forensic experts, PW-5 and PW-8, have confirmed the authenticity of the video as well as the audio recordings and have also verified



the originality and unaltered status of the recordings. The expert reports being Ex. PW-5/A and PW-8/A duly substantiates the evidentiary value of the video recordings presented before the learned Trial Court and no evidence of tampering as alleged by the appellant has been brought forward by him. More so, no suggestion has been put to the complainant/PW-4 in this regard.

iii) Crime Scene was identified by the complainant and both the appellant and co-accused were seen and identified in the video recordings as being indulged in demanding and accepting illegal gratification. It is pointed out that the presence of the present appellant has been duly proved at the crime scene through the testimonies of the complainant/PW-4, PW-1 and PW-2.

iv) It is the case of the CBI that from the perusal of the video recordings wherein the present appellant has been featured, he can be seen demanding and accepting bribe and the same has also been corroborated through the testimonies of the various prosecution witnesses as noted hereinabove.

v) It is submitted that the learned Trial Court has after detailed analysis placed reliance on the said video clippings/recordings to convict the present appellant and the said findings need not be interfered with as this Court did not have the occasion to scrutinize the said evidence and the contents of the said recordings. It is further submitted that no objection was raised by the appellant during the trial while the said video recordings were admitted by the learned Trial Court. Therefore, the said oversight cannot be agitated now. Reliance has been placed on **P.C. Purushothama Reddiar v. S. Perumal, (1972) 1 SCC 9**, to contend that if objections to the admissibility of an



evidence has not been raised at the stage of its exhibiting, then, the same cannot be raised at the appellate stage.

vi) It is further submitted that the prosecution was aware of the involvement of Bina Sansi in the present case, however, due to her demise, prosecution was unable to examine her as witness.

vii) Reliance has been placed on **B. Noha v. State of Kerala, (2006) 12 SCC 277**, to contend that when the voluntary and conscious acceptance of money has been proved on record by the prosecution then, no further burden is cast on the latter to prove by direct evidence the demand or motive behind the said act and the same can be deduced from the facts and circumstances of the case. Reliance has also been placed on **Hazari Lal v. State (Delhi Admn), AIR 1980 SC 873**, to contend that the conviction of a person accused of commission of offences punishable under the Prevention of Corruption Act can be based on the statement of trap officer.

viii) It is further submitted that no objection or questions have been put by the appellant to the expert witnesses during their cross-examinations regarding the authenticity or credibility of the said video recordings and the same is sought to be challenged by him in the present appeal. Reliance has been placed on **Mohd. Ibrahim and others v. Munni @ Zainab Bee, (2007) 1 ALT 511**, to contend that when the facts stated in the examination-in-chief of a witness are not disputed in the cross-examination, then, the same should be deemed to be admitted. Therefore, failure of appellant to dispute the authenticity of the video recordings during the cross-examinations of PW-4,



PW-5 and PW-8 suggests an implied admission of his part in respect of the validity of the said recordings.

ix) It is further submitted that the testimonies of PW-4 and PW-7 has cogently proved the charge of the demand and acceptance of illegal gratification by the appellant and no definite plea has been taken by the latter whereby aspersions could be casted on their testimonies. Reliance has been placed on **Shahaja @ Shahajan Ismail Mohd. v. The State of Maharashtra, 2022 SCC OnLine SC 883**, to contend that the aforesaid two witnesses, who were present at the spot where the bribe was handed over, have given consistent statements and there are no significant contradictions or improbabilities in their statements that would undermine their reliability.

x) Learned SPP for CBI has submitted that **State (GNCT of Delhi) v. Netrapal Singh and Ors., 2024 SCC OnLine Del 147: 2024:DHC: 136**, is not applicable to the facts of the present case and the same is distinguishable as, in the said case, original of the video recording (footage) was not produced before the Court. In the said case, the Respondents therein were acquitted by the learned Trial Court and the same was affirmed by this Court. Thus, legal principles applicable in the present case are different to that which have been followed in the **Netrapal's case**. Moreover, in the present case, the complainant/PW-4 was an eye-witness, however, this was not the case in **Netrapal's case**. Thus, it was prayed that the impugned judgment of conviction and order on sentence be upheld.

ANALYSIS AND FINDINGS

6. Heard learned counsel for the parties and perused the record.



7. In the present case, the appellant has been convicted for offence punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the PC Act. A Constitutional Bench of the Hon'ble Supreme Court in **Neeraj Dutta** (*supra*) had dealt with the following issue: -

“3. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short “the Act”) would not arise. Thus, the proof of demand is a *sine qua non* for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and dehors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning “hostile” or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.”

Answering the aforesaid issue, the Constitution Bench held as under: -

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (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.

88.2. (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.

88.3. (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.

88.4. (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 Sections 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 Sections 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 in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (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.

88.6. (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.

88.7. (g) Insofar 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.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.”

(emphasis supplied)

8. In view of the aforesaid legal position, the prosecution needs to establish both demand and acceptance of a bribe. The Hon’ble Supreme Court in **Neeraj Dutta** (*supra*) has categorically held that in both the cases of offer to pay by the bribe giver or when the public servant makes a demand, both would have to be proved by the prosecution as a fact in issue. Therefore, mere acceptance or receipt of illegal gratification would not be sufficient to bring the case of the prosecution under Section 7 or Section 13(1)(d) and Section 13(2) of the PC Act. Presumption regarding demand and acceptance or an



offer to pay of illegal gratification can be inferred only when the foundational facts have been proved by oral or documentary evidence.

9. In the present case, the learned Trial Court while convicting the appellant has solely relied on the testimony of complainant/PW-4 and the video cassette (Ex. P-5) which were produced by the said witness and played before the Court during the course of trial. Learned Trial Court while convicting the present appellant has exclusively relied on the said video footage played before it, to presume that the appellant had made a demand and accepted the bribe from one, Bina Sansi. There was no prior complaint of any demand by anyone including Bina Sansi, when the alleged video recording was shot. It is a matter of record that the aforesaid Beena Sansi, was neither examined before the learned Trial Court nor was cited as a witness. The relevant portion of the PW-4's testimony recorded before the learned Trial Court in respect to the video played is reproduced herein under: -

“(At this stage Sh. P.K Gottam from CFSL has set up the instruments etc. for playing the cassette. An envelope has been produced bearing the seal of the Court. The seal is removed and one cassette is taken out.)

I can identify this cassette. I had prepared the same. The cassette is already Ex.P5. The hand writing on the Inlay card already Ex.P5A giving the details of the recordings on it on the side X is in my hand writing.

(The cassette is inserted in the video camera brought by Sh. P.K Gottam from CFSL and played. The transcript thereof along with the two photographs prepared from the same video cassette have been handed over to the Ld. Defence Counsel as well as the witness for comparison with the recording.)

The frame which has been freezed by playing the cassette shows the accused Meghraj today present in the Court. He is the same person shown in the photograph which has just been shown to me. For reference the photograph is Ex.4/E. (While playing the cassette another frame has



been freeze.) I can identify this person. He is the other accused Sh. Ram Kumar today present in the Court. I have seen the photograph just shown to me still taken from the same video clipping. It shows the accused Ram Kumar. The photograph is now Ex. 4/F.

The video clipping being shown in the video cassette is of the residence of Jasbir Sansi. The lady appearing in the video clipping sitting on a cot is Beena W/o Jasbir Sansi. Beena and Jabir Sansi used to sell liquor illegally from the said premises in connivance with the local police. I had seen at the time of making the video clipping that the accused herein Head Constable Megh Raj had come to collect "monthly" from Beena Sansi, the way he used to come earlier for collecting "monthly" from them. He was accompanied by Constable Ram Kumar. (Objected to). I had visited the house of Jasbir Sansi before this time as well and had seen them selling liquor illegally. They had informed me that the police officials used to collect "monthly" from them. (objected to as hear say). I had seen at the spot the liquor was being sold by Beena Sansi. The above two officials had visited her and had asked her to pay the "monthly". Beena Sansi had bargained with them and HC Meghraj had accepted Rs.100/- from her and thereafter they had left. Even after I had switched off the camera, Beena had continued to sell liquor.

