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

Judgment reserved on: 14 August 2025
Judgment pronounced on: 28 August 2025

\+ W.P.(C) 6148/2024, CM APPL. 25569/2024 & CRL.M.(BAIL) 1412/2025

PRAKASH CHAND SHARMA .....Petitioner
Through: Mr. Nitin Joshi, Mr. Harsimran Singh, Mr. Vaibhav Thaledi, Mr. Sunit Dutt Sharma, Mr. Gursimran Singh and Mr. Harsh Singh, Advs.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Ajay Kumar Pandey, SPC with Mr. Amit Acharya, GP with Mr. Kishan Pandey, Adv. for UOI with Mr. Paramjeet Singh, Law Officer, BSF.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 28.08.2025

OM PRAKASH SHUKLA, J.

1. The petitioner has filed the present petition assailing his dismissal from service and his conviction thereof under Sections 7 & 11 of the Prevention of Corruption Act[1], 1988 by the General Security Force Court[2] constituted under the Border Security Force Act[3], 1968.

[1] "The PC Act", hereinafter
[2] "GSFC", hereinafter
[3] "The BSF Act", hereinafter

He further assails the confirmation of the same by Respondent No.3 and the disposal of his 'Pre Confirmation Petition' and 'Post Confirmation Petition' by Respondent No.2.

2. Shorn of unnecessary details, the facts as noted from the petition would be that the petitioner was enrolled in the Border Security Force[4] as SI/JE (Elect.) on 16.06.1993 and was subsequently promoted to Deputy Commandant (Electricals) on 27.01.2020 at HQ South Bengal Frontier BSF.

3. Allegations of corruption were levelled against the petitioner and as such a Staff Court of Inquiry[5] was initiated against him on 28.03.2022 to '*investigate into the circumstances relating to acceptance of bribe from civil contractors by pressurizing them'*, in lieu of which total 11 witness were examined. Since the petitioner was found guilty as per the material collected during Staff Court of Inquiry, a Record of Evidence[6] under Rule 48 of the BSF Rules, 1969 was directed to be prepared against the petitioner.

4. The Recording Officer, examined almost 07 Prosecution witnesses and the petitioner having been found guilty, disciplinary action by way of convening a GSFC was directed by Respondent No. 4 and the petitioner was served with a copy of the chargesheet on 14.02.2023 and the trial took place at 85 Battalion BSF deployed at Digberia, 24 Parganas, Kolkata, West Bengal from 21.02.2024 to 21.04.2023. The petitioner was accused of committing a punishable

[4] "BSF", hereinafter
[5] "SCIO" hereinafter
[6] "RoE" hereinafter

offence under Section 46 (3 charges) of the BSF Act, 1968, which are enumerated as herein below:

First Charge - Section 46 of the Border Security Force Act, 1968	COMMITTING A CIVIL OFFENCE THAT IS TO SAY BEING A PUBLIC SERVANT ATTEMPTED TO OBTAIN BRIBE FOR IMPROPER & DISHONEST PERFORMANCE OF AN OFFICIAL DUTY PUNISHABLE UNDER SECTION 7(A) OF PREVENTION OF CORRUPTION ACT, 1988 (AMENDED IN 2018) That he, on 21.12.2021 at about 1806 hrs attempted to obtain undue benefit in lieu of contract from Sandeep Dey of contractor, M/s Sujatha Enterprises in the administrative Block of Frontier Headquarters, South Bengal Rajarhat 24 Parganas (N), West Bengal and thereby Committed an offense punishable under Section 7(a) of the Prevention of Corruption Act, 1988.
Second Charge - Section 46 of the Border Security Force Act, 1968	COMMITTING A CIVIL OFFENCE, THAT IS TO SAY BEING A PUBLIC SERVANT OBTAINED UNDUE ADVATANGE WITHOUT CONSIDERATION FROM PERSON CONCERNED IN PROCEEDING OR BUSINESS TRANSACTED BY SUCH PUBLIC SERVANT PUNISHABLE U/S 11 OF THE PREVENTION OF CORRUPTION ACT 1988 (AMENDED IN 2018) That the petitioner, on 23.12.2021, at about 1344 hrs, at the Administrative Block of Frontier-Headquarters Border Security Force, South Bengal, Rajarhat, 24 Parganas (N), West Bengal, Sri Mohitash Das, M/s Das Enterprises, Resident Laupola, PO - Subarnopur, PS-Haringhata, District - Nadia (West Bengal), without accepting Rs. 10,000 - (Ten Thousand Rupees) from a person whom he knew as a contractor, carrying out electrical works of the Border Security Force and thereby violating the Prevention of Corruption Act, Committed an offense punishable under Section 11 of the Prevention of Corruption Act, 1988.
Third Charge - Section 46 of the	COMMITTING A CIVIL OFFENCE, THAT IS TO SAY BEING A PUBLIC SERVANT, OBTAINED

Border Security Force Act, 1968	BRIBE FOR IMPROPER AND DISHONEST DISCHARGE OF AN OFFICIAL DUTY, PUNISHABLE UNDER SECTION 7(A) OF THE PREVENTION OF CORRUPTION ACT, 1988 (AS AMENDED IN 2018). In that the petitioner, on 23.12.2021, about 1457 hrs, at Administrative Block of Frontier. - HQ BSF, South Bengal, Rajarhat, 24 Parganas (N), WB, accepted a bundle of Rs 500 - denomination currency notes, from No. 127070151-1 InspI JE(Elect) Subhash Chandra of SHQ. BSF Kolkata, in lieu of works and clearing bills, and thereby· committed an offence punishable u/s 7(a) of the Prevention of Corruption Act,1988.

5. The petitioner was tried for all the aforesaid three charges in the aforesaid GSFC trial, wherein he pleaded 'Not Guilty'. Thus, in order to prove their case, the prosecution examined 12 prosecution witnesses and called 3 witnesses as Court witnesses. The petitioner preferred to give a written statement in his defence, but did not produce any witness in his defence. After a perusal of the evidence on record, the GSFC found the petitioner not guilty on the "First Charge". However, the petitioner was found guilty on both the second and third charges and as such convicted under Section 11 and Section 7(a) of the PC Act, 1988 and as such *vide* an order dated 20th of November, 2023 the petitioner was sentenced to three years imprisonment, dismissal from service and a fine of Rs. 10,000/- (Ten thousand Rupees).

