



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

Date of reserving Judgment: 7th July, 2026

Date of decision: 1st October, 2026

IN THE MATTER OF:

+ CRL.A. 1266/2013

SANJEEV MATHUR

.....Appellant

Through: Mr. Krishan Kumar, Mr. Anubhav Kumar, Mr. Shivam Bedi and Mr. Aman Bhati, Advs.
Appellant-in-person.

versus

STATE

.....Respondent

Through: Mr. Mukesh Kumar, APP for State with Insp. Sandeep Singh, PS Anti Corruption Branch, GNCT of Delhi.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. The Appellant Sanjeev Mathur was found guilty and convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act') through the Judgment dated 19.09.2013 (hereinafter referred to as the 'Impugned Judgment') and was accordingly, sentenced to undergo Rigorous Imprisonment ('RI') for a period of 2 ½ years along with a fine of ₹ 10,000/- and in default of payment of fine, he was to undergo Simple Imprisonment ('SI') for a period of six months through the Order on Sentence dated 24.09.2013. Although, the learned Trial Court found it fit to give the benefit of doubt to the Appellant



with respect to the charges levelled against him under Section 13(1)(d) of the PC Act. Through the instant appeal, he has assailed the finding of guilt primarily on the ground that the prosecution failed to establish the foundational and essential factum of demand and acceptance beyond reasonable doubt and that the electronic evidence principally relied upon by the learned Trial Court was neither legally admissible nor sufficiently reliable to sustain the conviction.

2. The prosecution's case succinctly, is that the complainant, Ajit Kumar (PW-7), who was working as a parking attendant at an Authorised NDMC parking at Kasturba Gandhi Marg (Mercantile Building), New Delhi, exceeded the area earmarked for parking and a vacant land at Vakil Lane was also encroached upon to run the parking. The Appellant, SI Sanjeev Mathur, posted at PS Barakhamba Road, was stated to be the In-charge of the said area. It was alleged that when the Appellant got wind of the complainant's illegal parking facility operating in Vakil Lane, he demanded a monthly bribe of ₹3,000/- from the complainant for permitting him to continue the use of the area beyond the authorised parking. According to the complainant's version, pursuant to the said demand, a sum of ₹3,000/- was paid to the Appellant in November 2008. Incidentally, prior to the alleged demand, Ajit Kumar (PW-7) had already lodged a complaint against one Ajit Tyagi (PW-17), which too was being handled by the Appellant, resulting in repeated interactions between the complainant and the Appellant. Growing weary of the inaction of the Appellant and demand of monthly bribe, the complainant, approached the Anti-Corruption Branch (hereinafter referred to as 'ACB'), where he was advised to record his conversations with the Appellant for verification of the alleged demand. After multiple unsuccessful attempts, the complainant, using the recording device supplied by the ACB,



entered PS Barakhamba Road on 13.11.2008 and allegedly recorded his conversation with the Appellant, while SI Ramesh Kumar (PW-13) remained outside the Police Station. The recording was, thereafter, handed over to the ACB, transferred to a computer, transcribed and converted into CDs. The specimen voice samples were also obtained and sent to the Forensic Science Laboratory (hereinafter referred to as 'FSL') for examination subsequently. The formal complaint Ex. PW-7/A was ultimately lodged on 19.12.2008, pursuant to which FIR No. 43/2008 was registered at PS Anti-Corruption Branch.

3. The investigation carried out in the case ultimately shaped up in a chargesheet, which was filed under Sections 7 & 13 of the PC Act read with Section 506 of the Indian Penal Code, 1860 ('IPC') by the ACB against the Appellant, who was arrested on 21.02.2009 and subsequently, released on bail. He pleaded not guilty to the formal charge framed and served upon him under Sections 7, 13(i)(d), 13(2) of the PC Act.

4. In support of its case, the prosecution examined a total of 22 witnesses. The witnesses included the complainant Ajit Kumar (PW-7), officials who proved the relevant complaint, posting and transfer records, witnesses connected with the recording and seizure of the electronic evidence, Panch witness associated with voice identification and recording of specimen voices, the expert from the FSL Dr. C.P. Singh (PW-20), the Sanctioning Authority Sh. S. Dash (PW-21), and the Investigating Officer Inspector Kailash Chand (PW-22). The prosecution also brought in the relevant documentary and electronic evidence, including the complaint Ex. PW7/A, the seizure memos, transcript of the recorded conversation, CDs and the FSL report, etc.



5. After completion and conclusion of the prosecution evidence, the incriminating circumstances/evidence coming on record were put to the Appellant in order to give an opportunity to explain and his statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded. The Appellant denied having demanded or accepted ₹3,000/- from the complainant and claimed that he was falsely implicated by the complainant owing to a grudge nursed by him due to the Appellant's so called inaction towards the complainant's prior complaint against Ajit Kumar Tyagi. He further claimed that he was not posted at the concerned Police Station at the relevant time and that he was attached with the Election Commission. The Appellant was, however, found guilty and convicted under Section 7 of the PC Act, while being acquitted of the charge under Section 13(1)(d) of the PC Act.

6. At the outset, learned counsel for the Appellant has assailed the conviction primarily on the ground that the complainant (PW-7), the very person from whom the alleged demand was made and the very person who put the machinery of the Anti-Corruption Branch into motion, did not support the prosecution on the material aspect of demand and acceptance. He was declared hostile. It has been submitted that PW-7 specifically denied that the Appellant had demanded ₹3,000/- from him as monthly bribe or that he had accepted the amount or made any such demand. Further that PW-7, in his deposition before the learned Trial Court had stated that the only reason he had originally approached the Anti-Corruption Branch was not due to any demand made by the Appellant or any subsequent payment he had made pursuant to any demand, but to trigger some development in the earlier complaint which he had filed against Ajit Tyagi (PW-17).



7. Learned counsel for the Appellant has further submitted that PW-7's testimony concerning the formal complaint (Ex. PW-7/A) is such that it renders the formal complaint into nothing more than a false pretence to trigger unwarranted action against the Appellant in the form of the present case. Learned counsel for the appellant has specifically pointed out that although PW-7 admitted that the complaint was in his handwriting and bore his signatures, but he has clearly stated in cross-examination that, while copying the contents of the complaint from a paper that had already been prepared by the ACB, he had specifically informed the ACB officials that the same were factually incorrect and that he had never stated that the Appellant had demanded or accepted any bribe from him. Reliance in this context, has been placed upon **B. Jayaraj v. State of A.P.**, (2014) 13 SCC 55, by the learned counsel for the Appellant in support of his contention that where the complainant does not support the allegation of demand and there is no reliable independent proof thereof, the conviction cannot be sustained.

8. Learned counsel for the Appellant has also drawn this Court's attention towards the electronic evidence relied upon by the learned Trial Court. It has been submitted that the Compact Disk ('CD') containing the electronic recording (of the pre-raid verification) relied upon by the prosecution was admitted without the compliance of Section 65B of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'). Learned counsel for the Appellant has relied upon **Anvar P.V. v. P.K. Basheer**, (2014) 10 SCC 473, in support of his submission that the statutory requirements governing electronic evidence cannot be dispensed with. It has been further submitted that the original recording device was never produced, that the computer upon which the recordings were transferred was a shared computer and that the files were not password protected, thus, the



sanctity of such evidence is questionable. Hence, the electronic evidence cannot be looked into.

9. Learned counsel for the Appellant has further pointed out to some material discrepancies in the FSL report (Ex. PW-20/B) concerning the identification of the questioned and specimen voices. It is submitted that, upon comparison of the FSL report (Ex. PW-20/B) with the transcript (Ex. PW-19/C), the questioned voices appear to have been marked in reverse, inasmuch as 'Exhibit Q1', which the FSL report reflects that the voice of the Appellant has been compared with the specimen voice 'Exhibit S1', i.e. with the voice of the complainant. Whereas, 'Exhibit Q2', which the FSL report treats as the complainant's voice has been compared with 'Exhibit S2', i.e. stated to be the voice of the Appellant. Evidently, this mix up is disastrous for the prosecution. Dr. C.P. Singh (PW-20), who was the Acting Assistant Director (Physics) at the Forensic Science Laboratory, Sector-14, Rohini, Delhi, also admitted that he had used the transcript for marking 'Q1' and 'Q2' i.e. speakers of the respective voices. It has also been submitted that the learned Trial Court itself noticed the apparent error in identification of the speakers and found the FSL opinion on voice matching unreliable.

10. Learned counsel for the Appellant has also pointed out the discrepancy between the 'Sony' cassette mentioned in the seizure proceedings and the 'T-Series' cassette received by the FSL. Further, reliance has been placed upon the evidence of Ct. Ashok Kumar (PW-9) and Inspector Akhilesh Swaroop Yadav (PW-18), who were asked to identify the Appellant's voice. The PW-9 seemed unsure when the question was put to him and stated that he was not completely sure that the voice heard by him was that of the Appellant and also stated that the CD was not properly audible. The PW-18 also stated that the voice merely 'appeared similar' to



that of the Appellant and that he was not an expert in voice identification and that the recording contained disturbances and intermittent breaks. Thus, it is submitted, that nothing substantial is on record on this count as well.

11. Learned counsel for the Appellant has also relied upon the deficiencies in the recorded Anti-Corruption proceedings and related proceedings. SI Ramesh Kumar (PW-13) admitted that no departure entry was made on either 12.11.2008 or 13.11.2008, despite acknowledging that such entries were ordinarily made. SI Ramesh Kumar (PW-13) also admitted that no Panch or Shadow witness accompanied him and PW-7 to PS Barakhamba Road.

12. Lastly, it has been submitted that there was an unexplained delay of about one month in lodging the formal complaint. The successful recording exercise allegedly took place on 13.11.2008, whereas the formal complaint was lodged only on 19.12.2008. It is further submitted that there was no recovery of the alleged bribe amount, no identified currency and no independent witness to the alleged payment, demand or any subsequent interaction between the Appellant and the complainant. The learned Trial Court itself found the prosecution unsuccessful in proving acceptance and consequently acquitted the Appellant under Section 13(1)(d) of the PC Act. According to the defence, in these circumstances, the prosecution cannot sustain the conviction under Section 7 of the PC Act either, that too, on the strength of the evidence led which is not aboveboard, rather shaky and thus, highly unreliable.

13. Learned APP has not only stood by and supported the impugned judgment, but asserted that, notwithstanding the fact that the complainant (PW-7) has resiled from material portions of his earlier version, his testimony cannot be discarded in toto. It has been submitted that PW-7



admitted several material circumstances, including that he had approached the Anti-Corruption Branch, had been instructed to record his conversations with the Appellant and had, in fact, recorded conversations, handed over the recording to the ACB and subsequently identified and signed the relevant seizure and recording documents including the formal complaint itself. The prosecution further relies upon the complainant's (PW-7) admission that during the conversation, the Appellant referred to the amount of ₹3,000/- as monthly "*rishwat*".

14. It has been further submitted by the learned APP that the prosecution's case does not rest solely upon the oral testimony of PW-7 and that of the evidence of other material witnesses, when read cumulatively, provides corroboration to the prosecution's case. In this regard, reliance has been placed upon the deposition of SI Ramesh Kumar (PW-13), who accompanied complainant (PW-7) to PS Barakhamba Road on 13.11.2008, remained outside while PW-7 entered the police station with the recording devices and thereafter heard the recording when it was played at the ACB office. Learned APP submits that his testimony corroborates the fact that the recording exercise was undertaken by PW-7 pursuant to his report to the ACB and the recording was thereafter brought back to the ACB and not only played, but a transcription too was prepared.

15. The prosecution has further relied upon the deposition of SI Karnail Singh (PW-19), who stated that the recording devices were handed over to him after PW-7 returned from the police station, that he transferred the recordings to the computer, heard them and, with the assistance of PW-7, prepared the relevant transcript. According to the learned APP, the evidence of PW-13 and PW-19, when read in conjunction, corroborates the recording proceedings and the subsequent handling and processing of the recorded



material, thereby lending support and corroboration to the prosecution's case.

16. With regards to the veracity and admissibility of the electronic evidence, learned APP has submitted that the identity of the Appellant's voice was not dependent solely upon the complainant. Ct. Ashok Kumar (PW-9) and Ins. Akhilesh Swaroop (PW-18), both of whom had interacted with the Appellant during his posting at PS Barakhamba Road, identified the voice in the CD and found it similar to that of the Appellant. Reliance has also been placed upon the evidence of Dr. C.P. Singh (PW-20), the FSL expert, who examined the CD and specimen voice samples and reported that there was no indication of alteration in the audio recording and that the questioned and specimen voices were of the same persons.

17. As regards to the alleged manipulation of the recorded evidence, learned APP submits that the mere fact that the recording was subsequently enhanced does not establish fabrication. Dr. C.P. Singh (PW-20) explained that the recording was referred for enhancement because of unwanted noise and that, after enhancement, the voice material could still be utilised for speaker identification. Tampering in the files has been specifically ruled out by the expert at the instance of the ACB.

18. Learned APP has further submitted that the absence of recovery of the earlier payment of ₹3,000/-, does not by itself, obliterate the offence under Section 7 of the PC Act, particularly where the prosecution's case regarding the demand is founded upon both the recorded conversation and the formal complaint. It has been submitted that the subsequent failure to establish acceptance explains the acquittal under Section 13(1)(d) of the PC Act, but does not automatically negate the proof or the finding of the separate act of demand. It has been further submitted that the Appellant was admittedly a



police officer posted at PS Barakhamba Road and was In-charge of and dealing with matters concerning the area in question. The complainant's prior complaint against Ajit Tyagi had admittedly been assigned to the Appellant, pursuant to which the complainant had, on multiple occasions, met him in that connection. Learned APP, therefore, submits that the recorded conversation, read in the context of the admitted interaction between the parties and the unauthorised parking activity along with the contents of the formal complaint, furnishes and creates a reliable chain of events which in turn, provides sufficient evidence of the demand being connected with the Appellant in the light of his official position as a public servant.

19. According to the learned APP, the evidence must be appreciated cumulatively rather than being nitpicked witness-wise, in isolation. The hostility of the complainant, the alleged deficiencies in the recording procedure and the technical objections concerning the electronic evidence, according to the State, do not erase the substantive admissions of the complainant (PW-7) or the corroborative evidence of the other prosecution witnesses that have been brought on record. Learned APP, therefore, submits that the learned Trial Court correctly placed reliance upon the electronic evidence along with the testimonies of key witnesses, the formal complaint and the portions of the complainant's testimony that stays true to the prosecution's case and arrived at the finding of guilt under Section 7 of the PC Act.

20. Having considered the rival submissions and examined the evidence on record, the main controversy that takes centre stage in the present appeal may first be narrowed down by identifying certain facts which are not disputed. The status of the Appellant as a police officer and, therefore, as a



public servant, is not in dispute. It is also established that the complainant (PW-7) had an earlier complaint lodged against Ajit Tyagi which was assigned to the Appellant for inquiry and it was in pursuance of this very complaint that the parties had interacted with each other multiple times, prior to the main events that has brought the present case into being. The prosecution, however, was required to establish beyond reasonable doubt the essential factual foundation for the offence under Section 7 of the PC Act, namely that the Appellant demanded or otherwise sought to obtain illegal gratification in connection with the performance or purported performance of an official act. The question, therefore, is not merely whether the parties interacted or whether a conversation took place, but whether the evidence relied upon to establish the alleged demand is of such quality and reliability that brings the case in the realm of beyond reasonable doubt, and that a finding of guilt can safely rest upon it.

21. Section 7 of the PC Act, as applicable to the present case, is reproduced herein below for ready reference:

7. [Offence relating to public servant being bribed. [Substituted by Act No. 16 of 2018, dated 26.7.2018.]

- Any public servant who,-

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years



but which may extend to seven years and shall also be liable to fine.

22. The first and most important witness in this regard is the complainant himself examined as, PW-7. However, at this point, it is clear that his testimony presents a materially divided and somewhat distorted picture. On the one hand, he accepts several surrounding and attending circumstances but turns around on the vital aspects. He admits that he had a complaint pending against Ajit Tyagi, that the said complaint was assigned to the Appellant and that he met the Appellant in connection with the same. He further accepts that he approached the Anti-Corruption Branch and was advised to record his conversations with the Appellant. He made attempts to do so by, initially, purchasing recording devices at his own expense, thereafter participated in a further recording exercise using devices supplied through the ACB, then finally handing over the recordings to the officials. He also admits the seizure of the CDs prepared from those recordings and identifies his signatures on the relevant documents relating to the recordings and the formal complaint as well. The relevant portion of the complainant Ajit Kumar's (PW-7) examination-in-chief is reproduced hereunder for reference:

"I went to Anti- Corruption Branch and met senior officer who guided me to record the conversation if any between Ajit Kumar Tyagi and SI Sanjeev Mathur regarding any transaction of bribe giving and bribe taking. I was also guided to deal with SI Sanjeev Mathur and tried to have a transaction of giving bribe to him. I purchased a mobile phone with recording facility. I met SI Sanjeev Mathur thereafter many times but every time I was put off. I failed to lay my hands on SI Sanjeev Mathur and therefore again went to the Anti Corruption Branch. I was again sent back with the suggestion to record the conversation of any transaction of bribe giving and bribe taking with SI Sanjeev Mathur and only then action could be taken against SI Sanjeev Mathur.



I recorded my conversation with SI Sanjeev Mathur 2-3 times on my mobile phone but failed to record any conversation regarding demand of bribe. The conversations recorded by me was handed over to the officials of the Anti Corruption Branch. The same was heard and verified by them after sending me away from their room. I was called inside the room after a short while and was informed that a CD of the conversation recorded in my mobile phone had been got prepared. I was given one instrument by the officials of Anti Corruption Branch and informed them. Thereafter, the officials of Anti Corruption Branch asked me to leave and return as and when I was called. I returned the instrument of recording to SI Ramesh Kumar. ”

23. On the other hand, when we look towards the evidence which reaches the central allegation of demand and acceptance of illegal gratification, PW-7 expressly denies the same, almost at every turn. He specifically denied that the Appellant had harassed him in relation to any demand or that he demanded ₹3,000/- from him as monthly bribe and further denied that any such demand was made when he pursued his earlier complaint against Ajit Tyagi. The relevant portion of PW-7's cross-examination, where he had deposed as mentioned above, has been reproduced hereunder:

“It is correct that in my complaint Ex.PW7/A, I have mentioned my name, address and the fact that I was working as an Attendant in an authorised parking. It is incorrect to suggest that SI Sanjeev Mathur harassed me and demanded Rs.3,000/- as monthly bribe. (Confronted with portion Mark ‘A’ to ‘A’ in Ex.PW7/A wherein it is so recorded). It is incorrect to suggest that as and when I pressed on my complaint against Ajit Singh Tyagi, accused SI Sanjeev Mathur used to threaten me and demanded Rs. 3,000/- as monthly bribe (Confronted with portion Mark ‘B’ to ‘B’ in Ex.PW7/A wherein it is so recorded). It is incorrect to suggest that in the month of November, 2008 under threat and pressure took Rs. 3,000/- from me as bribe and told me that I should pay Rs. 3,000/- on a monthly basis thereafter. ”

24. With regard to the formal complaint (Ex. PW-7/A), PW-7 has stated in cross-examination that, when he copied the complaint Ex. PW-7/A, he had informed the ACB officials that its contents were factually incorrect and



that he had never stated that the Appellant had demanded or accepted a bribe from him. The relevant portion reads as under:

“when the complaint Ex. PW-7/A was copied by me, I had pointed out to the officials of Anti Corruption Branch that the same was factually incorrect as I never stated that SI Sanjeev Mathur had demanded or accepted the bribe from me in fact I only wanted to complain that SI Sanjeev Mathur had not taken any action on my complaint against Ajit Singh Tyagi.”

25. It is trite law that the testimony of a hostile witness is not effaced completely from the record merely because the witness has resiled from his earlier version. Those portions which are otherwise reliable and find corroboration in the evidence on record may be acted upon. The question, however, is not whether every statement of PW-7 is to be rejected merely because he was declared hostile. The question is whether the portions of his testimony relied upon by the prosecution, when tested against his categorical denial of demand and acceptance, furnish a sufficiently reliable foundation for conviction. In this context, reference can be made to the judgment of the Hon’ble Supreme Court in ***K.P. Tamilmaran v. State by Deputy Superintendent of Police***, 2025 SCC OnLine SC 958. The relevant portion of which has been reproduced hereunder:

“36. It is though trite and much overstated but the maxim “falsus in uno, falsus in omnibus”, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in Bhajju v. State of Madhya Pradesh, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

“36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence...”



If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.”

26. The learned Trial Court itself noticed this difficulty and recorded that, solely from PW-7's oral testimony, it could not be held beyond reasonable doubt that the Appellant had demanded or accepted the bribe and, therefore, proceeded to seek corroboration from the electronic evidence. In light of the same, the electronic evidence thus assumes decisive significance in the present case.

27. However, before delving into the electronic evidence on record, this Court finds it appropriate to take a closer look into the conduct of PW-7 after his initial approach to the ACB. If his present explanation is accepted *prima facie*, that his only object or actual intention in approaching the Anti-Corruption Branch was to exert pressure upon the police machinery, through the Appellant, so as to secure action on his complaint against Ajit Tyagi, but his subsequent conduct is difficult to be reconciled entirely with that explanation. The record clearly shows that PW-7 did not merely lodge a complaint and leave the matter there. He returned to the ACB, purchased a mobile phone with recording facilities, made repeated attempts to record his interactions with the Appellant and thereafter participated in a further recording exercise with ACB officials. Such conduct is not, by itself, proof of the truth of the allegation of demand, but it is a circumstance, which



merits consideration while assessing whether his subsequent complete denial can be accepted without reservation.

28. The entire exercise pertaining to the obtaining of the recorded conversation between the Complainant and the Accused is also independently corroborated, to the extent of the exercise itself, by SI Ramesh Kumar (PW-13). PW-13 deposed that on 12.11.2008, he accompanied PW-7 to PS Barakhamba Road with recording devices but no successful recording could be made. On the following day, i.e. 13.11.2008, he again accompanied PW-7, who entered the police station with the recording devices while PW-13 remained outside. The complainant, upon his return, informed that he had successfully recorded the conversation. They, thereafter, returned to the Anti-Corruption Branch and handed over the recording devices to SI Karnail Singh. The relevant portion of SI Ramesh Kumar's examination-in-chief is reproduced hereunder for reference:

"On 12.11.2008, i was posted in the Anti Corruption Branch and on that day, I on instructions of my senior officials alongwith the complaint Ajit Kumar went to the Police Station at Bara Khamba Road along with two secret recorders. On that day, we were unable to meet the person demanding bribe.

On the next day i.e. 13.11.2008, I again along with Ajit Kumar went to PS-Bara Khamba Road. Ajit Kumar hid both the recorders on his person and went inside the PS-Bara Khamba Road and I remained outside and waited for him to return. Ajit Kumar came out and told me that he had been successful in recording the demand and acceptance of bribe and we returned to the PS-Anti Corruption Branch and handed over the audio recorder to SI Karnail Singh"

29. SI Karnail Singh (PW-19) further deposed that he received the recording devices after PW-7 returned from the Police Station, transferred the recordings to the computer, heard them and prepared the relevant



transcript with the assistance of PW-7. His evidence, therefore, corroborates the subsequent handling and processing of the material. However, neither PW-13 nor PW-19 was a witness to the conversation which took place inside the Police Station. Their testimony can establish that a recording exercise took place and that the material was subsequently processed. It cannot, by itself, establish the contents of the conversation.

30. The complaint Ex. PW-7/A also requires consideration. It is admitted that the complaint was written in PW-7's handwriting and bears his signatures. However, on the most material aspect of the formal complaint, i.e. its contents, PW-7 subsequently stated that the same had been copied by him, as discussed in the preceding paragraphs. This subsequent denial undoubtedly affects the weight that can be attached to the complaint and the extent to which its contents can be relied upon. Thus, what remains on record is that PW-7 does not dispute having written and signed the complaint, and that the same was duly brought on record and considered by the learned Trial Court. However, in view of PW-7's subsequent deposition, the contents of the complaint cannot, by themselves, be treated as substantive evidence of the truth of the allegations contained therein.

31. The explanation furnished by PW-7 regarding the purpose of approaching the Anti-Corruption Branch also sits somewhat uneasily with his assertion that he had objected to the factual contents of the complaint. If his sole purpose was merely to secure action or exert pressure in relation to his earlier complaint against Ajit Tyagi, then there appears to be little reason for him to have simultaneously pursued a complaint containing specific allegations of demand and acceptance before the very authority which he claims he had approached only for that collateral purpose. This internal inconsistency creates a very unstable conundrum in which PW-7's



subsequent denial is to be assessed. It does not, however, by itself prove that the allegations contained in Ex. PW-7/A were true.

32. The evidence of Ajit Tyagi (PW-17) also requires consideration, albeit with some restraint. PW-17 stated that PW-7 used to tell him that the Appellant was demanding ₹3,000/- to ₹6,000/- from him for permitting him to run the unauthorised parking and maintained this position in cross-examination. However, PW-17 had no personal knowledge of any demand made by the Appellant to PW-7. His evidence regarding what PW-7 told him is, therefore, not direct evidence of the Appellant's demand. At its highest, it establishes that PW-7 had previously made such an allegation to PW-17. The prior dispute between the two witnesses may be considered while assessing their credibility, but it cannot convert this hearsay account into substantive proof that the Appellant actually demanded the gratification. The official nexus between the parties nevertheless stands independently established. HC Ravinder Kumar (PW-1) proved that the complaint lodged by PW-7 against Ajit Tyagi had been assigned to the Appellant and that an inquiry report had thereafter been submitted by him. PW-7 also deposed regarding his repeated interaction with the Appellant in connection with that complaint. Inspector Akhilesh Swaroop (PW-18) accepted that Vakil Lane formed part of Division-II and that the Appellant was the Division Officer, while also accepting that, despite his temporary attachment elsewhere, the Appellant continued to frequent PS Barakhamba Road in connection with his pending work. PW-17 similarly deposed regarding the Appellant's knowledge of the unauthorised parking activity and his summoning of PW-7 to the Police Station.

33. These circumstances discussed in the preceding paragraphs, establish the opportunity and official nexus between the parties, but they do not, in



themselves, establish the demand of illegal gratification. There is, however, one significant admission made by PW-7 concerning the conversation which he admittedly had with the Appellant. Though, PW-7 categorically denied that the Appellant had demanded ₹3,000/- from him as bribe, he nevertheless accepted that the Appellant, during the said conversation, referred to himself as a professional SI, spoke of his standard of living and, in the same breath, stated that even ₹3,000/- as monthly “*rishwat*” was on the lesser side. The significance of this admission cannot be brushed aside merely because the witness subsequently denied the allegation of demand. At the same time, caution must be exercised in attributing to the statement a meaning which goes beyond what PW-7 himself has admitted. The statement, by its tenor, undoubtedly contains a reference to a recurring monthly payment and therefore lends some support to the prosecution’s version. However, in the absence of the admissible contents of the recording and in view of PW-7’s categorical denial that the Appellant had actually demanded the amount from him, the admission cannot, standing by itself, establish that the Appellant was in fact making a demand or attempting to obtain illegal gratification from PW-7. It is, therefore, a relevant corroborative circumstance, but cannot be treated as a substitute for proof of the alleged demand.

34. This brings us to dealing with the principal difficulty confronting the prosecution’s case, namely the admissibility of the electronic evidence, which at the trial stage, supplied the principal corroboration for the portions of PW-7’s testimony upon which the prosecution relied. The CD containing the recorded material and the transcript (Ex. PW-19/C) prepared therefrom were relied upon to establish the contents of the conversation between the complainant and the Appellant concerning the alleged demand. At this stage, the learned counsel for the Appellant has raised the submission that no



certificate under Section 65B of the Indian Evidence Act, 1872 has been produced by the prosecution and that the original recording devices were not produced before the FSL or before the learned Trial Court.

35. The legal position in this regard has been authoritatively settled by the Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal**, (2020) 7 SCC 1, wherein it was held that the certificate contemplated under Section 65B(4) of the Indian Evidence Act is a condition precedent to the admissibility of electronic evidence produced as secondary evidence and that oral evidence cannot substitute for such certificate. The relevant portion reads as under:

“61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Cri) 24] ... Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law.”

36. However, **Arjun Panditrao** (supra) also provides a slim exception to the requirement under Section 65B of the Indian Evidence Act, where the original electronic device from which the electronic record was produced is itself produced before the Court, the relevant portion has been reproduced hereunder:

“34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where “the computer”, as defined, happens to be a part of a “computer system” or “computer network” (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite



certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as “... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ...”. This may more appropriately be read without the words “under Section 62 of the Evidence Act,...”. With this minor clarification, the law stated in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited.”

37. The present case, however, does not fall within that exception. The original recording device used by the complainant to record the conversation between him and the Appellant on 13.11.2008 was not produced at the time of trial. As per the deposition of SI Karnail Singh (PW-19), the recording devices, after the recording exercise, were handed over to him, whereafter he transferred the recordings contained therein to the ACB computer and subsequently prepared the CD from the electronic files stored on that computer. Thus, PW-19 was the custodian of the computer on which the recording was subsequently stored and processed. However, he was unable to produce before the learned Trial Court, the original electronic record i.e. the device on which the conversation was first recorded and stored. The computer itself, therefore, contained a derivative copy of the original recording and could not, merely by virtue of PW-19 having custody of it, convert the CD subsequently prepared therefrom into primary electronic evidence. Indeed, PW-19 admitted that the said computer was not password protected and was accessible to other members of the ACB, a circumstance which further demonstrates that his custody of the computer cannot be equated with production and proof of the original electronic record.



38. In these circumstances, the CD containing the recording constituted secondary electronic evidence, and its admissibility was consequently governed by Section 65B of the Indian Evidence Act. The reasoning adopted by the learned Trial Court that the oral testimony of PW-19, being the custodian of the computer, could substitute for the statutory certificate under Section 65B(4) of the Indian Evidence Act, therefore cannot be sustained in view of the subsequent authoritative pronouncement in **Arjun Panditrao** (supra). At the risk of repetition, this court reiterates the decision in **Arjun Panditrao** (supra) wherein it has been expressly clarified that the certificate under Section 65B(4) of the Indian Evidence Act is unnecessary only where the original electronic record itself is produced as primary evidence. Where, instead, a copy or computer output derived from the original electronic record is relied upon, the statutory requirements of Section 65B of the Evidence Act must be complied with. The mere examination of a person who handled, stored or processed the electronic files on a computer does not dispense with that requirement, especially when the computer was accessible to multiple persons and was not in exclusive control of PW-19. In the present case, neither the original recording device nor the original electronic record first stored therein was produced before the Court. In the absence of a certificate under Section 65B(4) of the Indian Evidence Act, the CD and the transcript prepared therefrom could not, therefore, be treated as admissible secondary electronic evidence.

39. In view of the aforesaid legal position, reliance cannot be placed upon the contents of Ex. P-1 or Ex. PW-19/C for the purpose of establishing that the Appellant made the alleged demand. Nor is it necessary, in view of this finding, to determine the remaining disputed questions concerning the precise identification of Q1 and Q2, the discrepancy in the recording



medium or the reservations expressed by the voice-identification witnesses. Those questions go to the reliability of evidence which, in any event, cannot be relied upon for proving the demand in the absence of compliance of Section 65B of the Evidence Act.

40. It must, however, be made clear that exclusion of the electronic record does not automatically result in the exclusion of every other piece of evidence in a case such as this. The difficulty, however, arises from the deposition of PW-7, the complainant. In cases involving allegations of demand of illegal gratification, the testimony of the complainant assumes particular significance and is required to be examined with due scrutiny. This is so because, in most such cases, the prosecution's case originates from the complaint of the complainant and the allegations of demand are, in the first instance, founded upon his account of the interaction with the accused. In the present case, however, the evidence given by the complainant vide his complaint and deposition in court, even if accepted at face value, does not by itself establish the context necessary to conclude that the Appellant thereby demanded illegal gratification from him. Therefore, PW-7's testimony cannot be treated as an indirect substitute for the contents of an inadmissible electronic record. The other objections concerning the recording procedure, including the absence of departure entries and the absence of a shadow or Panch witness, may therefore be considered only as surrounding circumstances. Likewise, the evidence of PW-9 and PW-18 concerning voice identification and the FSL opinion of PW-20 cannot independently cure the fundamental defect in admissibility of the electronic record. Once the CD and transcript themselves cannot be relied upon to establish the contents of the conversation, the question whether the voices appearing



therein were correctly identified loses much of its significance for the present appeal.

41. The delay in lodging the formal complaint also requires some consideration, while *prima facie*, it does not appear to have caused any prejudice to either side. The successful recording exercise took place on 13.11.2008, whereas the formal complaint was lodged on 19.12.2008. The prosecution has explained the delay by stating that further efforts were made to record the subsequent monthly demand, but the Appellant was transferred in the intervening period, following which the formal complaint was lodged. This explanation prevents the delay from being treated as wholly unexplained. Nevertheless, once the electronic material itself is excluded, the interval assumes some relevance in assessing the overall reliability of the prosecution's version, particularly, since no subsequent trap or recovery took place.

42. The absence of recovery or acceptance must also be kept distinct from the question of demand. There was no raid conducted in this case due to the Appellant's subsequent transfer. Likewise, there is no recovery of the alleged ₹3,000/-, no identified currency and no witness who saw the alleged earlier payment. The learned Trial Court, on that basis, extended the benefit of doubt to the Appellant under Section 13(1)(d) of the PC Act. That conclusion does not automatically disprove a prior demand. However, it does mean that the prosecution cannot rely upon the alleged completed transaction as an independent circumstance corroborating the existence of the demand.

43. The prosecution has sought to overcome this evidentiary difficulty by relying upon the expressions "agrees to accept" and "attempts to obtain" contained in Section 7 of the PC Act. It is correct that the provision



contemplated conduct which could fall short of a completed transaction resulting in the actual receipt of illegal gratification. However, the mere existence of those expressions does not dispense with proof of the conduct constituting such agreement or attempt. The prosecution would still have to establish beyond reasonable doubt that the Appellant had agreed to accept or attempted to obtain illegal gratification. The failure to prove acceptance cannot, by itself, be converted into an affirmative finding of an attempt to obtain gratification.

44. The Constitution Bench in **Neeraj Dutta v. State (NCT of Delhi)**, (2023) 4 SCC 731, while considering the statutory scheme governing the PC Act, held that the relevant facts may be established through direct or circumstantial evidence, but emphasized the necessity of proving the foundational facts in issue. In the conventional case involving a demand by a public servant followed by tender and receipt of gratification, the prosecution must establish the demand and acceptance/receipt in accordance with the particular provision invoked. The alternative expressions “agrees to accept” or “attempts to obtain” therefore, cannot be employed merely as a means of avoiding an evidentiary failure in proving the substantive ingredients of the prosecution case. The relevant portion of **Neeraj Dutta** (supra) is reproduced hereunder for reference:

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

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.



88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

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

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

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

88.6. (f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by



circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

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

45. Applying the above principles laid out in **Neeraj Dutta** (supra), to the facts and evidence on record, the prosecution’s case rests substantially upon the alleged prior/recurring demand of ₹3,000/- per month and the allegation that an earlier payment of ₹3,000/- had already been made pursuant to the said demand. The alleged payment has not been proved, there is no recovery, no independent witness to the payment and no admissible electronic evidence establishing the alleged acknowledgment of such payment.

46. Once the electronic evidence is excluded, the evidence bearing upon the demand consists principally of the complainant’s own testimony and the surrounding circumstances already noticed. PW-7’s conduct in approaching the ACB and attempting to obtain a recording may show that he sought to substantiate his grievance against the Appellant. It does not, however, establish what the Appellant actually demanded illegal gratification from the complainant for “looking the other way” while he continued to run his illegal parking facility. Likewise, PW-7’s admission regarding the reference to ₹3,000/- as a monthly bribe is a relevant circumstance, but in the absence of admissible evidence of the conversation in its entirety, it cannot by itself establish that the Appellant demanded illegal gratification from him.



47. The principle governing appreciation of hostile testimony does not alter this conclusion. As discussed in the preceding paragraphs, the testimony of a hostile witness is not washed off the record and those portions which are found reliable and corroborated may be relied upon, as recognised by the Hon'ble Supreme Court in **K.P. Tamilmaran** (supra). This Court is, therefore, entitled to rely upon the admissible portions of PW-7's testimony after putting the same through thorough scrutiny. The result of prioritizing and picking out those admissible portions is that, those admissible portions establish the complainant's interaction with the Appellant, his approach to the ACB, the recording exercise and his admission regarding the ₹3,000/- statement, but they fail to establish beyond reasonable doubt that the Appellant demanded illegal gratification.

48. The present case in hand is materially different from a case where, despite the complainant turning hostile, there remains an admissible recording, independent direct evidence of demand through the deposition of Panch witnesses/ independent witnesses, recovery of the demanded amount, or some other reliable evidence establishing the demand. Here, the person from whom the demand was allegedly made i.e. PW-7, has expressly denied it. The only other person who had interacted with both the Appellant and the complainant, Ajit Tyagi (PW-17), despite his deposition, has no personal knowledge of the alleged demand. The electronic material relied upon by the prosecution is inadmissible for want of compliance with Section 65B of the Indian Evidence Act, the original recording device was not produced and the alleged acceptance of the earlier payment has not been established.

49. The circumstances on record may give rise to suspicion regarding the supposed dealings between the complainant and the Appellant, and may also raise questions regarding the reason for the complainant's subsequent



departure/hostility from the prosecution's case. However, suspicion, irrespective of how strong it may be, cannot substitute substantive evidence and proof. The prosecution was required to establish not merely that the Appellant and PW-7 interacted, or that ₹3,000/- was discussed between them, but that the Appellant demanded or otherwise sought to obtain illegal gratification in the manner alleged by the prosecution.

50. The burden remained upon the prosecution throughout to establish the essential ingredients of the offence beyond reasonable doubt. While the conduct of a witness may furnish corroboration and may affect the assessment of his credibility, it cannot relieve the prosecution of the obligation to prove the fact in issue. In the present case, the circumstances relied upon by the prosecution, even when considered cumulatively, do not cross that threshold.

51. The acquittal under Section 13(1)(d) of the PC Act recorded by the learned Trial Court also requires no interference. The prosecution has failed to establish actual acceptance or obtainment of the alleged gratification, and the absence of recovery or proof of payment remains uncontroverted. Since the present appeal concerns the conviction under Section 7 of the PC Act, then there is no basis for disturbing the benefit of doubt already extended to the Appellant on that count and in any case the prosecution has not even assailed it.

52. Accordingly, while the conduct of PW-7 and the circumstances surrounding the complaint and recording exercise raise legitimate questions regarding his subsequent departure from the prosecution version, those circumstances cannot substitute for proof of the essential ingredient of demand. The prosecution has thus, failed to establish the charge under Section 7 of the PC Act beyond reasonable doubt.



53. The conviction of the Appellant under Section 7 of the Prevention of Corruption Act, 1988, recorded by the learned Trial Court vide judgment dated 19.09.2013, therefore, cannot be sustained and is accordingly, set aside. The Appellant is acquitted of the said charge.

54. The finding of acquittal under Section 13(1)(d) of the PC Act requires no interference. The appeal is accordingly allowed and stands disposed of together with pending application(s), if any.

55. Copy of this judgment be transmitted to the learned Trial Court and Prison Authorities for information and necessary compliances.

VIMAL KUMAR YADAV, J

OCTOBER 01, 2026/ij