



2025:DHC:8226



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

Reserved on: 6th August, 2025

Pronounced on: 17th September, 2025

+ CRL.A. 276/2011

ROOP CHAND

.....Appellant

Through: Mr. Amit Shrivastava, Adv.
versus

STATE

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State.
SI Bheem Singh, P.S. ACB.

+ CRL.A. 292/2011

RAJESH KUMAR @ RAJU

.....Appellant

Through: Mr. Harshit Jain, Mr. Rahul Kumar
and Mr. Abhishek Chaudhary,
Advocates.

versus

STATE GOVT OF NCT DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State.
SI Bheem Singh, P.S. ACB.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeals under Section 374(2) of the Code of Criminal Procedure, 1973, (for short, 'CrPC') have been filed assailing the impugned



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common judgment of conviction dated 07.02.2011 and order on sentence dated 11.02.2011, passed by the learned Special Judge (ACB), Tis Hazari Court, Delhi, whereby the present appellants were convicted in CC No. 22/07 arising out of FIR No. 54/2006, under Sections 7, 13(1)(d) & 12 of the Prevention of Corruption Act, 1988, (for short, 'PC Act) read with Section 120B of the Indian Penal Code, 1860 (for short, 'IPC'), registered at P.S. Anti-Corruption Branch in the matter of State vs. Roop Chand and Rajesh Kumar @ Raju. Both the appeals are being disposed of *vide* this common judgment. For the sake of convenience, appellant-Roop Chand in **CRL.A. 276/2011** is hereinafter referred to as “appellant No.1” and appellant-Rajesh Kumar @ Raju in **CRL.A. 292/2011** is hereinafter referred to as “appellant No.2”.

2. *Vide* the aforesaid judgment of conviction and order on sentence, the appellants had been convicted for the offences punishable under Section 120-B read with Sections 7, 13(2) of the PC Act. Appellant No.1 was sentenced to Rigorous Imprisonment for a period of 2 years and a fine of Rs. 4,000/- under Section 120-B IPC read with Sections 7 and 13(i)(d) of the PC Act and in default of payment of fine, further imprisonment for a period of 6 months. Appellant No.1 was further sentenced to Rigorous Imprisonment for a period of 2 years and a fine of Rs. 4,000/- under Section 7 of the PC Act and in default of payment of fine, further Simple Imprisonment for a period of 6 months. Appellant No.1 was further sentenced to Rigorous Imprisonment for a period of 2 years and a fine of Rs. 4,000/- under Section 13(2) of the PC Act and in default of payment of fine, further Simple Imprisonment for a period of



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6 months. Appellant No.1 was sentenced to Rigorous Imprisonment of 2 years and a fine of Rs. 4,000/- under Section 120B read with Sections 7 & 13(i)(d) of the PC Act and in default of fine, further imprisonment of 6 months. Appellant No.2 was further sentenced to Rigorous Imprisonment for a period of 2 years and a fine of Rs. 4,000/- under Section 12 of PC Act and in default of payment of fine, further Simple Imprisonment for a period of 6 months. The learned Special Judge ordered that all the sentences shall run concurrently and that the appellants shall be entitled to the benefit under Section 428 of the CrPC.

FACTUAL BACKGROUND

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

- i) On 28.06.2006, the complainant, Sudhir Rana (PW-6), submitted a complaint (Ex. PW-6/A) to the Anti-Corruption Branch, New Delhi, stating that he had purchased a house at Village Burari, Khasra No. 1/29, consisting of a ground floor and a first floor. He further stated that upon construction of the second floor on 26.06.2006, Appellant No.1, then posted as Junior Engineer (JE) with the Municipal Corporation of Delhi (MCD), Model Town, along with other staff, attempted to seal the premises and sell the said house.
- ii) It was further alleged in the complaint that the second floor of the house was partly demolished and that when the complainant