6. Thereafter, the petitioner exercised his right under Section 117(1) of the BSF Act, 1968 and preferred a 'Pre-Confirmation Petition' mentioning defects and legal infirmities in the findings and it

was conveyed on the very same day when the 'confirmation' was conveyed i.e. 20.11.2023, however the petitioner was sent to civil prison at Kolkata. Later, the sentence of the petitioner was suspended for 10 days enabling him to participate in a marriage in his family and while on the concession of interim suspension the petitioner was served with the copy of trial proceedings and a copy of disposal of his 'Pre-Confirmation Petition' on 01.12.2023.

7. The petitioner dissatisfied with the outcome of "pre-confirmation petition", preferred an application before the Respondent No. 1 and 2 on 03.12.2023 seeking pardon/remission and suspension of sentence in accordance with the BSF Act and Rules, which was decided against the petitioner *vide* order dated 10.01.2024 issued *vide* No. 03/04/2023/CLO-BSF/11-14. Furthermore, the petitioner also preferred a 'Post Confirmation Petition' under Section 117(2) of the BSF Act, 1968 dated 03.12.2023 addressed to Respondent No.2, which was disposed on 03.04.2024. The petitioner surrendered before the Superintendent of Dum Dum Correctional Home on 04.12.2023 and is in jail.

Subsequently, his application seeking suspension of sentence was rejected by Respondent No.2 and thereafter this Court declined to grant the petitioner concession of interim suspension of sentence *vide* order dated 25.01.2024. Thereafter, the petitioner challenged the order dated 25.01.2024 before the Apex Court, however, the said SLP was withdrawn.

8. Further, during the pendency of this writ petition, the sentence

promulgated on the petitioner *vide* order dated 20.11.2023, was suspended for a period of 60 days from the date of his release from the concerned Jail *vide* an order dated 19.12.2024 passed in Crl. M (Bail) 2158/2024 by this Court. The said concession of suspension of sentence was extended further for a period of two months *vide* an order dated 14.02.2025 and for a further period of 12 weeks *vide* an order dated 17th of April, 2025, which again was extended till the next date of hearing *vide* orders dated 7th of July, 2025, 18th of July, 2025, 24th of July, 2025, 29th of July, 2025, 6th of August, 2025, 8th of August, 2025 and 14th of August, 2025.

9. Mr. Nitin Joshi, learned counsel on behalf of the petitioner submits that the 'Post Confirmation Petition' is riddled with presumptions, conjectures and surmises, as while authorizing the impugned order dated 03.04.2024, no reports which formed the basis of disciplinary proceedings against the petitioner were produced barring the petitioner from using said reports for purpose of contradictions jeopardizing his interests and it must be accounted that law may prohibit revealing the identity of the secret informer but said information i.e. reduced into writing constituted a crucial piece of evidence and is mandatorily to be provided to the accused in order to enable him to prepare his defence.

10. Moreover, the learned counsel for the petitioner argued that the RoE was initiated in absence of any legally admissible evidence and Respondent No.2 had failed that receipt of illegal gratification by the petitioner formed basis for ordering of RoE against the petitioner, as

no reports were ever brought to the notice of the petitioner nor was ever exhibited during trial. It was argued that the sole basis of incriminating the petitioner were 15 cropped video clips which were devoid of any certification primarily lacking two certificates under Section 65 B of IEA (i) In respect of transfer of secondary evidence from the DVR to the computer device and (ii) Transfer of secondary evidence from the computer device to the compact disk, with all material particulars as stated under Section 65B of IEA and as such it has been strenuously argued that these video clips could not have legally formed, the sole basis for reliance and further action against the petitioner.

11. The learned Counsel for the petitioner has buttressed his submissions on the silence of the impugned order dated 03.04.2024 in regard to how 'DEMAND' was proved when the person who allegedly paid the tainted money did not mention anything in relation to 'DEMAND' and no report or complaint was produced and no person independently stood witness to any 'DEMAND' by the petitioner. Respondent No.2 also failed to address the particular bills that were alleged to have been cleared by the petitioner in lieu of said illegal gratification.

12. Furthermore, the petitioner contended that the delivery of tainted money (Bundle of Rs. 500/- Notes) was in lieu of bringing 'Peda' and the Respondent No. 2's act of seeking proof of petitioner's visit to his home town for bringing said 'Pedas' was unfounded as the respondent failed to take into account the fact that the said 'Pedas' could have been brought by someone from petitioner's hometown and

it did not necessitate the petitioners to visit his hometown. Also, it was contended by the petitioner that 4 notes of Rs. 500/- did not constitute a bundle and it was not for the petitioner to prove that he himself had brought 'Pedas' but the duty of the prosecution to prove that there was 'DEMAND and consequent delivery/acceptance of 'tainted money' by the petitioner in lieu of 'clearance of bills' which has been presumed without anything in that regard being on record.

13. It has been further submitted by the learned counsel that, impugned order dated 03.04.2024 reeks of ignorance as the sacrosanct right of the petitioner to obtain the entire footage of the video recordings to be used in his defence has been violated as only the cropped/edited clips were controverted during the trial. It has been also argued that although respondent was correct in its observation of the impugned order that it is not necessary under the scheme of Section 7 and 11 of the PC Act, 1988 to recover the tainted money or the apprehension of the accused in receiving the tainted money. However, according to the learned Counsel, the Respondent No. 2 has completely lost sight of what is necessary under the said sections i.e. 'DEMAND' of said tainted money, which as per his submission has not been proved in any manner whatsoever and any complaint made against the petitioner has also not been proved 'beyond reasonable doubt' and so is any secret information received against the petitioner.

14. Furthermore, the 'Defending Officer' of the petitioner was not available for a considerable time during the trial and the petitioner was represented by a Civil Counsel but Respondent No.2 overlooked the fact that as per principles of natural justice, the presence of a

defending officer is warranted along with the Civil Counsel as Civil Counsels are not conversant with the day-to-day nuances of the military's functioning.

15. Learned Counsel for the petitioner also submits that the rejection of the application seeking Pardon, Remission and Suspension of sentence of the petitioner is based on whimsical and presumptive lines of the learned Force Court and Respondent No.2 has yet again chosen to attach importance to legally impermissible presumptions and assumptions and overlooked the material on record making the impugned disposal bad in the eyes of law. He has further submitted that the benefit of doubt shall not be given to the prosecution as the Apex Court has settled that even in Court Martial proceedings the prosecution has the duty to prove its case beyond reasonable doubt and the benefit of doubt, if any, accrues in favour of the accused.

