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

Date of reserving Judgment: 21st July, 2026

Date of Decision: 4th November, 2026

IN THE MATTER OF:

\+ CRL.A. 1010/2008

NARESH PAL .....Appellant

Through: Mr. Ramesh Gupta, Sr. Adv. with Mr. Tejvir Singh, Mr. Shailendra Singh and Mr. Ishan Jain, Advs. with Appellant in person.

versus

STATE .....Respondent

Through: Mr. Mukesh Kumar, APP for State with SI Bheem Singh, PS Anti Corruption Branch.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. The present appeal assails the judgment dated 07.11.2008 (hereinafter referred to as 'impugned judgment') passed by the learned Special Judge-Delhi, whereby the appellant was convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") and the order on sentence dated 10.11.2008 (hereinafter referred to as 'impugned order') whereby the appellant was sentenced to undergo Rigorous Imprisonment ('RI') for a period of two years and a fine of Rs. 10,000/- for the offence punishable under Section 7 of the PC Act, and in default of payment of fine he was further sentenced to undergo Simple Imprisonment ('SI') for a period

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of three months. Vide the impugned order, the appellant was also sentenced to undergo RI for a period of two years and a fine of Rs. 10,000/-, for the offence punishable under Section 13(2) of the PC Act, and in default of payment of fine, he was further sentenced to undergo SI for a period of three months.

2. Bereft of unnecessary details, the prosecution's case, in brief, is that the complainant, Lakhan Singh (PW-2), was running a factory engaged in the manufacture of lemon soda water under the name of M/s R.K. Soft Drinks at Raghubir Nagar, Delhi. It was alleged that the appellant, who was serving as a Beat Constable, along with his colleagues, Constables Amit and Dharambir, used to visit the complainant's premises and harass him in connection with his license, which at the time was not in the possession of the complainant. It has been further alleged that the appellant along with his fellow constables abovenamed had demanded ₹5,000/- from the complainant on the pretext of allowing the complainant to continue running his business. According to the prosecution, on 23.03.2004, the appellant and Constable Dharambir had again visited the factory and demanded the aforesaid amount. When the complainant expressed his inability to arrange the entire amount, it was agreed that ₹1,000/- would initially be paid and the remaining amount would be paid thereafter.

3. The complainant thereafter approached the Anti-Corruption Branch (hereinafter referred to as 'ACB'). A complaint (Ex. PW-2/A) was recorded, and the pre-trap proceedings were conducted. Two Government Currency ('GC') notes of ₹500 each were treated with phenolphthalein powder and their serial numbers were noted down by the Raid Officer (PW-9) in the pre-raid report (Ex. PW-2/B). The complainant was instructed to hand over the treated currency notes to the appellant upon the relevant demand. A raiding

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party was constituted, and the complainant proceeded to the spot i.e. jhuggis located in Raghubir Nagar with the members of the raiding party. Radha Kishan (PW-7), was assigned the role of shadow witness. The prosecution alleges that the appellant accepted the treated currency notes from the complainant and that, upon the predetermined signal, the raiding party apprehended him. Thereafter, the treated currency notes were recovered from the left pocket of the appellant's shirt. Hand washes of the accused and the wash of the relevant shirt pocket belonging to the appellant were taken, and the solutions turned pink.

4. The prosecution examined thirteen witnesses in support of its case. The complainant, Lakhan Singh, was examined as PW-2, Inspector Hari Chand, the initial Investigating Officer ('IO') as PW-4, Radha Kishan, the shadow witness, as PW-7and Inspector S.S. Sandhu, the Raid Officer, as PW-9. The incriminating evidence coming on record was put to the appellant and his statement under Section 313 of the Code of Criminal Procedure, 1973, (hereinafter referred to as Cr.P.C.) was recorded wherein he denied the incriminating circumstances put to him. The defence also examined two witnesses, Praveen Kumari as DW-1 and Pratap Singh as DW-2.

5. At the outset, learned counsel for the appellant has assailed the impugned judgment primarily on the ground that the prosecution has failed to establish the demand and voluntary acceptance of illegal gratification. Learned counsel for the appellant has submitted that the complainant Lakhan Singh (PW-2), who is the person from whom the alleged demand was made and who was allegedly present at the time of the transaction, did not support the prosecution's case on material aspects. Rather, PW-2 stated that the appellant had refused to accept the money and that it was the

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complainant himself who inserted the treated currency notes into the pocket of the appellant's shirt.