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pleaded with Appellant No.1 not to demolish the remaining portion, he was directed to approach Appellant No.2, who was employed as a personal photographer of Appellant No.1.

iii) It was further alleged in the complaint that Appellant No.2 thereafter called the complainant/PW-6 on mobile at about 8:00 PM and made him speak to Appellant No.1, who demanded a sum of ₹1,00,000/- to stop the demolition. The complainant stated that he would not be able to make the entire payment at once and could only pay in instalments, whereupon Appellant No.1 instructed him to remain in touch with Appellant No.2 and disconnected the call. On 28.06.2006, the complainant (PW-6) again received a call from Appellant No.2 demanding illegal gratification.

iv) On the basis of the said complaint, the trap proceedings were initiated. The case of the prosecution is that the complainant/PW6 produced GC notes of Rs.20,000/- in the denomination of six GC notes of Rs. 1,000/- each and 28 GC notes of Rs. 500/- each before Hari Chand Raid Officer (PW9) in presence of the N.D. Sharma, panch witness (PW7), and same were treated with phenolphthalein powder and the demonstration about the characteristics of the phenolphthalein powder was explained by the Raid Officer (PW9) and pre-raid report, Ex.PW6/B, was prepared in which the serial numbers of the GC notes were recorded. The treated GC notes were given to the Complainant (PW6) who kept the same in the left pocket of his shirt and the panch



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witness (PW7) was given instructions to remain close to the Complainant (PW6) and give a signal of demand/acceptance of bribe money by hurling his hand over his head.

v) The case of the prosecution is that the raiding party comprising of Hari Chand Raid Officer (PW9), N.D. Sharma, panch witness (PW7), along with the complainant (PW6) reached 60 Ft. Road, Burari, Delhi with the bribe money as instructed by appellant No.2 over the call on 28.06.2006.

vi) The case of the prosecution is that the complainant/PW-6 and panch witness/PW-7, were seated in the car of the complainant and other raiding members took strategic positions. In the meantime, appellant No.1 came on a motorcycle near the window of the car and spoke to the complainant, PW6, and demanded and accepted the bribe amount from the complainant, PW6, in the denomination of six GC notes of Rs.1,000/- each and twenty-eight GC notes of Rs.500/- each in his right hand and kept the same in the left pocket of his shirt, but before the panch witness, PW-7, could give a pre-determined signal to the raiding party, appellant No.2 escaped.

vii) The case of the prosecution is that while the raiding party was returning to the Anti-Corruption Branch, the complainant (PW-6) received a telephone call from Appellant No.2, who conveyed that Appellant No.1 had stated the amount was insufficient and instructed



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the complainant/PW-6 to deliver the balance amount after about half an hour near Alpana Cinema, Model Town, Delhi.

viii) The case of the prosecution is that the complainant/PW-6 along with the raiding party went near Alpana Cinema, Model Town, Delhi where appellant No.2 came on a second round and was apprehended by the police officials of the Anti-Corruption Branch. Thereafter, appellant No.2 disclosed that the bribe money accepted by him was on behalf of appellant No.1/JE and he had handed over the same to the latter. The search of appellant No.2 was carried out but no recovery was affected. Appellant No.2 led the Raiding Party to MCD workshop office, Model Town, JE Building, Civil Line Zone, Delhi.

ix) The case of the prosecution further is that appellant No.2 pointed out towards appellant No.1, who was sitting in the MCD workshop office, Model Town, JE Building, Civil Line Zone, Delhi and stated that he had handed over the bribe amount of ₹20,000/-, comprising six GC notes of ₹1,000/- denomination and twenty-eight GC notes of ₹500/- denomination, into the right hand of Appellant No.1. However, upon the search of Appellant No.1, the said amount was not recovered.

x) The case of the prosecution is that the right-hand wash of Appellant No.1, right hand wash and wash of the left pocket of the shirt of Appellant No.2 were taken. Wash of the handle of the motorcycle was also taken and the post-raid proceedings were drawn *vide*



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Ex.PW7/A. *Rukka vide* Ex.PW-9/A was sent to the Anti-Corruption branch, based on which an FIR, Ex.PW-10/B, was registered and both the accused were arrested.

xi) The Chargesheet in the matter was filed on 21.04.2007 after obtaining sanction and the FSL Report. After complying with the provisions of Section 207 of the CrPC, order on charge was passed on 04.02.2008 against the appellants alleging that both accused Roop Chand (JE)/Appellant No.1 and Rajesh Kumar @ Raju/Appellant No.2 had conspired to extract a bribe of Rs. 1,00,000/- from the complainant, and in furtherance of this conspiracy, obtained illegal gratification of Rs. 20,000/-, thereby committing offenses under Section 120B IPC read with Sections 7 and 13(2) of the Prevention of Corruption Act, 1988. Appellant No.1/Roop Chand, as a public servant, obtained illegal gratification through Appellant No.2/Rajesh Kumar @ Raju and committed criminal misconduct under Section 13(1)(d) of the Act. Accused Rajesh Kumar @ Raju was also alleged to have demanded and accepted illegal gratification on the direction of Appellant No.1/Roop Chand, thereby abetting offenses punishable under Sections 7, 13(1)(d), and 12 of the PC Act.

xii) The prosecution to prove the aforesaid charges levelled against the appellant had examined 10 witnesses. The defence, in support of its case, had examined 4 witnesses. The Learned Trial Court, after analyzing the prosecution evidence, the defense evidence, and the



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statements of the appellants recorded under Section 313 of the CrPC, found the appellants guilty of the charges levelled against them and sentenced them accordingly. Hence, the present appeals have been filed assailing the impugned judgment of conviction and order on sentence passed by the learned Trial Court.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

4. Learned counsel appearing on behalf of the appellant no.1, in support of the latter's appeal, has made the following submissions: -

i) Learned Trial Court has erroneously convicted the appellant for the alleged offences under Section 120B read with Section 7, Section 13(2) and Section 13(1)(d) of the PC Act, despite material contradictions and deficiencies in the prosecution evidence placed on record during the course of the trial.

ii) Learned Trial Court failed to appreciate that the Complainant (PW-6) resiled from his initial statements during Examination-in-Chief and was declared hostile, consequently denying the involvement of Appellant No. 1 in the offence and refuting the claim that the appellant demanded money.



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iii) It was submitted that there were glaring contradictions in the testimony of prosecution witnesses, particularly between PW-6, PW-7, PW-9, and PW-10, which were contradictory to each and every chain of the false story of the prosecution.

iv) It was further submitted that there is inconsistency regarding the place where the hand wash samples of the appellants were taken, with PW-6 and PW-7 asserting it occurred at the Anti-Corruption Branch office, while PW-9 and PW-10 indicated the MCD office.

v) The Learned Trial Court failed to note that the panch witnesses stated the raiding team carried phenolphthalein powder with them, which is impermissible and contradicts the procedure established by law.

vi) It was submitted that the panch witness (PW-7) was a stock witness of the Anti-Corruption Branch, having participated in multiple raids, thus casting doubt upon the impartiality and credibility of the evidence produced by the prosecution.

vii) The learned Trial Court failed to appreciate that the hand wash, shirt wash, and other scientific evidence relied on by the prosecution does not connect the appellant with the alleged offence in the absence of demand and acceptance.



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viii) No money was recovered from the appellant or found in his possession. Essential elements required to prove offences under Sections 7 or 13(1)(d) of the PC Act have not been established against the appellant. The prosecution has not demonstrated demand, acceptance, or recovery of any bribe money in relation to the appellant.

ix) Learned counsel for the appellant no.1 has placed reliance on the following cases: -

- i) **B. Jayaraj v. State of Andhra Pradesh**¹;
- ii) **P. Satyanarayana Murthy v. State of A.P.**²

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

5. Learned counsel appearing on behalf of the appellant No.2, in support of the latter's appeal, has made the following submissions: -

i) The appellant is not a government employee nor was he engaged in discharging any "public duty" by virtue of any office or position. Therefore, the provisions of the PC Act are not applicable to him.

¹ (2014) 13 SCC 55

² (2015) 10 SCC 152



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ii) The appellant was convicted under Section 120 B of the IPC, read with Sections 7, 13(1)(d), and 12 of the Prevention of Corruption Act, 1988. The essential ingredients to bring charges under the PC Act are demand, acceptance, and recovery of illegal gratification. In the present case, the prosecution has not established any demand by the appellant, nor the acceptance of any illegal gratification, since no recovery was affected.

iii) The prosecution's case is that the Appellant No.2 demanded a bribe telephonically on behalf of a Appellant No.1 who was a government servant. However, no evidence was produced showing communication between the appellants or the complainant beyond the appellant's call detail records. Additionally, the prosecution did not prove the telephone numbers of the complainant, co-accused, or any government official linked to the appellant, thus undermining the allegation of a telephonic demand.

iv) The conviction primarily relies on positive results of the hand wash test on the appellants. However, settled law holds that a positive hand wash test and recovery of chemically treated currency provide only corroborative evidence and do not by themselves prove demand or acceptance of a bribe. Testimony from the Panch witness (PW-7) further cast doubt on the reliability of this evidence, indicating that the Investigating Officer retained the chemical after treating the currency



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before the raid, raising the possibility of tampering during arrest or search.

v) Several witnesses from the raiding party failed to provide complete details about the preparation and execution of the raid, with some not testifying on when, where, or how the arrests and hand wash tests were conducted.

vi) Learned counsel for the appellant no.2 has placed reliance on the following cases:-

- a) **Neeraj Dutta v. State**³;
- b) **Rajesh Kumar Baliyan v. State**⁴;

vii) Thus, it was prayed that the impugned judgment of conviction and order on sentence be set aside and appellant no.2 be acquitted.

SUBMISSIONS ON BEHALF OF THE STATE

6. *Per contra*, learned APP for the State, in support of the impugned judgment and order on sentence, has made the following submissions: -

i) It was submitted that appellant. no.1/Roop Chand's active involvement was clearly demonstrated by a series of interconnected

³ (2023) 4 SCC 731

⁴ 2025 SCC OnLine Del 401



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facts. The evidence, notably the statement of appellant no.2/Rajesh Kumar @ Raju acknowledging that the bribe money was intended for the Appellant No.1, and the positive phenolphthalein test result on his right hand, firmly establishes the Appellant No.2's role in the demand and acceptance of the bribe. This constitutes a strong and indisputable chain of circumstances affirming the appellant no.1's active participation in the criminal conspiracy. Additionally, the involvement of appellant no.1 is substantiated by the phenolphthalein test results.

ii) It was further submitted that once the demand and acceptance are established, the statutory presumption under Section 20 of the Prevention of Corruption Act mandates the Court to presume that the gratification was demanded and accepted as a motive or reward, unless convincingly rebutted by the accused. In the present case, both the appellants have failed to provide any plausible or satisfactory explanation to rebut this statutory presumption or to explain the presence of the chemical residue on their hands.

iii) It was further submitted that after investigation and procurement of prosecution sanction, both the appellants were prosecuted. The learned Trial Court, after considering the evidence including the testimonies of the complainant, panch witness, and Investigating Officer, found the Appellants guilty under Sections 7, 13(2), and 120-B of the Prevention of Corruption Act, 1988, based on the positive phenolphthalein test and corroborated witness accounts. The findings



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on chain of events and recovery of tainted money dispelled any suggestion of false implication, and the Appellants had failed to provide satisfactory explanation regarding the incriminating evidence.

iv) Learned APP for the State has also placed reliance on the following cases: -

a) **Neeraj Dutta v. State**⁵;

b) **State of Karnataka v. Chandrasha**⁶,

v) In light of aforesaid, it was prayed that the impugned judgment of conviction and order on sentence be upheld and the present appeals be dismissed.

ANALYSIS AND FINDINGS

7. Heard learned counsels for both parties and perused the record.

8. In the present case, the appellants have been convicted for the offences punishable under Section 120B IPC read with 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: -

⁵ (2023) 4 SCC 731

⁶ 2024 SCC OnLine SC 3469



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“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



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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



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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)

9. 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. It was further



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held that in case the complainant turns “hostile”, the demand of illegal gratification can be proved through some other witnesses, either by oral or documentary evidence or the same can be proved through circumstantial evidence. But “demand” has to be proved. 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.

10. In the present case, primary evidence of demand is the complaint made by complainant/PW-6, who when examined before the learned Trial Court had deposed as under: -

“PW6 SH. SUDHIR RANA S/O SH. RAM KISHAN AGED 31 YEARS
FARMER R/O VPO KADI PUR, DELHI 36
ON SA:

On 26.6.06 I had a house in which ground floor and first floor were already constructed. I constructed second floor . On 26.6.06 Roop Ohand_AE as the rank was disclosed to me, accused present In the court today, correctly identified and one raja whose designation was disclosed to me as JE was demolished one lonter and one wail of this second floor of my property. However, that Raja Is not present in the Court today. Next day I talked to a boy who was present with Roop chond and Raja on the previous day and asked him not to demolish the remaining portion of my property. That boy asked for Rs. one ioc on behoif of that AE and JE who were present on the previous day at the time of demoiition of second floor of my property. On that day in the evening i received the telephone coii from that boy and that boy asked me to talk to AE Rojo . Thereafter I talked to AE Rojo. And that AE Raja asked.me to give one



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rupee to that boy on 28.6.06. After about io minutes either i telephoned that person or i received the telephone coll and I inquired from that person as to what does he mean by one rupee then he told by one rupee he meant Rs. one lac. And that Raja asked me to come with the bribe amount at Model Town on 28.6.06 in the after noon as demolition action is going on in Model Town and then he asked me to come at 60 feet Road, Burari. it was told by Raja that that very boy would come to collect the bribe amount, i told raja that i would not be in a position to pay the entire amount and i would pay the amount in installments.

On 28.6.06 i went to Anti Corruption Branch at about 12 noon. There i wrote my complaint Ex. PW 6/A in my own hand writing which bear my signatures at point A in the presence of one ponch witness whose name i do not recollect and i handed over my complaint to inspector Hori Chond (herein after referred to as Raid Officer

I had brought Rs. 10000/- in denomination of six GO notes Rs.1000/- each and 28 Gc notes of Rs. 500/- each . Raid Officer applied some powder on those GC notes and gave a demonstration by touching the hand of some one and that solution turned into pink. Those treated GC notes were given to me and i kept the same in my left pocket of my shirt.

I was instructed to hand over the money to the person who asked for it and thereafter panch witness was directed to give the signal by hurling his hand over his head. The pre-raid proceeding drawn by the Raid Officer is Ex. PW6/B bearing my signature at point A.

Thereafter, at about 1:00 p.m. I along with panch witness, Raid Officer, and other four five members of raiding party whose name i do not remember left Anti-Corruption Branch in a government vehicle for Burori and we reached there within 20- 25 minutes. That government vehicle was left at the distance of about 100 feet away from 60 feet rood, i and panch witness were mode to sit in my santro cor which was along with us and we moved towards Sworoop Nogor and members of raiding party followed my cor on foot. When i reached near a society ; which was under construction a boy had come on a motor cycle towards my right side of my cor on a driver seat, i was driving the santro car that boys asked for money and i gave him Rs. 20,000 to that boy and further requested him not demolish my property. That boy accepted those GO notes in his right hand . That boy to whom i handed over the money is not present in the Court. Thereafter, panch witness got down from the car gave pre-determined signal to the raiding party and by the time members



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of raiding party reached to the Santro car the motor cyclist went towards Swaroop Nagar . i do not know where that boy kept the money after receiving the same in his right hand. He might have kept the money in his pocket. Thereafter we tried to trace that motor cyclist in the santro cor OS well as in the government gypsy but he could not be traced. Thereafter, we started returning to Anti Corruption Branch and at that time I was sitting in the government gypsy and when we reached near mali road i received a telephone coil from that boy who hod accepted money from me and told me that i was to give rs. one ioc and stated that i hove given Rs. 20,000/- and thereafter i requested that boy that i was in short of money on account of my sickness of my father and i requested him that i would give certain more amount within half on hour and that boy asked me to give the onnount after half on hour near Aipono cinema Model Town and i told this conversation to Raid Officer. Raid Officer asked me to keep certain money with me and he further asked me to apprehend the person at the time of giving of amount . At about 3;00p.m-3:i5p.m. we reached Alpana Cinema Model Town and after five ten minutes that boy oame in a motor cycle I cannot soy if he is on the some motor cycle but he come on a motor cycle and that boy was apprehend by me with the help of my brother who was with me and in the meantime Raid Officer also came there and that boy was apprehended. The name of that boy who was arrested , was later on i come to know was Raju. Raid Officer disclosed his identity and challenged him. That boy told the Raid Officer that he had accepted the bribe amount on behalf of AE saheb and he further told that AE saheb had talked to the complainant on telephone. That boy Raju became perplexed . The search of Raju was taken however Rs. 20,000/- were not recovered from his search. Roju told the Raid Officer that he hod given the money to the soheb at Model Town in the office of AE/ JE. Then we went to Model Town office where accused Roop chand was found and his search was taken but those Go notes were not recovered from his possession. Thereafter Roop chand and Raju were brought to civil lines zone MOD and Raja was brought. Thereafter we all of us came back to Anti Corruption Branch and there washes of Roju and Roop Chand were taken and they turned pink but i do not remember whether the wash of both the hands of those persons were token or washes of one hand each of those persons. The wash of the handle of the motor cycle was also taken which also turned pink.”



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11. A perusal of the aforesaid testimony would show that the complainant did not state that appellant no. 1 had demanded the bribe. It is the case of the said Appellant No.1 that he was JE at that point of time and the allegation made by the complainant was that AE Raja had made the demand from him.

12. There is no evidence on record with regard to the conversation that allegedly took place between appellant no. 1 and appellant no. 2. Admittedly, the bribe amount of Rs.25,000/- was never recovered in the present case. No evidence has also been brought on record to establish that appellant nos. 1 and 2 were known to each other prior to the date of the incident. It is the case of the prosecution that after apprehension of appellant no. 2, he took the party to appellant no. 1's office, where the latter was apprehended. Much reliance has been placed on the handwash of the appellant no. 1 to demonstrate that the money accepted by appellant no. 2 was handed over to appellant no. 1. In this regard, it is pointed out by learned counsel for the appellants that various contradictions have come in the testimonies of the witnesses with respect to the said handwash. As per the complainant/PW-6, both the appellants were taken to the Anti-Corruption Branch where the handwash was taken. PW-7, panch witness, also states that handwash of both the appellants was taken at the Anti-Corruption Office, however, both the Raid Officer as well as the Investigating Officer in their testimonies have stated that the handwash was taken at the MCD workshop, where the appellant no.1 was apprehended. Thus, it is the case of the prosecution that the handwashes were taken at the spot, *i.e.*, Model Town Workshop Office, which is contradicted by both the complainant/PW-6 as well as by PW-7 (Panch witness). In these



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circumstances, the process of hand wash becomes suspicious and cannot be relied upon.

13. PW-7/panch witness also states that the Raid Officer had taken powder with him by which demonstration was given. In his cross-examination, on behalf of appellant no. 2, this witness states that appellant no. 2 was chased but he was not found and it is also the case of the prosecution that at the first instance appellant no. 2 after receiving the alleged bribe money escaped from there. In these circumstances, it is unbelievable that a person who has run away from the spot would come back again to meet the complainant at the second instance.

14. It is pertinent to note that PW-7 (panch witness) in his cross-examination on behalf of appellant no. 1 had stated that the person driving the motorcycle who was given the alleged bribe amount was wearing helmet. It is further stated by him that when they reached the Head Office, Civil Lines Zone, certain persons were sitting at the Head Office and in the room of the appellant No. 1, 3-4 persons were present at that time. He stated that AE/ appellant No.1, was also present there and that both AE and JE were taken to the Anti-Corruption Branch, however, no handwash of AE was taken. This is contradictory to the case of the prosecution as per which only appellant no.1 was apprehended.

15. So far as the case of Appellant No.2 is concerned, he has been convicted for conspiring with Appellant No.1 and abetting him in the commission of



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offences punishable under Sections 7, 13(1)(d), and 12 of the PC Act. The case of the prosecution was that appellant no. 1 had engaged the services of appellant no. 2 as an official photographer who had come on the site of the complainant/PW-6 with the appellant no. 1 and other officials. However, nothing has been brought on record to establish that fact. Nothing has been brought on record to prove that there was connectivity between the appellants. No evidence has been placed on record that the telephone numbers alleged to have been belonging to the complainant/PW-6 or the appellants had been proved by any evidence to show that the same belong to the said persons.

16. Prosecution in the present case has also relied on the conclusive positive phenolphthalein test of right-hand wash of Appellant No.1, motorcycle handle wash and wash of left pocket of the shirt of appellant no. 2. As noted above, the case of the prosecution that the handwash, etc., were taken at the MCD Office has been contradicted by the testimonies of complainant/PW-6 as well as PW-7, panch witness. It has further come on record that the chemical was carried by the Raid Officer. In these circumstances, reliance on the report of the handwash alone is not sufficient to convict the present appellants.

17. As already noted above, the foundational fact of demand had to be proved by prosecution by leading the evidence before Court to prove the case of prosecution beyond reasonable doubt. In the absence of the complainant proving the alleged demand, the prosecution has not been able to prove the



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same by way of any other circumstantial evidence or other witness. The currency amount has also not been recovered from either of the appellants or during the course of the investigation. It is the case of the prosecution itself that appellant no. 2 was apprehended and was immediately taken to the office of appellant no. 1, however, no recovery of the currency notes has been affected. The custody of both the appellants was with the Investigating Officer at that relevant point of time, however, no investigation or for that matter, recovery had been affected from them. This Court also further notes that appellant No. 1 had examined 4 witnesses in his defense, who were working in the MCD Office at the relevant point of time when the appellant No. 1 was apprehended by the police officials. Three of the aforesaid witnesses submit that they were present at the MCD Office at the relevant date and time, when appellant No.1 was apprehended by Anti-Corruption Branch and they have stated that no proceedings took place at the spot.

18. In view of the aforesaid, this Court is of the considered opinion that the prosecution has not been able to establish charges *qua* appellant no.1 and appellant no.2 beyond reasonable doubt.

19. In totality of the facts and circumstances of the present case, the present appeals are allowed and impugned judgement of conviction and order on sentence dated 07.02.2011 and 11.02.2011 respectively are set aside. Both appellant no. 1 and appellant no. 2 stand acquitted of the charges levelled against them.



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20. Bail bonds stand discharged.
21. Pending applications, if any, also stand disposed of accordingly.
22. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.
23. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J.

SEPTEMBER17, 2025/kr/sp