16. As per the submission of the Counsel for petitioner the essential conditions to constitute an offence under Section 7 (a) of the PC Act, 1988 requires the prosecution to prove beyond an *iota* of doubt that: (i) Petitioner was a public servant (ii) Obtainment of bribe (Demand) (iii) Details of bribe (Total tainted money) (iv) Promised improper & dishonest performance of official duty. Now, the prosecution according to the petitioner has failed to prove the obtainment of bribe as the proof submitted by the respondent is a cropped video clip, without audio depicting conversation between the participants therein, with a defective certificate and the witness who allegedly paid the bribe money did not support the case of prosecution

and it lacked any independent witnesses. Also, no details regarding the alleged amount of bribe was provided before the petitioner was adjudicated as 'Guilty' and no direct circumstantial evidence led/insisted to depict details of any alleged receipt of tainted money or assignment of work showing that the petitioner improperly and dishonestly performed his official duty.

17. According to the learned Counsel for the petitioner, the ingredients to constitute an offence under Section 11 of the PC Act, 1988 were absent as no details regarding the obtainment of undue advantage of Rs. 10,000/- was provided before the petitioner was held 'Guilty' and the sole star witness Sri. Mohitosh Das (PW-10) did not support the case of the prosecution at any stage and never stated that any undue advantage was received from the petitioner, and the pre-requisite ('Proof of Demand') before analysing obtainment under Section 11 was not satisfied, and no evidence was adduced which proved that the petitioner could have extended any benefit to Sri Mohitosh Das either himself or through anyone else which led to the conviction against the 'Second Charge' by the Respondents.

18. It is also argued by the Counsel for the petitioner that presumption under Section 20 of PC Act, 1988 is raised only after 'Demand' and 'Receipt' is conclusively proved and not only on the sole basis of framing of charge under Section 7 and 11 of the PC Act, 1988 and the GSFC trial of the petitioner did not prove any 'demand' by the petitioner. Further, the 'Third charge' presumption could have been raised as there was absolutely no proof (direct/circumstantial) in respect of demand of bribe by the petitioner and the amount of Rs.

2000/- was also presumed to be bribe without any substantial evidence.

19. The learned Counsel for the petitioner also contended that the CCTV footage was used as sole basis of conviction and incarceration without it being authenticated by forensics as the video clippings were never sent for forensic analysis to prove its authenticity and said clips cannot form the basis of 'Guilty'. The clippings that are being relied upon were cut from the entire database of DVR which subsequently transferred to a computer wherefrom it was copied in a CD and produced before the Court which did not fulfil the requirement of 'Proof beyond reasonable doubt'. Even the certificate under Section 65B of the IEA, 1872 was defective as the same did not contain all the material detail as encapsulated under Section 65B and did not even mention the name of the software used for cropping video clips and the format of the video clips do not certify that the same were un-editable leading to the submission of the petitioner that the same cannot form the sole basis for arriving at a hypothesis of guilt on part of the petitioner. Further, the right to defend is a cardinal part of right to fair trial and the denial/wilful non-supply of entire footage to the petitioner of the DVR of the camera illegally installed in his office jeopardises the defence of the petitioner and abrasively whittles the right to privacy of the petitioner as the cameras were installed in his office without his consent/a sign/visible notice and the silence of the Information Technology Act, 2000 in respect of CCTV cameras was wilfully misused to invade the privacy of the petitioner.

20. Per Contra, Mr. Ajay Kumar Pandey, learned SPC, submits that

the petition has raised various grounds which are so intermingled with the facts that they cannot be decided without appreciating the evidence. According to the learned Counsel, keeping in view the limited jurisdiction of judicial review exercised by this Court under Article 226 of the Constitution of India, these grounds are meaningless and without any force of law. Thus, it has been submitted that the present writ petition is liable to be dismissed and reliance in this regard has been placed on the judgment of ***Satbir Singh v Union of India & Ors***.[7], ***Kiran Kumar v Union of India***[8]**,** decided on 25.07.2025 & ***Kailash Chand v Union of India & Ors***[9]**.**

21. The learned Counsel for the respondent submits that intelligence reports regarding corrupt practice of the petitioner, including clearing of bills after receiving bribes was being monitored after receipt of said report and a formal report along with clipping was submitted to IG, BSF South Bengal on 23.03.2022 following which Staff Court of Inquiry[10] was convened with the purpose of investigating into the allegations about the petitioner. As per the evidence from the abovementioned SCOI the petitioner was found to be involved in the corrupt practices and blamed for his various acts of commission and omissions. Thus, a disciplinary action was initiated against the petitioner and hearing of charges under Rule 45B of BSF Rules, 1969 in respect of accused officer/petitioner was held on 02.09.2022. The petitioner was remanded for preparation of RoE on three Charges all under Section 46 of BSF Act, 1969 read with

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[7] **2025 SCC OnLine Del 3846**
[8] **WP(C) No. 6319/2023**
[9] **2025 SCC OnLine Del 2500**
[10] "SCOI" hereinafter

Section 7, 7(a) & 11 of Prevention of Corruption Act, 1988. Having examined the ROE and considering the nature and gravity of charges the Inspector General was of the view that a *prima facie* case was established against the petitioner. Accordingly, the inspector general directed the petitioner to be tried by the GSFC on abovementioned charges in order to have judicial verdict in the matter.

22. The learned Counsel for the respondents submits that the petitioner's contention that the chargesheet nowhere discloses which works were allotted by the petitioner and which bills were cleared by the petitioner in lieu of the 'undue advantage', so as to be in violation of Rule 54 (5) (b) of BSF Rules, 1969. However, it has been submitted by him that the said rule comes into play only after Rule 54(5)(a), which provides that for a charge to be framed the time and place of the offence and the person who is charged with the offence alongwith the thing in respect of which it was committed would be sufficient for framing of charge and these particulars have been clearly mentioned in the chargesheet.