6. It has been further submitted by the learned counsel for the appellant that PW-2 was cross-examined by the prosecution after being declared hostile, but he did not support the prosecution's material allegations despite the suggestions put to him. Additionally, learned counsel for the appellant has also submitted that the prosecution could not be allowed to treat the complaint (Ex.PW-2/A) as substantive evidence of demand merely because it had formed the basis of the registration of the case and the subsequent trap proceedings. It has been submitted by the learned counsel for the appellant that once the maker or the person from which the actual complaint originated from, did not affirm the material allegation of demand in Court, the prosecution was required to establish that fact through other legally admissible evidence without taking refuge behind the contents of the complaint (Ex. PW-2/A).

7. Learned counsel for the appellant has also assailed the reliance placed upon the testimony of the shadow witness Radha Kishan (PW-7) by the prosecution. It is submitted that although PW-7 acted as the shadow witness during the raid proceedings, he stated that he had not accompanied the complainant inside the factory and while he did witness the complainant handing something over to the appellant, who accepted it with his right hand and kept it in the pocket of his pants, the currency notes were subsequently recovered from the left pocket of the appellant's shirt. Learned counsel for the appellant vehemently submits that this is not a minor discrepancy, but a material inconsistency concerning the very manner in which the alleged gratification was accepted and retained by the appellant. It has been submitted by the learned counsel for the appellant that the prosecution

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cannot rely upon the deposition of PW-7 to fill the void left by the complainant's testimony on the aspect of demand, particularly when the testimony of PW-7 itself is inconsistent with regard to the manner in which the alleged transaction took place, including the hand with which the appellant accepted the money and the pocket in which he allegedly kept it, which is at variance with the place from where the treated currency notes were ultimately recovered.

8. Learned counsel for the appellant has also drawn attention to the testimony of the Raid Officer, Inspector S.S. Sandhu (PW-9), who conducted the trap proceedings and carried out the apprehension of the appellant and recovery of the treated currency notes from his person. It is submitted that PW-9 did not personally witness the alleged demand or acceptance of the money. His evidence, therefore, concerns the proceedings conducted after the signal and cannot independently establish what transpired between the complainant and the appellant before the raiding party intervened.

9. Learned counsel for the appellant has further relied upon the testimony of Inspector Hari Chand (PW-4), the initial IO. It is pointed out that PW-4 admitted in his cross-examination that he had not verified the correctness of the complaint. It is also submitted that, although Constable Dharambir was named in connection with the alleged demand, he was not charge-sheeted. According to learned counsel, these circumstances cast doubt upon the manner in which the investigation proceeded and the extent to which the allegations were independently verified.

10. In support of the arguments raised in support of the appellant, learned counsel for the appellant has relied upon ***M. Sambasiva Rao v. State of Andhra Pradesh***, 2025 SCC OnLine SC 1463, and has submitted that the

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failure to verify the complaint before laying the trap constitutes a serious infirmity in the prosecution's case. It is contended that the prosecution proceeded upon the complaint without adequately testing or verifying its correctness, and that the subsequent recovery cannot, by itself, cure this deficiency. Learned counsel for the appellant has also relied upon ***Neeraj Dutta v. State (Government of NCT of Delhi), (2023)*** 4 SCC 731, and ***B. Jayaraj v. State of Andhra Pradesh,*** (2014) 13 SCC 55, to submit that proof of the relevant demand and acceptance is essential to a conviction under the provisions invoked in the present case. It is urged that the statutory presumption under Section 20 of the Act cannot be invoked to supply the very facts which the prosecution has failed to establish.

11. Learned counsel for the appellant has further challenged the manner in which certain circumstances were put to the appellant during the recording of his statement under Section 313 Cr.P.C. In particular, learned counsel has drawn attention to Questions Nos. 13 and 15, wherein it was put to the appellant that evidence had emerged against him to the effect that he had demanded and accepted ₹1,000/- from the complainant as illegal gratification. It is contended that there was no evidence whatsoever establishing the alleged demand, nor had any witness deposed to the appellant having demanded the bribe amount. According to learned counsel, only circumstances supported by evidence and appearing incriminating against the accused can be put to him for his explanation, and the mere formulation of Questions Nos. 13 and 15 could not be treated as evidence of demand where no such evidence had emerged during trial.

12. Learned counsel has also objected to Question No. 29 put to the appellant, wherein it was stated that the sanction for prosecution had been granted by the Deputy Commissioner of Police, R.S. Yadav (PW-5). It is

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submitted that this assertion is contrary to the record, as no sanction had been granted by the Deputy Commissioner of Police. On this basis, learned counsel has contended that the conviction is also rendered unsustainable on account of the incorrect circumstance put to the appellant regarding the grant of sanction.

13. Per contra, learned APP for the State has stood by the impugned judgment. It has been submitted that the prosecution's case must be assessed by considering the complaint, the pre-trap proceedings, the voluntary acceptance by the appellant, the recovery of the treated currency notes, the positive hand and pocket washes, and the testimony of the members of the raiding party. According to the learned APP, the fact that the treated currency notes were recovered from the appellant's shirt pocket, coupled with the positive washes, is a significant circumstance supporting the prosecution case.

14. Learned APP has further submitted that the testimony of a witness who has been declared hostile or in this case the testimony of the complainant, Lakhan Singh (PW-2) is not required to be discarded in its entirety. It is contended that reliable portions of such testimony can be acted upon if it is otherwise supported or corroborated by the evidence on record. The prosecution maintains that the complainant's failure to support the prosecution on the question of demand does not necessarily result in acquittal where other evidence and the surrounding circumstances are sufficient to establish the offence.

15. Learned APP has further submitted that the evidence of the Raid Officer (PW-9) and the recovery proceedings cannot be ignored merely because the officer did not personally hear the demand. According to the prosecution, the evidence must be appreciated cumulatively, and the

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recovery of the treated currency notes, the positive washes and the surrounding circumstances lend support to the prosecution version. Learned APP for the State has accordingly urged that the findings recorded by the learned Trial Court do not call for interference.

16. Having considered the rival submissions and examined the material forming part of the appeal record, the principal question that arises for consideration is whether the prosecution has established beyond reasonable doubt the facts necessary to sustain the appellant's conviction under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act.

17. Before proceeding to examine the evidence, it is necessary to notice the legal position governing the proof of demand, acceptance and obtainment of illegal gratification. The law in this regard has been authoritatively considered by the Constitution Bench of the Supreme Court in ***Neeraj Dutta*** (supra) wherein the Constitution Bench clarified that the prosecution must prove the facts constituting the offence and that the relevant facts may be established either by direct evidence or by circumstantial evidence. The fact that the complainant does not support the prosecution or is unavailable as a witness does not, by itself, bring the prosecution to an end. The Court must examine whether the remaining evidence establishes the relevant facts beyond reasonable doubt.

18. The judgment in ***Neeraj Dutta*** (supra) also requires a distinction to be maintained between the offence under Section 7 and the offence of obtaining illegal gratification under the then applicable Section 13(1)(d)(i) and (ii) of the PC Act.

19. Act. Where the public servant demands illegal gratification and obtains it, the prosecution must establish the demand and the consequent obtainment. However, where the bribe-giver independently offers illegal

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gratification and the public servant knowingly and voluntarily accepts it, the absence of a prior demand by the public servant does not, by itself, defeat the charge under Section 7. In either situation, the prosecution must establish the facts constituting the offence; mere recovery of currency notes is not sufficient.

20. The distinction is material in the present case. The prosecution has proceeded on the specific allegation that the appellant demanded ₹5,000/- from the complainant and that the subsequent payment of ₹1,000/- was made pursuant to that demand. The appellant, however, relies upon the complainant's testimony that no demand was made and that the appellant refused the money, which the complainant himself inserted into the appellant's pocket. Consequently, the evidence must be assessed not only to determine whether the alleged demand and obtainment have been proved, but also to determine whether the prosecution has independently established knowing and voluntary acceptance of an offer of illegal gratification.

21. In ***B. Jayaraj*** (supra), the Hon'ble Supreme Court cautioned that mere recovery of currency notes, in the absence of proof of the requisite facts, is insufficient to sustain a conviction. The principles in that decision must now be applied in the light of the subsequent Constitution Bench judgment in ***Neeraj Dutta*** (supra). The latter does not require demand to be proved only by direct testimony, but equally does not permit demand or voluntary acceptance to be presumed merely from the fact of recovery. The statutory presumption under Section 20 of the Act must also be considered within these limits. The presumption does not dispense with proof of the foundational facts necessary to attract it. The prosecution must first establish the relevant facts concerning acceptance of gratification, and the presumption must then operate in accordance with the statutory provision. It

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cannot be used to convert an uncertain or disputed transaction into proof of knowing and voluntary acceptance.

22. