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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. 653/2014 & CRL.M.(BAIL) 1035/2016

SATISH KUMAR

.....Appellant

Through: Mr. Sunil K. Mittal, Mr. Anshul Mittal,
Mr. Sameer Dawar, Mr. Vipin K.
Mittal, Mr. Kshitij Mittal and Ms.
Khushi Aggarwal, Advocates.

versus

C.B.I

.....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 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed assailing the impugned judgment of conviction and order on sentence dated 19.04.2014 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. 93/2011 arising out of RC No. 48(A)/04, under Section 7 and Section 13(2) read with Section 13(1)(d) 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 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 Constable/Driver No. 724/RB with the Delhi Police in 2003. During 2002 and 2003, one Chetan Prakash S/o Babu Lal (hereinafter referred to as, 'complainant/PW-1') 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.

ii) 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.

iii) The complainant/PW-1 has provided one VHS video cassette and five HI-8 (small) video cassettes to CBI through this Court which then, formed the basis of the present investigation. One of the places where complainant/PW-1 captured the video films, in a clandestine manner, was in inside the premises of Shri Devraj Diwan situated behind Bus stand, Om Vihar, PS Uttam Nagar. The place was also known as “*Kala Sansi ka adda*”. The said Devraj Diwan used run illegal bootlegging business from his premises. Two persons namely, Bengali and Goonga, who were servants of Devraj Diwan, used to sell liquor bottles illegally from the latter’s premises. Several cases under the Excise Act were stated to have been registered against the said Devraj Diwan at PS Uttam Nagar.

iv) During the course of investigation, it was revealed that video films in question were prepared by the complainant/PW-1 on HI-8 video cassettes and he had also copied its contents in VHS video cassette. Five such HI-8 video cassettes and one VHS cassette were kept in possession of CBI under sealed condition. The contents of these video films were shown to the complainant/PW-1 and several Police personnel of Delhi Police and the persons being featured in the video films were identified.



v) The appellant was posted as driver with Delhi Police in PCR, West Zone at the relevant point in time and when the said video film was captured, he was identified as being featured in that video (Marked as Exh-2 by CFSL Chandigarh) from 21:16 minute to 22:09 minute. The appellant, in police uniform, was found pronouncing his name out loud and showing his name tally in order to collect money comprising of several currency notes of smaller denomination. Bengali, servant of Devraj Diwan was captured as being offering and giving bribe to the appellant and the latter was captured as receiving the said money as illegal gratification other than legal remuneration. The said video recording also contains visuals showing people purchasing liquor bottles from the said place of Devraj Diwan.

vi) The said video clipping in question was shown to the complainant and several police personnel of Delhi police and they have identified the appellant 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.

vii) 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.



viii) 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 was obtained from the competent authorities on 25.06.2007. Learned Trial Court 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 the appellant.

ix) The prosecution in order to prove the aforesaid charges levelled against the appellant had examined 11 witnesses. Learned Trial Court after analysing the prosecution evidence, the statement of the appellant recorded under Section 313 of the CrPC 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 its contents contained in the cassette. It is submitted that the complainant/PW-1, who has provided the said video recordings, was not personally involved in the transaction whereby the alleged charge of accepting illegal gratification has been levelled against the present appellant.



It is the case of the appellant that the learned Trial Court has convicted him on the basis of the conjectures and surmises.

ii) Perusal of the impugned judgment would show that the conviction of the appellant has been solely based on the testimony of complainant/PW-1 and the alleged video recording. Learned Trial Court has presumed the acceptance of bribe by the appellant and had prejudged the case against him.

iii) It is the case of the appellant that the persons, the aforesaid Bengali and Goonga, from whom he has been seen accepting bribe have neither been cited as prosecution witness nor they have been examined during the course of trial. Therefore, there are major missing links and discrepancies in the case of the prosecution as the latter has miserably failed to prove the charges levelled against the appellant and the learned Trial Court has based the impugned judgment on the basis of presumptions.

iv) Prosecution has failed to establish the identity of the persons who have been captured as handing over money to the appellant and even the place of the incident has neither been identified nor proved by any evidence. It is further case of the appellant that the learned Trial Court has simply accepted the case of prosecution on the basis of the statement of complainant/PW-1, who himself is an interested party in the present case and his testimony cannot be relied on has the same is hearsay.

v) Regarding the validity of the sanction for prosecution (Ex. PW-8/A) against the appellant, it is submitted that PW-8, DCP Rashtrapati Bhawan Security, in his cross-examination has admitted that he had accorded the said sanction order on the basis of the FIR, reports of CFSL and statement of



witnesses and not after watching the said video recording/clipping. Attention of this Court has been drawn towards the testimony of the PW-8 and it is submitted that he, in his cross-examination, has stated that he had not received any CD or video cassette while the case was put for obtaining sanction for prosecution against the present appellant. More so, the case file was not received by him directly from CBI. In view of the aforesaid, it is submitted that the learned Trial Court has erred in placing reliance on the said sanction order for prosecution of the appellant.

vi) It has further been argued that the prosecution had tendered two expert reports, being Ex. PW-3/A and Ex. PW-4/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. It is submitted that the 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. It is pointed out that PW-4, expert witness, in his report (Ex. PW-4/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-4 would show that there were various additions and deletions in the said video cassettes. It is also pointed out that the original recording device used to record the said video recording has not been sent to CFSL for examination and the same has also been stated by the concerned expert witness in his testimony before the learned Trial Court. In



view of the same, it is contended that the said video recordings alongwith both the expert reports are liable to be discarded.

vii) Learned counsel for the appellant has placed reliance on the following cases in support of the present appeal: -

1. State (GNCT of Delhi) v. Netrapal Singh & Ors., 2024:DHC:136;
2. Neeraj Dutta v. State (GNCT of Delhi), 2023 Cri LJ 1856 (SC);
3. G.S. Matharoo v. CBI, 2012 SCC OnLine Del 480;
4. Mohd. Iqbal Ahmed v. State of Andhra Pradesh, AIR 1979 SC 677;
5. State of Karnataka v. Ameer Jan, AIR 2008 SC 108;
6. S.K. Saini & Anr. v. CBI, 2015 (3) JCC 2169;
7. R.K. Pathak & Anr. v. CBI, CRL.A. 567/2000 decided on 26.04.2019;
8. B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55;
9. Joginder Singh Malik v. CBI, CRL.A. 1302/2010 decided on 08.12.2022;
10. Surender Singh v. State (NCT of Delhi), 2014: DHC:5399

viii) 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) A conjoint reading of the testimonies of PW-1, PW-10 would demonstrate that the present appellant, in his capacity as a public servant, had demanded and accepted illegal payments in return for allowing the illegal



liquor business to operate. The combination of documentary, forensic and video evidence cogently and satisfactorily proves the charges levelled against the appellant.

ii) Testimonies of forensic experts, PW-3 and PW-4, 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 experts reports, being Ex. PW-3/A and PW-4/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-1 in this regard.

iii) Crime Scene was identified by the complainant/PW-1 and the appellant was 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-1 and PW-10.

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) 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.

vii) It is further submitted that no objection or questions have been put by the appellant to the expert witnesses, PW-3 and PW-4, 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-3 and PW-4 suggests an implied admission of his part in respect of the validity of the said recordings.

viii) It is further submitted that the testimonies of PW-1 and PW-10 have 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 money was handed over, have given consistent statements and there are no significant contradictions or improbabilities in their statements that would undermine their reliability.

ix) Learned SPP for CBI has submitted that **State (GNCT of Delhi) v. Netrapal Singh & Ors., 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-1 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-1 and the video cassette (Ex. P-2) 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, Bengali, servant of Dev Raj (PW-10). It is a matter of record that the aforesaid Bengali, was neither examined before the learned Trial Court nor was cited as a witness. The relevant portion of the PW-1's testimony recorded before the learned Trial Court in respect to the video played is reproduced herein under: -

"I Identify video cassette Ex.p.2, which was recorded by me from my Video Camera and the same was submitted by me in Hon'ble Delhi High Court along with my writ petition No. 367/2004. On Inlay Card placed in the said cover of the cassette i.e. Ex.P-2A, I had written description of various scenes in my own handwriting at the time of recording and before submitting the same in Hon'ble Delhi High Court. I also identify my handwriting on the said Inlay Card.

The said video cassette has been played in Video Camera cum Recorder of Sony Make.

There is a scene dated 07.11.2002, which commences at 20:44:41 hours, wherein Shri Bangali and Shri Gunga are seeing talking with a customer of illicit liquor and the he i.e. customer was offering money to said Shri Bangali, which he i.e. Shri Bangali had not taken and Shri Bangali was calling someone saying "Ajaa". Thereafter, back side of accused Satish



Kumar is seen and he was entering Dev Raj Ka Adda situated behind Om Vihar Bus Stand. While accused Satish Kumar was entering said Adda, Shri Bangali had asked him that "Naam Toh Bata Do Apna". On which, accused Satish Kumar replied saying "Satish Naam Hai Mera". Accused Satish Kumar, who is in police uniform, is also seen showing his Name Plate affixed on the pocket of his shirt. Face of the accused is clearly visible in the video now, at this stage. Thereafter the video cassette has been further played, wherein Shri Bangali is saying to the accused that "Pichhe Bhi Ek Sasin Daaru Bech Rahin Hai" to which accused said 'Acha'. Shri Bangali again said "Park Ke Pass, Masjid Ke Saamne, Ek Nayi Sasin Daaru Bech Rahi Hai, Theek Hai". On which accused said "Theek Hai, Abhi Jata Hun". Thereafter, Shri Gunga is seen counting some currency notes of denomination of Rs.10/- each and after counting the same, he i.e. Shri Gunga is giving the said currency notes to accused Satish Kumar, who had accepted the same. Thereafter, accused is seen counting the said currency notes. While giving the said currency notes to accused, Shri Bangali is saying to accused "Kharcha Paani Le Liya Karo, Humara Kaam Dhanda Manda Hai, Is Mahiney Sau Rupay Kam De Raha Hoon". Accused Satish Kumar further said "Cheh Mahiney Ho Gaye, Mein Toh Uske Pass Gaya Nahin". Thereafter, accused is seen leaving the said Adda saying "Jaa Raha Hun Meri Sasu Ke Pass". Thereafter, Shri Gunga is seen taking out quarter bottle of illicit liquor from the drawer of a table and giving the same to a customer. Customer is seen consuming the said liquor at the Adda. This scene stands completed at 20:48:00 hours.

Court Observation:- At this stage, Head Constable Atique Khan of Maalkhana, CBI has produced one Compact Disc bearing Mark Exh-2, put by CFSL. On the request of Id. PP for CBI, the said Compact Disc be played and further examination-in-chief of the witness continue.

The said Compact Disc Exh.-2 is played on CD Player and the scenes visible therein and the conversation between accused, Shri Bangali and Shri Gunga, are identical, which were there in the aforesaid video cassette Ex.P-2."

10. As already noted hereinabove, Bengali was never examined before the learned Trial Court, however, his allegedly claimed employer/master, was



examined as PW-10, who had not stated anything in this regard. PW-10 had merely stated that he had stayed in Uttam Nagar for about 7-8 years and used to sell liquor illegally from his residence and there were some cases registered against him under Punjab Excise Act.

11. It is important to note that the video relied upon by the learned Trial Court has been recorded with the help of complainant/PW-1 who was not privy to the conversation between the present appellant and the person named Bengali. Complainant/PW-1 in his examination-in-chief dated 06.04.2011 has stated as under: -

“I recorded their activities during the period 2002 to 2003. During this period, when I was doing recording of activities of police officials and officials of excise department at Kamla Sansi Ka Adda in the area of Madhu Vihar under jurisdiction of P.S. Dabri.”

From cross-examination of complainant/PW-1 recorded on 04.08.2011 following has come on record: -

“It is wrong to suggest that the aforesaid scenes do not show the place of their occurrence. It is wrong to suggest that on seeing the said scenes, no one can say about the place of occurrence. Vol. I can tell the name of the place, where the aforesaid scenes took place and of which, the aforesaid recording was made by me. Further volunteered to say that the place has been specifically told by me in my examination-in-chief.”

Thus, admittedly the complainant/PW-1 has not specifically mentioned the place from where he had shot the alleged video clipping in the present case.

12. It is also the case of the prosecution that the video in the present case was of the premises of Dev Raj (PW-10), *Kala Sansi ka Adda*. The actual spot from where PW-1 has claimed to have captured the video is not being stated



by him, as pointed hereinabove. Moreover, there is no site plan prepared by the Investigating Officer Dilip (PW-11) in the present case. It is interesting to note that even as per the case of the prosecution, complainant/PW-1 claimed to have shot series of videos at the premises of Dev Raj (PW-10) wherein, other police officials and officials of excise department were also allegedly seen visiting *Kala Sansi ka Adda* wherein, they were 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. 91/2011 titled as, “CBI v. Ram Kumar and Anr.”, this witness (PW-1 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, PW-1 has not stated the place from where he was shooting the said video clipping. It is also not his case that he was standing in close vicinity to the said persons or the present appellant when the subject video clipping was captured by him. Thus, as to how he was able to record the conversation in the video clipping has not been explained.

13. This Court is conscious of the fact that the aforesaid statements given by this witness (PW-1) 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 examine the cross-examinations of the complainant/PW-1,



Chetan Prakash, in the aforesaid Corruption Cases as well and specially with regard to use of mic by the complainant/PW-1 in recording the subject video clippings.

14. Be that as it may, even in the present case, the prosecution, apart from Dev Raj, PW-10, has not examined Goonga, who was alleged to be seen in the video captured by complainant/PW-1 and was also servant of PW-10. No voice analysis of Bengali has been placed on record. As noted hereinabove, the place from where the subject videos were captured has not been stated by the complainant/PW-1, it cannot be determined whether conversations between Bengali and the appellant could have been heard by the complainant/PW-1. It is also pertinent to note that no one has identified Bengali or Goonga apart from the complainant/PW-1.

15. 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, Bengali has neither been cited as witness nor examined as witness during the course of trial. There was no prior complaint on behalf of Bengali 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., Bengali, has not been proved on record. The version of the complainant/PW-1, Chetan Prakash, thus, comes within the realm of hearsay evidence.



16. In the present appeal, it is not the case of the prosecution that there were complaints made by either Bengali or Goonga or their employer/master, PW-10, at any point of time to the CBI with regard to the demand of bribe by the present appellant. It is complainant/PW-1 who claims to have recorded the events as he wanted to expose the business of illegal alcohol and corrupt practices of the police officials. It is noted that the complainant/PW-1 in the very first para of his examination-in-chief itself, had stated as under: -

“I have been doing business of Property Dealer in the area of Uttam Nagar since 1997. Police officials of P.S. Dabri and P.S. Uttam Nagar used to harass me and demand bribe from me. I was not inclined to pay bribe to police officials. I also opposed one Shri Shripal, who used to sell illicit liquor near my house, and also made complaints against him at P.S. Dabri. Due to aforesaid reasons, police officials of P.S. Dabri and Excise Department in connivance with said Shri Shripal, implicated me in a false case registered at P.S. Dabri.”

In the same examination-in-chief, it is further recorded as under: -

“Thereafter, I decided to fight against their harassment and expose corrupt practices of the police officials, who were involved in taking bribe from illicit liquor sellers & suppliers. I purchased a Video Camera and began to record activities of police officials at various places while they were demanding & accepting bribe from sellers & suppliers of illicit liquor.”

This reflects that the complainant/PW-1 did bear grudge against police officials.

17. Equally important is the fact that Dev Raj (PW-10), who was the employer/master of Bengali, 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 the said persons named, Bengali and Goonga.



18. Learned Trial Court has heavily relied upon the video cassette (Ex. P-2) which was sent to FSL. However, *vide* a report (Ex. PW-4/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-1 was never produced before the CBI nor sent to the FSL for examination.

19. 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-1, 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)

20. It is matter of record that investigation in the present FIR-RC was initiated in pursuance of the order dated 04.10.2004 passed by a Coordinate Bench of this Court in **W.P.(CRL) 367/2004**. As already noted hereinabove, there were different Corruption Cases arising out of the present FIR-RC in respect of the different police personnel. Out of those cases in Meghraj (CC No. 89/2011) and Ram Kumar & Anr. (CC No. 91/2011), it has come on record by way of the testimony of the complainant/PW-1 herein, that the device by which the subject video clippings were recorded was never sent to FSL for examination. Also, in **Netrapal’s case (supra)**, the proceedings were initiated similarly on the basis of the video cassettes handed over to CBI for investigation in pursuance of the order passed by this Court and the device by



which the subject video recordings were alleged to have been recorded was never sent for examination. In these circumstances, it is not in dispute that it is the same device, i.e., handycam camera, in all these cases which was not sent for FSL examination as the proceedings were initiated in pursuance of the same order in the present appeal, including others which have been disposed of by this Court *vide* separate judgments of the even date and all these cases had arisen out of the same FIR-RC. Moreover, the FSL expert PW-4, has himself in his report, Ex. PW-4/A, had stated that the video cassettes were “*rerecorded (over recording in order to delete some portion that too in-camera)*”.

21. 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 statements of Bengali or Goonga, in respect of the fact that whether they 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.

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



23. 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 19.04.2014 and 12.05.2014 respectively are set aside. The appellant stands acquitted of the charges levelled against him.
24. Bail bonds stand discharged.
25. Pending applications, if any, also stand disposed of accordingly.
26. Copy of the judgment be sent to the concerned jail superintendent for necessary information and compliance.
27. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

MARCH 12, 2025/kr