I have heard the conversation recorded in the video clipping. It matches the transcript which has been shown to me except that there is an addition to be made at point X1 which has just been recorded in the transcript. The transcript for future reference is Ex.4/G.”

10. The transcript (Ex. PW-4/G) of the said video recording is reproduced as under: -

“M-POLICE-KYA HALL HAI, KYA HUA

LADY – ASPASTH (NOT CLEAR)

M- POLICE – AYE, DARU NA BIK RAHI, LE AA JALDI KAR,
BUKHAR HO RAHA HAI KYA

LADY – ASPASTH (NOT CLEAR)

M- POLICE – UTH JA CHAL, LA DE, CHALEIN PHIR LA



LADY – EK DOH PAWWA BECH RAHEN HAIN, CHOWKI WALON KO BHI NAHI DIYE

M- POLICE – NA HAI TO THEEK, NAHI TOH KEH DE NAI HAI, LA LE AA PHIR JALDI CHALEN

LADY – ASPASTH (NOT CLEAR) LE JAIYA EK-DOH DIN MAIN

M – POLICE – AAYE, HAI TUJHE PATA HAI YAHAN PHIR AAYA JAYE KYA JALDI LE AA JALDI KAR, JALDI, THAILI MAIN SE NIKAL LA- ASPASTH (NOT CLEAR) – TUJHE PATA HAI HAMARE PAAS.....

LADY – LE USHA

LADY 2 – HAAN

LADY – LE 100 RUPAYE DE DE

M – POLICE – NAHI 10 RUPAYE NAHI

LADY – AREY 100 RUPAYE MAIN DE RAHI HOON TERE NAHI TOH YAHAN GADI WALE CHALE GAYE KHALI

M – POLICE – GADI WALE AUR, WEY GADIWALE MAIN KYA PHARAK HAI

LADY – MATA RANI KASAM, EK DOH PAWWE BECH RAHI HOON, KAL PARSO SE WHO BHI CHORI DIYE, MERA TO BEDA GARK ISNE KAR DIYA, MAIN TOH PLOT KE CHAKKAR MAIN BAITHI HOON, AAJ BIK JAYE TOH AAJ CHALE JAYEN

M- POLICE- AB TU BECH RAHI HOGI DARU KE SATH

LADY – ASPASTH (NOT CLEAR)

M – POLICE – BECH RAHI HOON MAIN TOH BACCHON KI KASAM AUR KAHIN LUNGI YAHAN TOH CHOWKI CHOWKI KE SADHE ATHARAH HAZAR RUPAYE HAIN

M – POLICE – CHOWKI KI TOH BAAT HI THI NAU HAZAR RUPAYE MAIN HI TOH BAAT HUI THI TERI.

M – Stands for Meghraj.”



11. As already noted hereinabove, the said lady, Bina Sansi was never examined before the learned Trial Court, however, her husband, Jasbir Sansi, was examined as PW-7, who, in the said video clipping, had identified his house as well as lady featured in the said video recording, Bina Sansi, his wife. He further stated that his wife was giving currency note to the person sitting in the chair to get the vehicle of complainant/PW-4 apprehended who allegedly was in the business of supplying liquor. He further stated that he was not at home when the said video was being captured. It is noted that this was also the defence taken by the appellant herein.

12. It is important to note that the transcript relied upon by the learned Trial Court has been prepared with the help of complainant/PW-4 who was not privy to the conversation between the present appellant and lady Beena Sansi. Complainant/PW-4 in his cross-examination dated 01.12.2012 has stated as under: -

“The video related to this case was shot by me from a plot of land with a boundary wall opposite to the house of the Jasbir Sansi.”

Thus, admittedly the complainant/PW-4 was not present in the premises at the time when the said videos were captured.

13. It is also the case of the prosecution that the video in the present case was of the house of Jasbir Sansi (PW-7). The place from where he captured the video is stated by the complainant/PW-4 to be a plot of land with a boundary wall opposite to the house of Jasbir Sansi, however, there is no site plan prepared by the Investigating Officer Mukesh (PW-13). It is interesting to note that even as per the case of the prosecution, complainant/PW-4 claimed to have shot series of videos at the house of Jasbir Sansi (PW-7)



wherein, other police officials were also allegedly caught taking bribe. There were different Corruption Cases arising out of the present FIR-RC registered in respect of different police personnel. In one such cases, arising out of the same RC in CC No. 92/2011 titled as, “CBI v. Vijay Pal”, Chetan Prakash (PW-4 herein) was examined as PW-2 in the said case and during his cross-examination in the said case, he had stated that he captured the video from the first floor of the house inside the kitchen from whose window the spot where liquor was being sold and visitation by the police officials were clearly visible.

14. Similarly, in case CC No. 91/2011 titled as, “CBI v. Ram Kumar and Anr.”, this witness (PW-4 herein) who was examined as PW-3 in the said case had stated that the camera was located at a distance of about 25 feet from the spot and that a mic was fixed on the tree under which all the persons were seen sitting. It has been further stated that the mic was above the head of the person sitting and was connected with his handycam camera. In the present case as well, complainant/PW-4 was using a mic and from his cross-examination recorded on 01.12.2012, following has come on record regarding the usage of audio lead: -

“Q.: Would it be correct to say that in the video clipping from the timing 14:27:23 to 14:27:34 nothing is visible?”

A.: During that period, the camera had gone out of focus as I was at that time, checking the audio lead as to whether the same was fixed properly or not.”

15. This Court is conscious of the fact that the aforesaid statements given by this witness (PW-4) in different Corruption Cases arising out of same FIR-



RC cannot be used for the purpose of the present appeal, however, it is noted that since the appeals arising out of the aforesaid Corruption Cases are also being disposed of *vide* separate judgments of the even date, this Court had the opportunity to peruse the cross-examinations of the complainant/PW-4, Chetan Prakash, in the aforesaid Corruption Cases as well and specially with regard to mode and manner in which the subject videos were recorded by this witness, PW-4.

16. Be that as it may, even in the present case, the prosecution, apart from Jasbir Sansi, PW-7, has not examined daughter of Beena Sansi, who was alleged to be seen in the video captured by complainant/PW-4. No voice analysis of Beena Sansi has been placed on record. Conversations between Beena Sansi and the appellant could not have been heard by the complainant/PW-4 as he was admittedly not present at the 'spot'.

17. As already highlighted hereinabove, the Hon'ble Supreme Court in **Neeraj Dutta** (*supra*) has categorically held that both in case of an offer to pay by the bribe giver without there being any demand from the public servant and when the public servant makes a demand and the bribe giver accepts the demand and tenders the demand of gratification, such offer or the demand respectively have to be proved by the prosecution as a fact in issue. In the present case, admittedly, Beena Sansi has neither been cited as witness nor examined as witness during the course of trial. There was no prior complaint on behalf of Beena Sansi or any other person with respect to any demand of illegal gratification or bribe made by the present appellant. Even an offer to pay bribe by the giver, i.e., Beena Sansi, has not been proved on



record. The version of the complainant/PW-4, Chetan Prakash, thus, comes within the realm of hearsay evidence.

18. In the present appeal, it is not the case of the prosecution that there were complaints made by Bina Sansi or her husband, PW-7, at any point of time to the CBI with regard to the demand of bribe by the present appellant. It is complainant/PW-4 who claims to have recorded the events as he wanted to help PW-7 and his family members from illegal extortion of money committed by the police personnel from Delhi Police. It is noted that the complainant/PW-4 in the very first para of his examination-in-chief itself, had stated as under: -

“I am a Property Dealer by profession in the area of P.S. Dabri. My residence was under the jurisdiction of P.S. Uttam Nagar, New Delhi. Police officials of P.S. Dabri used to demand bribe money from me in relation to my property dealing business and they also used to extend threats to me of my false implication in false criminal cases if I failed to pay to pay the same.”

This reflects that the complainant/PW-4 did bear grudge against police officials.

19. Equally important is the fact that Jasbir Sansi (PW-7), who was the husband of Bina Sansi, has not stated anything about any demand of bribe. Thus, the demand of bribe on behalf of the appellant cannot be proved in absence of examination of Bina Sansi.

20. Learned Trial Court has heavily relied upon the video cassette (Ex. P-5) which was sent to FSL. However, *vide* a report (Ex. PW-5/A) dated 19.12.2006 regarding the said video cassette, it has come on record that the video cassettes were “*rerecorded (over recording in order to delete some*



portion that too in-camera)”. It is relevant to note that the device, i.e., handycam, by which the said videos were alleged to have been recorded by complainant/PW-4 was never produced before the CBI nor sent to the FSL for examination.

21. Learned counsel for the appellant had also relied upon **Netrapal Singh** (*supra*), whereby State’s appeal against acquittal of the respondent/accused therein was dismissed by this Court. It is pertinent to note in the said appeal, the same complainant/PW-4, Chetan Prakash, was the main witness and a similar video cassette was being relied upon in order to establish the case of the prosecution. In the said case as well, the video cassette was sent for analysis and a report was given that the recording was found free from any addition, deletion, or tampering. In the said case, FSL report, however, had stated that it could not opine whether the video footage therein was original as the recording device was not sent for FSL examination. The relevant paras of the said judgment read thus: -

“**29.** In the aforesaid context, the observation made by the learned Special Judge with regard to admissibility of the said video cassette (Ex. P-1) needs to be examined. The learned Special Judge, in his finding, has examined that the testimony of Chetan Prakash Sharma (PW-4) as recorded on 18.04.2015 and made the following observations:

“7.1.2...A perusal of the testimony of Chetan Sharma (PW-4), as recorded on 18.04.2015 indicates that the sequence at Sri. No.-IO displays the starting time of recording as 19 : 22 Hours and concluding time as 19 : 42 Hours. It was observed by the court that the sequence had jumped time from 19 : 27 : 23 Hours to 19 : 28 : 02 Hours and 19 : 30 Hours to 19 : 38 Hours. Meaning thereby, either the recording was stopped in between the sequence, or, some portion has been deleted, after the recording had been done. The FSL report being silent as regards this sequence; in my opinion, the same is not a complete & correct report. Similarly the FSL report



has not noticed and opined about a TV clip of ETC. Channel, in between the alleged recordings of corrupt activity.”

30. Similarly, in Para 7.2, it has been observed as under:

“7.2 However, in the absence of proof of actual demand of bribe, it can be held that there is any incriminating material against the accused persons. Mere identification of their pictures in cassette Bx.P-1 can not be said to be incriminating as cassette Ex.P-1 itself is \ inadmissible in evidence. The video footage contained in Bx.P-1 has not been opined by FSL to be the original recording. It has been demonstrated by the Id. defence counsels that the video cassette contains clippings of ETC. Channel in between the alleged incriminating clips, which demonstrates that the cassette is not original recording. It was copied on a pre-recorded cassette. **It has also not been brought on record that the recording device had the provisions of making direct recording on the cassette or it first recorded on a memory stick and then transferred the contents to cassette. The recording device was admittedly not sent to FSL for analysis. Thus, there is no evidence that video recording contained in cassette Bx.P-1 is original recording and, thus. Primary Evidence admissible u/sec-62 of the Indian Evidence Act. In the absence of certificate u/sec.-65/B of the Indian Evidence Act, the cassette Ex.P-1 is apparently inadmissible as Secondary Evidence, as well.** View taken by the Hon'ble Supreme Court of India in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473's case is as under:—

“Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub section (2) are satisfied, without further proof or production of the original. The very admissibility of such a



document i. e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions u/sec.-65-B(2) of the Indian Evidence Act-

- (i) The electronic record containing the information should have been produced by the computer, during the period over, which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from, which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity. U/sec-65 (4) of the Indian Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:
 - (a) There must be a certificate, which identifies the electronic record containing the statement;
 - (b) The certificate must describe the manner in which the electronic record was produced;
 - (c) The certificate must furnish the particulars of the device involved in the production of that record;
 - (d) The certificate must deal with the applicable conditions mentioned u/sec-65 B(2) of the Indian Evidence Act; and
 - (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

(emphasis supplied)

31. The aforesaid analysis of the learned Special Judge, that the contents of the video cassette, as played during the course of evidence, were on some other prerecorded data and there were chances that the recording



was stopped in between or some portions were deleted, is a possible view. **It is also pertinent to note that Dr. SK Jain (PW-11), in his testimony, also submitted that whether the recording in the said cassette was original could not be determined as the recording device was not sent to FSL despite request for the same.** Furthermore, in the cross-examination of Chetan Prakash Sharma (PW-4), he asserted that he used a new blank cassette between 14.10.2005 to 22.10.2005. However, the same is contradictory as the cassette (Ex. P-1) which was played during the course of evidence contained clippings of ETC. channel. Finally, the fact that the said cassette (Ex. P-1) was not supported by a certificate under Section 65B of the Indian Evidence Act, the same could not be admitted as secondary evidence, as it had come on record that there was no evidence that the recording contained in the cassette (Ex. P-1) was the original recording.”

(emphasis supplied)

22. In the present case as well, the appellant has pointed out certain discrepancies in the two forensic expert reports, Ex. PW-5/A, regarding editing and tampering aspect, and Ex. PW-8/A, regarding voice specimen of the present appellant, with respect to the same video cassette (Ex. P-5) in the following manner: -

S NO.	Particulars	As per Report Ex PW-5/A	As per Report Ex PW-8/A
1	Total Clippings	33	6
2	Total Duration	52 minutes 34 seconds	44 minutes 36 seconds
3	Clip 1	Starting time 00 minutes 00 seconds Ending time 00 minutes 05 seconds Dated 13.11.2003 at 4 PM	Starting time 00 minutes 00 seconds Ending time 6 minutes 45 seconds Not mentioned



	Clip 2	Starting time 00 minutes 05 seconds Ending time 06 minutes 45 seconds Dated 14.11.2003 at 2.26 PM	No details
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23. Furthermore, the complainant/PW-4, Chetan Prakash, in his cross-examination recorded on 01.12.2012 has stated as under: -

“I had submitted five HI 8 cassettes with the High Court. On the basis of the orders of the High Court there was one FIR recorded but seven charge sheets were filed in the Court. I am witness in all those cases.

Q.; From where did you learn telephone tapping?

A.: Telephone Tapping is a very simple thing and anyone can do it. What is required is an extra telephone instrument and a recording device. The extra telephone is connected in series with the line related to the telephone connection of which the recording is to be made. The conversation thereafter can be heard on the telephone so connected and if you have a recording device with you the same can be attached with this extra telephone connected in series and the conversation can be recorded.

Q.: Did you re-record the tapes which you had once used for recording at any point of time?

A.: I do not remember. As far as I can recollect now I had not recorded any material on the tapes on which I had already made the recordings.

I had not left the tapes blank in between. (Vol.) It is possible that in between some shots they may have been blank spaces for some seconds.



There was a slot for photo memory card in the said camera which could only be used for still photography. (Vol.) There was, however, no memory card for video recording.”

He has further stated in his cross-examination which reads as under: -

“ (Vol. Further) I had recorded the video of accused Meghraj before also at the residence of Jasbir Sansi, which had been taken away by ACP Rajbir.

It is correct that I had kept the copies of the video cassettes with me before submitting the original tapes with the Registry of Hon'ble High Court. It don't be correct to say that as and when I had shot the videos, I had also prepared their copies. (Vol.) I, however, will not be able to say as to how many copies I had prepared.”

24. The said camera was never produced before the FSL to ascertain whether it had a slot for memory card or not or whether these cassettes were from the said memory card. The FSL expert PW-5, has himself in his report, Ex. PW-5/A, had stated that the video cassettes were “*rerecorded (over recording in order to delete some portion that too in-camera)*”.

25. It is also pertinent to note that the appellant in the present case, *vide* order on charge dated 25.09.2010 was charged for acceptance of money on 12.11.2003 from the said lady Beena Sansi. It is a matter of record that 5 video cassettes were sent to the FSL which were marked as Exh-1, Exh-2, Exh-3, Exh-4 and Exh-5 (Ex. PW-5/A). In the CD identification memo (Ex. PW-4/D), it was recorded that the 5 video cassettes which were sent to FSL had been received along with the copies of the said 5 video cassettes and CDs for the use of investigation and the same were marked as Exh-1 to Exh-5, as pointed out hereinabove. In the said memo, the concerned recording with



regard to the present appellant is shown in Exh-5, the same also stands recorded in the impugned judgment passed by the learned Trial Court. The relevant portion of the impugned judgment of conviction passed by the learned Trial Court wherein, the aforesaid factum was mentioned reads as under: -

“52. At the end, I would like to clarify the question of video shot that being shot on already recorded material is more of academic nature, as that is something, which related to cassette Ex. 2, what we are concerned here is cassette Ex. P5.”

Expert report (Ex. PW-5/A) with regard to the aforesaid Exh.5, in respect of the alleged date of incident reads as under: -

“v) The videotape in videocassette marked Exh-5, is found recorded with 24 video shots. These shots are indicated to have been recorded during 13-11-03 to 16-11-03.”

In view of the above, there is discrepancy whether the subject recordings in the aforesaid cassette, Exh-5 did relate to the date of the alleged incident as mentioned in the order on framing of charge, i.e., 12.11.2003.

26. Admittedly, the video cassettes were recorded by the witness (PW-4/Complainant) in one handycam. In **Netrapal's case (supra)**, the FSL expert gave a clear finding that no opinion can be given with regard to whether the cassettes was an original or copy in absence of the recording device. Moreover, PW-4/Complainant has further admitted that video of the present appellant has been recorded by him earlier also which were taken by ACP Rajbir, however, there is no investigation in that respect.



27. In these circumstances, in the considered opinion of this Court it is not safe to rely upon the videography as the same cannot take place of the primary evidence, i.e., the statement of Beena Sansi, in respect of the fact that whether she had offered bribe or there was a demand of bribe from the appellant. In absence of any other corroborative evidence, conviction for the offences punishable under Section 7 and Section 13(1)(d) of the PC Act cannot be sustained. Again, it is reiterated that the present case is not one, where complaint was made and verification had been done with regard to its contents and the proceedings were conducted in pursuance of such a complaint.

28. In view of the aforesaid circumstances, the prosecution has not been able to prove their case beyond reasonable doubt.

29. In the totality of the facts and circumstances of the present case, the present appeal is allowed and impugned judgment of conviction and order of sentence dated 03.05.2014 and 12.05.2014 respectively are set aside. The appellant stands acquitted of the charges levelled against him.

30. Bail bonds stand discharged.

31. Pending applications, if any, also stand disposed of accordingly.

32. Copy of the judgment be sent to the concerned jail superintendent for necessary information and compliance.



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33. Judgment be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA
JUDGE**

MARCH, 12 2025/kr