23. Learned SPC further submits, that as for the absence of 'DEMAND' is concerned there are video clips of the petitioner accepting money from the people he is dealing in official capacity and has failed to provide an explanation as to why he is accepting money from a person he is dealing with in official capacity, there is also presumption under Section 20 of PC Act, 1988 that if it is proved that the public servant has accepted undue advantage then it would be presumed that the said acceptance was for performing of a public duty improperly and dishonestly. The Counsel for the respondent places

reliance upon the judgement of ***Neeraj Dutta v. State (Govt. of NCT of Delhi)***[11] wherein the Constitution Bench of the Apex Court held:

> *"70. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*
> *In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."*

The learned counsel has buttressed his submissions on the premise that the writ court under Article 226 of the Constitution is not required to re-appreciate the evidence produced before the GSFC. Moreover, the High Court can only see that whether the enquiry was held by a competent authority according to the procedure prescribed and there is no violation of the rules of natural justice. Reliance was placed on the judgement of the Apex Court in ***Union of India v. P. Gunasekaran***[12]**.**

24. Further, the learned counsel for the respondents contended that during the Trial, the prosecution produced 13 video clips along with Section 65B certificate before the GSFC and the petitioner in some of these clips, can be seen accepting bundles of money from various persons and also signing files. As regards the admissibility of electronic records, the learned Counsel has relied on the Apex Court judgment of ***Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal & Ors.***[13]. It has been submitted that although, the petitioner has denied these video clips as being false. However, he has totally

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[11] **2023 4 SCC 731**
[12] **(2015) 2 SCC 610**
[13] **2020 INSC 453**

failed to explain as to why he was receiving money from a person with whom he was dealing with in official capacity. It is contended by the counsel for the respondent that Section 114 of the Indian Evidence Act states that:

> *"**Section 114.:** Court may presume existence of certain facts.*
> *The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."*

Thus, the CCTV footage being a document duly placed on record by the official of BSF with signed certificate can be treated as evidence of fact as shown in the CCTV.

25. Having heard the learned Counsel for the parties, this Court has given anxious thoughts to the entire gamut of facts and the various documents referred by them during the course of hearing. This Court is of the view that before embarking on the path of deciding the present writ petition, the scope and extent of interference of this Court under the provisions of Article 226 of the Constitution of India in trials conducted by the GSFC as per BSF Act and rules framed therein, must be understood, in order to appreciate the adversarial controversy raised in this petition between the parties concerned. Recently, this Bench had an occasion to examine the said scope & extent in the case of *"**Kiran Kumar v Union of India**" (Supra) vide* judgment dated 25.07.2025. This Court in the said judgment, relied on the Judgment of the Apex Court in the case of '***B.C. Chaturvedi v***

UOI & Ors*[14]*., *and an* earlier judgment dated 13.07.2025 passed by a Coordinate Bench of this Court in the matter of ***Deshraj v Directory Gen. BSF & Anr.*[15]*,*** which had extensively relied on a judgement passed by a Division Bench of the Gauhati High Court in ***Director General, BSF & Ors. v Iboton Singh (KH)*[16]*.***

26. What is discernible from these Judgments is that the scope of this Court while exercising its power of Judicial Review under Article 226 of the Constitution of India is circumscribed and limited. Further, this Court cannot be oblivious to the fact that the entire procedure of a trial by GSFC is provided in the BSF Act and the Rules made thereunder and since the provisions contained therein require that the findings reached, and the sentence passed, against an accused by a GSFC, is available for re-consideration by a competent authority for the purpose of pre-confirmation by the Director General, BSF in terms of section 117(1) of the BSF Act and Post-confirmation by the Ministry of Home Affairs under Section 117(2) of the BSF Act, 1968. Therefore, there exists various layers of adjudication and it is only after these layers of confirmation of the findings and sentence are exhausted that the findings become final. Thus, this Court finds that the scope of judicial review in these kinds of cases, becomes severely restricted and can be exercised in exceptional cases only.

27. According to this court, this restricted exercise has to be for the limited purpose of determining as to whether the proceedings of the

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[14] **(1995) 6 SCC 749**
[15] **W.P. (C) 768/2007**
[16] **2007 SCC OnLine Gau 419**

GSFC have been conducted in accordance with the requirement of law or as to find out if there had been any violation of the principles of natural justice, while conducting the trial, so as to vitiate the proceedings. The test to be applied by this Court while examining the conduction of Trial is also limited, with a caveat that, even if the findings reached by the GSFC are found to be perverse and/or contrary to, or in violation of, the provisions of the law relevant thereto, this Court is only to interfere when the infraction has resulted, in the failure of justice. The rule being that, if the conclusion or finding be such as no reasonable person would have ever reached, this Court may interfere with the conclusion or the finding.

28. Further, this Court, while exercising its power of judicial review in GSFC orders, does not sit on the findings of a GSFC or on the proceedings of a GSFC as an appellate authority and re-appreciate the findings for the purpose of determining if the evidence were sufficient for the conclusion reached. The findings of facts arrived by the GSFC are final in nature as it being the master of the relevance, admissibility or weight of the evidence lead during the Trial. Thus, this Court, while exercising its power of judicial review is reminded of its self-imposed limitation of restrictive intrusion only when the conclusion arrived by GSFC is based on no evidence. Further, neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to these trials. So long as the findings are supported by some legal evidence, the adequacy or reliability of such evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution, reliance in this regard can be placed on the

judgement of ***State of Andhra Pradesh & Ors. v Chitra Venkata Rao***[17] of the Apex Court.

29. As, far as the present case is concerned, the learned Counsel for the Petitioner raised questions, regarding the military court's authority to convict an accused on the basis of probability and the requirements of the Indian Evidence Act, 1872 as stated under Section 87 of BSF Act, which was mandatorily required to be adhered to in the present GSFC trial. This Court is of the view that no doubt, as per Section 87 of the BSF Act, 1968 the Security Force Courts are required to adhere to the provisions of the Indian Evidence Act, 1872 and said Act should apply to all proceedings before the Security Force Court. However, from a plain reading of Section 87 of the Act, it clearly transpires that general rules of evidence contained in the Indian Evidence Act shall, subject to the provisions of the BSF Act, apply to all proceedings before the GSFC. That means any provision in the BSF Act laying down and providing any Rule of evidence would override the contrary provisions in the Indian Evidence Act. That apart, the BSF Act is a special enactment providing for Constitution and regulation of an armed force of the Union for ensuring the security of the borders of India and other matters connected therewith and, therefore, the provisions of the BSF Act would prevail over the general provisions of the Indian Evidence Act wherever there is found any repugnancy between the general - Indian Evidence Act and the Special - BSF Act, 1968.

30. Although, this Court is circumscribed to re-appreciate the

[17] **(1975) 2 SCC 557**

evidence brought on record during the GSFC Trial, however since it has been strenuously argued by the petitioner that the present case is a case of having no evidence against him and that the findings arrived by the Court in based on surmises & conjectures, this Court took upon itself the ardous task of shifting through the evidence brought on record against the petitioner. This Court while examining the culpability of the petitioner relating to the second charge levelled against him for an offence under Section 11 of the Prevention of Corruption Act, 1998 is concerned, finds that the GSFC has on the evidence brought on records a returned finding that the petitioner is a Public Servant and was present in the Administrative Block of Frontier HQ BSF South Bengal, Rajarhat, 24 Parganas (N), West Bengal on 23rd December, 2021 at 13:44 hrs. on the basis of testimony of Inspector/JE Subhas Chandra (PW-5), Constable (GD) Khaiarul Basar, (PW-7, Addl.), Shri Musale Avinash Dnyanoba (PW-9, Addl.) who produced Exhibit (Materials) M and N relating to video clips of the office of the petitioner, Shri Mohitosh Das (PW-10) and Shri Pradeep Verma, 2IC (PW-11). Thus, the presence of the petitioner on the fateful date and time has been proved by cogent evidence, which cannot be shrugged aside.

31. Further, this Court finds that the GSFC while discussing as to whether the petitioner accepted Rs. 10,000/- in cash without consideration from Sh. Mohitosh Das of M/s Das enterprises, on the said date has after discussing the oral testimony and the materials brought on record concluded that:

> *"…Court also consider and find the part of statement of (PW-10) which was a proved contradiction as given during ROE that on*

23rd Dec, 2021, he had come to SHQ BSF, Kolkata for some official work as he had already spoken to Shri Prakash Chand, DC(Elect) of HQ SB Frontier BSF regarding his visit to his office as also that he visited the office of Shri Prakash Chand, DC(Elect) at around 1345 hours on 23rd Dec 2021 and find it believable in view of glaring evidence which has come before us in the form of electronic evidence Exhibit (Material) 'N', in which, at video clip number 06, Sh Mohitosh Das (PW-10) is clearly identified by us to have offered money to accused in denomination of Rs 200 currency notes. We also consider the version of defence that the witness is less educated and cannot understand the English language and the witness could not understand his previous statements before signing. The Court, on this account, also consider the statements of PW-11 (Addl) and PW- 12 (Addl). As per PW 11(Addl), after recording the statements of the witnesses, the same were read over to the witnesses in the language they understood in presence of accused and signatures of accused, independent witness and Prosecution witness were obtained on each page of the statement of Prosecution witnesses. We also consider a certificate recorded under the statement of Sh Mohitosh Das(PW-10) which reads that the above statement question and answers have, been read over to the witness in the presence and hearing of accused in the language he understands better i.e, Hindi and he signs it as correct as well as the contention of defence that the word 'explain' has not been mentioned in this certificate. We are of view that mere non-mentioning of the word 'explain' in this certificate by Recording Officer would not wash out the statement of the witness when it was also read over to him in 'Hindi' language by the RO and reject the contention of the defence in this regard. As per PW -12(Addl), who prepared SCOI in this case, he also explained the contents of his statement line by line and also read over the statement to him. PW-.12(Addl.) further gave evidence that Shri Mohitosh Das also himself read his statement line by line and put his signatures on the statement after having satisfied in presence of independent witness. As per PW-12(Addl), he completed the SCOI as per the procedure contained in BSF Act and Rules made ·there under and there is no provision of endorsing by witness that he had been read over his statement and signing on finding it correct. It is also in evidence through the statement of PW-10 before us that he is class VI pass, however, has stated that he understands Hindi very well and also that he is in the profession of Contractor when he was 32 years of age and as of 2021, he has completed almost 26 years in the profession as contractor. This goes to 'show that the witness is not so illiterate to have not understood the contents of his statement which were read over to him in the language he understood better i.e. Hindi and he signed it as correct in the presence and hearing of accused. Therefore, the contention of the defence challenging to authenticity of statement of PW-10 in SCOI and ROE does not hold

ground because of fact that the witness has deposed not only once but twice and at both the occasions, his version is consistent and corroborative, therefore, the version of PW-10 before us that he did not hand oven any money to the accused cannot be believed that too, when he is clearly seen in the clip number 6 to have given a bundle of currency Notes in the denomination of Rs 200 to accused which the Court find convincing and trustworthy on the reason that when humans have for extraneous reasons, like the case in hand, failed to be on the side of truth, the evidence collected by machines like video camera cannot be kept out of judicial scrutiny on specious reasons. The Court also find that the case in hand is of acceptance and not obtainment in so far as second charge is concerned because of the convincing evidence of offer having been given by the bribe giver when he handed over currency notes in the denomination of Rs. 200/- and its acceptance by the accused with consenting mind which is clearly evident from video clip No 6 relied by us besides other corroborative evidence as discussed above.

In view of the discussion on this issue of the charge, law relating to the charges and knowledge as members of the Force, the Court, accordingly, take this issue that the accused accepted Rs 10000/- in cash without consideration from Sh Mohitosh Das of M/s Das Enterpises, RIo Laupola, PO- Subarnopur, PS: Haringhata, Distt- Nadia on 23rd December, 2021 at 1344 hrs as 'Proved'."

32. Further, the GSFC, while holding the issue to be proved against the petitioner relating to the knowledge of the petitioner about Shri Mohitosh Das of M/s Das Enterprises being a contractor and carrying out electric works of BSF and concerned in the proceeding or business transacted by the petitioner, has categorically observed that Sh. Mohitosh Das (PW-10) used to contact the petitioner, both at the site and his office and thus it cannot be disputed that the petitioner had no knowledge of PW10 to have been carrying out electric works for BSF. The GSFC has rightly concluded that since the acceptance of undue advantage stood proved against the petitioner in view of the statements and video clips, a presumption under law as per section 20 of the PC Act, was raised against the petitioner that the said undue

advantage was accepted without consideration from a person carrying out electric works of BSF and concerned in proceedings or business transacted by the petitioner, which remained unrebutted, despite being given an opportunity to explain. Thus, the findings arrived against the petitioner, has rightly made him culpable for an offence under section 11 of the PC Act, 1988.

33. This Court also finds that as far as the charge relating to the offence committed under Section 7(a) of the Prevention of Corruption Act is concerned, the GSFC after noting that the petitioner is a Public servant and was present in the Administrative Block of Frontier HQ BSF South Bengal, Rajarhat, 24 Parganas (N), West Bengal on 23rd December, 2021 at 14:57 Hours, in view of the testimony of various witnesses and the video clips, went on to also return a finding that the petitioner accepted a bundle of Rs. 500/- denomination currency notes from Inspector/JE Subhas Chandra, on the said date and time, in the following word:

> *"...Court further take notice of the manner in which Inspector/JE Subhash has handed over the bundle of currency notes in denomination of Rs 500/- after signing of few documents and measurement book (MB) and also as to how the same was quickly accepted and kept in pocket by accused. The handing over of currency Notes in clandestine manner substantiates the fact that the. money being handed was obviously not for the 'pedas'. The Court also find that in absence of any evidence of demand having been emanated from the accused, it cannot be said that the accused had obtained undue advantage infact, the accused has duly accepted the undue advantage offered by Insp/JE Subhash Chandra with consenting mind and thus can be said to have accepted an undue advantage 'as clearly evident from video clip No. 13 relied by us and on this score, reject the part of statement of Inspector/JE Subhash Chandra that he has never offered any bribe to accused or that the amount was for 'pedas', We, therefore, unhesitatingly hold that video clip No. 13 captured the activities of accused contemporaneously when the accused was accepting*

currency notes from Inspector/JE Subhash Chandra and Exhibit (Meterial) 'N' and is not doctored as contented by defence.
In view of the discussion on this issue of the charge and law relating to the charge, the Court, accordingly, take this issue that accused accepted a bundle of Rs 500/- denomination currency notes from No. 120701511 Inspector/ Subhash Chandra of SHQ Kolkata on 23rd December, 2021 at 1457 hrs as 'Proved'…"

34. Further, the Court notes that the GSFC, while holding the issue to be proved against the petitioner relating to his acceptance of the money in lieu of works and clearing the bills for improper and dishonest performance of an official duty thereby committing an offence punishable under Section 7(a) of PC Act, 1988 has concluded that:

"…As per PW-4, Executive Engineer is not payment authority and he only passes the bills for payment by PAD. Court further consider that as per the witness, the payment order is issued by Sector DDO but he has no power to stop already passed bills by accused and believe him findings that accused has a significant role in passing the bills raised by the firms and an inference could be safely drawn that the money was accepted by the accused in lieu of clearing the bills. We are fortified in our view when we see the law relating to the Charge as contained in the Explanation' 2 (ii) of Section 7 of PCA,1988 as amended in 2018 as per which, it shall be immaterial whether such person being a public servant obtains or accepts or attempts to obtain the undue advantage directly or through third party. Furthermore, as per the provisions "of Section 20 of PCA, since acceptance of the money has been proved in second issue of-this charge, mandatory presumption has to be drawn against accused that he accepted the undue advantage as a motive or reward for performing a public duty improperly by him, thus committed an offence under Section 7(a) of PCA 1988."

35. This Court has purposely extracted the findings of the GSFC to demonstrate and satisfy itself as to the reasoning appended by the GSFC in returning a finding of conviction against the petitioner. We find that the findings arrived by the GSFC cannot be faulted nor the

same is based on surmises as has been wrongly contended by the petitioner. It was proved beyond reasonable doubt that the petitioner at the relevant point of time played a significant role in processing of bills of the electric works, which at that point of time was being carried by M/s Das Enterprises. The presence of the owner of M/s Das enterprises is proved from the video clips as well as the oral testimony of the witnesses. There is no escape from the fact that the petitioner and the owner of M/s Das Enterprises were in contact and the money has changed hands as visible from the video clips. The factum of money being handed over to the petitioner by the owner of M/s Das Enterprises, although was clearly visible in the video clips and was also accepted by him during the RoE was however purposefully denied during the GSFC trial, for which he was declared hostile. The said denial is significant in the background that during the RoE, he had accepted the handing over of the money, to the petitioner, although for a different reason and he had also admitted that the person in the video clip was the petitioner and it was he, who had handed over Rs. 10,000/- to the petitioner on 23rd December, 2021 at 13:44 hours as visible in the video clippings. The grounds to resile from his statement recorded during RoE/SCOI on the ground of his ignorance has been adequately dealt with and negated by the GSFC. In ***Union of India Vs Major. A Hussain***[18], it has been held that proceedings of Court of Inquiry are not adversarial and are not part of pre-trial investigation. There is cogent evidence on record to show the date, time, place, person and the amount in respect of which the offences have been committed. Further, even the purpose i.e. receiving

[18] **1998(1) SC 537**

of bribe in lieu of works and payments of bills, has been proved on records. Thus, we see no perversity in the findings arrived by the GSFC, nor the same could in any manner be termed as a failure of Justice.

36. There is apparently no violation of principles of natural Justice, only for that the petitioner has submitted that the 'Defending Officer' of the Petitioner was not available for a considerable time during the trial and the petitioner was represented by a Civil Counsel, who may not be conversant with the nuances of the military's day to day functioning. However, this Court finds that the defending officer was present throughout the trial, except on few occasions, wherein the petitioner had no objections to the continuation of the proceedings. Further, it is seen from the proceedings that the petitioner was adequately represented by two Counsels of his choice, who has vigorously defended him and conducted cross-examination of the prosecution witnesses at length. Besides the fact that no such ground was raised during the Trial, the petitioner is unable to show as to how the proceedings or its outcome has been prejudiced with the transient absence of the defending officer from the trial. Further, the learned counsel for the petitioner submitted that the fundamental right to privacy of the accused has been withered and questions if the right to privacy not extend to the subject of the 'Border Security Force'. It is pertinent to note that the Supreme Court in the case of ***Justice K.S. Puttaswamy (Retd.) v. Union of India***[19]**,** declared that right to privacy is to be treated as a fundamental right under Article 21, but it is to be understood that the right to privacy is not an absolute right and it is

[19] **(2017) 10 SCC 1**

subject to curtailment. If a valid legal framework is followed with a clear objective of public interest, it maybe lawful and in the instant matter the Inspector General issued directions for intelligence reports inquiring into the corrupt practices of the petitioner. Hence, the installation of CCTV cameras in the petitioner's office would not amount to violation of the petitioner's right to privacy. Reliance can be placed on the case of ***Aakash Deep Chouhan v. CBI & Anr.***[20]**,** wherein it was held that:

> *"39. The admissibility of any piece of evidence rests on its reliability, instead of how that evidence came to be procured. That is not to say that such evidence cannot be disallowed if the evidence is colored by breach of the privacy of the accused, however, even then, the judicial discretion will need to be exercised at the time of stage of adjudication rather than at the time of admitting the evidence on record"*

On the basis of the judgement of the Hon'ble Apex Court in the case of ***State (NCT of Delhi) v. Navjot Sandhu***[21]**,** which stated that the admissibility of the material is not affected by the non-compliance of the procedural safeguard:

> *"153. The legality and admissibility of intercepted telephone calls arises in the context of telephone conversation between Shaukat and his wife Afsan Guru on 14th December at 2009 hrs and the conversation between Gilani and his brother Shah Faizal on the same day at 1222 hrs. ...It is contended by the learned Senior Counsel appearing for the two accused Shaukat and Gilani, that even Rule 419-A, has not been complied with in the instant case, and, therefore, the tape-recorded conversation obtained by such interception cannot be utilised by the prosecution to incriminate the said accused. It is the contention of the learned counsel for the State Mr Gopal Subramanium, that there was substantial compliance with Rule 419-A and, in any case, even if the interception did not take place in strict conformity with the Rule, that does not affect the admissibility of the communications so recorded. In other words, his submission is that the illegality or*

[20] **CRL.M.C.-204/2020**
[21] **(2005) 11 SCC 600**

irregularity in the interception does not affect its admissibility in evidence there being no specific embargo against the admissibility in the Telegraph Act or in the Rules. Irrespective of the merit in the first contention of Mr Gopal Subramanium, we find force in the alternative contention advanced by him.

154. In regard to the first aspect, two infirmities are pointed out in the relevant orders authorising and confirming the interception in respect of specified telephone numbers. It is not shown by the prosecution that the Joint Director, Intelligence Bureau who authorised the interception, holds the rank of Joint Secretary to the Government of India. Secondly, the confirmation orders passed by the Home Secretary (contained in Vol. 7 of the lower court record, p. 447, etc.) would indicate that the confirmation was prospective. We are distressed to note that the confirmation orders should be passed by a senior officer of the Government of India in such a careless manner, that too, in an important case of this nature. However, these deficiencies or inadequacies do not, in our view, preclude the admission of intercepted telephonic communication in evidence. It is to be noted that unlike the proviso to Section 45 of POTA, Section 5(2) of the Telegraph Act or Rule 419-A does not deal with any rule of evidence. The non-compliance or inadequate compliance with the provisions of the Telegraph Act does not per se affect the admissibility. The legal position regarding the question of admissibility of the tape-recorded conversation illegally collected or obtained is no longer res integra in view of the decision of this Court in R.M. Malkani v. State of Maharashtra [(1973) 1 SCC 471: 1973 SCC (Cri) 399]. In that case, the Court clarified that a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible as res gestae under Section 7 of the Evidence Act. Adverting to the argument that Section 25 of the Telegraph Act, 1885 was contravened the learned Judges held that there was no violation. At the same time, the question of admissibility of evidence illegally obtained was discussed. The law was laid down as follows: (SCC p. 477, para 24) 'There is warrant for the proposition that even if evidence is illegally obtained it is admissible. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence."

Moreover, in the instant matter the CCTV cameras were installed pursuant to the intelligence reports regarding corrupt practices of the petitioner in order to monitor his activities. Hence, the right to privacy of the petitioner was curtailed in accordance with law.

37. Further, this Court cannot be oblivious to the fact that the petitioner was a part of the Armed forces i.e. BSF and occupied a position which called for due care and precaution and in view of Article 33 of the Constitution of India, whereby it is for the parliament to determine as to what extent fundamental rights shall be applicable to the members of Armed Forces. Thus, the petitioner cannot claim parity with ordinary citizen, reliance in this regard is placed on the judgment of the Apex Court in ***Union of India & Ors. v Ex. Flt. Lt. G.S Bajwa***[22]**,** and ***Lt. Col. Prithi Pal Singh Bedi v Union of India & Ors***[23]**.**

38. The next contention of the learned Counsel for the petitioner is that the Supreme Court in its constitution bench judgement ***Neeraj Dutta v. State (Govt. of NCT of Delhi)*** *(Supra)* has categorically settled that 'proof of demand' or 'offer to pay tainted amount and receipt thereof' is essential before raising presumptions under Section 20 of Prevention of Corruption Act, 1988. While, it is true that the proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is essential to establish the guilt of the accused, but this Court finds that in the present case the star witness (PW-10) had turned hostile and in case the complainant turns 'hostile', dies or is unavailable to record his evidence during trial, demand of illegal gratification can be proved by documentary or circumstantial evidence.

[22] **(2003) 9 SCC 630**
[23] **(1982) 3 SCC 140**

> *"...Para 10 (f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.*
> *(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said Criminal Appeal No.1669 of 2009 presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)."*

Also, in light of the instant matter there is ample documentary and circumstantial evidence on record that allows the Court to raise presumptions that the illegal gratification was for a purpose, and the order of the GSFC was well-reasoned.

39. Moreover, this Court finds that the GSFC had the benefit of viewing video clip No. 06 produced before it in which the petitioner is seen receiving a bundle of currency notes of the denomination of Rs. 200/- on 23.12.2021 at about 1344 hrs from Sh. Mohitosh Das (PW-10) who was the owner of M/s Das Enterprise and was working with him for execution of electrical works in Engineering Branch, Frontier Headquarters South Bengal Border Security Force. The petitioner received the bundle of those notes and immediately put the bundle in his left pocket. Although, Sh. Mohitosh Das (PW-I0) did not cooperate and was declared hostile. However, his previous statements given during RoE clearly indicate that on 23.12.2021, he visited the office of the petitioner and at about 13:45 hrs. handed over Rs. 10,000/- in denomination notes of Rs. 200/- to the petitioner. The petitioner could not explain to the Court the reason for which he

accepted Rs. 10,000/- from the contractor with whom he was working in official capacity. Therefore, once it was proved that the petitioner had accepted undue advantage in the form of cash, the onus was on the petitioner to rebut the presumption that the undue advantage without consideration was not for dishonest performance of official duty, but he could not rebut this fact.

40. Further, this Court finds that the GSFC has found in the video clips that Inspector (JE) Subhash Chandra (PW-5) had handed over Rs. 2000/- to the petitioner at the office of the petitioner on 23rd December 2021 and the video clip in which the said transaction was recorded was found to be accurate. The said activity was clearly seen in the footage. In the video clip no. 13, Inspector (JE) Subhash Chandra (PW - 5) was clearly seen attending the office of the petitioner at about 1457 hrs. and taking out a bundle of currency notes (Rs. 500/-) and handing it over to the petitioner under the cover of papers. The petitioner is clearly seen accepting the bundle of notes and putting it in the right pocket of his trousers. The defence's contention that the said money was for the ‘pedas’ brought by the petitioner was not believed by the Court as the handing over of the notes was done in a clandestine manner. The Court was also of the view that the petitioner had accepted the said amount in lieu of work because after the assignment and completion of the work, the bills given by the firms were passed by the petitioner. Further, the petitioner could not rebut the presumption that the money in his possession was not a reward for improper discharge of public duty by him. Taking into consideration all the above, the Court was satisfied that the petitioner accepted the bribe for improper and dishonest discharge of official

duty. The Judgment passed by the Apex Court in the case of ***M. Narsinga Rao v. State of A.P.***[24]**,** makes for an interesting read in this regard, which clarifies as to when and to what extent presumption can be raised. Wherein, the Hon'ble Apex Court held that:

> ***"21.*** *From those proved facts the court can legitimately draw a presumption that the appellant received or accepted the said currency notes on his own volition. Of course, the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence. But if the appellant fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the appellant received the said amount.*
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> ***22.*** *In Raghubir Singh v. State of Haryana [(1974) 4 SCC 560: 1974 SCC (Cri) 596] V.R. Krishna Iyer, J. speaking for a three-Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is "res ipsa loquitur". In this context the decision of a two-Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ.) in Hazari Lal v. State (Delhi Admn.) [(1980) 2 SCC 390: 1980 SCC (Cri) 458] can usefully be referred to. A police constable was convicted under Section 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs 60 from one Sriram who was examined as PW 3 in that case. In the trial court PW 3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW 8 have spoken to the prosecution version. The Court found that phenolphthalein-smeared currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption under Section 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two-Judge Bench observed as follows: (SCC p. 396, para 10)*
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> *"It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW 3. Under Section 114 of the Evidence Act the*

[24] **(2001) 1 SCC 691**

court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below."

23. *The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two-Judge Bench that the legal principle on this aspect has been correctly propounded therein.*

24. *Regarding the second limb of the contention advanced by Shri Nageshwara Rao, learned counsel for the appellant (that it was not gratification which the appellant has received), we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra [(2000) 8 SCC 571: JT 2000 Supp (2) SC 458]. The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (SCC p. 577, para 12)*

"The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So, the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

> ***25.*** *We, therefore, agree with the finding of the trial court as well as the High Court that prosecution has proved that the appellant has received gratification from PW 1. In such a situation the Court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty. Of course, the appellant made a serious endeavour to rebut the said presumption through two modes. One is to make PW 1 and PW 2 speak to the version of the appellant and the other is by examining two witnesses on the defence side. True PW 1 and PW 2 obliged the appellant. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the date when the alleged demand was made by PW 1. But the trial court and the High Court have held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The concurrent finding made by the two courts does not require any interference by this Court."*

41. As far as the admissibility of the certificate under Section 65B of the Indian Evidence Act, 1872 is concerned, as per the evidence on record, in the 'Pre-Confirmation Petition' that the digital evidence containing video clips was accepted under Section 65B, IEA, 1872 in accordance with the provisions of law. Moreover, it is also to be noted that the said petition mentions that there has been no infraction of law in admission of said digital evidence. The CD is to be treated as secondary evidence and as per the certificate under Section 65B of IEA it is certified that the computer of G branch bearing CPU No. INA581W572 was kept under lock and key in safe custody. Considering the failure of defence to prove to the Court that how was the said CD tampered with when the same was copied from the original source, leads the Court to believe that the said contention of the petitioner is devoid of any merit and is liable to be rejected. The said requirement satisfies the requirement of law as has been propounded by the Hon'ble Apex Court in the case of ***Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*** *(Supra).*

42. Further, this Court finds that although the petitioner had objected to the admission of digital evidence before the GSFC, but the submission of the petitioner was rejected as being inadmissible after due deliberation. Thereafter, the petitioner extensively cross-examined the witness who produced digital evidence containing recording of the events at the office of the petitioner on 23.12.2021. The petitioner was also provided a copy of the same digital evidence which was produced before the Court. The proceedings against the petitioner are not in any way prejudiced as it has been provided with the portions of the video footage which were produced before the Court and exhibited in the proceedings of the GSFC. Therefore, this Court does not find any force in the argument of the petitioner that the non-supply of entire footage to the petitioner of the DVR of the camera, installed in his office, has not caused prejudiced to the petitioner in any manner.

43. An analysis of the evidence on record clearly establishes that the offences for which the petitioner has been held guilty have been committed by the petitioner and the findings of this Court are based on the evidence available on record. The corruption committed by the petitioner in his official functions is contrary to efficient administration and governance. Such corrupt officers have a demoralizing effect on the honest members of the Force. Such corrupt practices need to be dealt with an iron hand and no leniency is required to be shown. The sentence awarded is just and legal. It would be apposite to point out the observation of this Court in ***Swatantar Singh v. State of Haryana***[25]**,** which reads as under:

[25] **(1997) 4 SCC 14**

> *"6…Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."*

44. For all the aforesaid reasons, this Court does not find any grounds to interfere with the order passed by the GSFC and believes the said order to be well-reasoned. Moreover, the view taken and the punishment inflicted were proportional as the actions of the petitioner of indulging in blatant corrupt practices are to be dealt with sternly in order to preserve the fabric of administration.

45. Accordingly, the writ petition is dismissed. All pending applications, if any, are also disposed of.

46. There shall be no order as to cost.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

AUGUST 28, 2025/*AT*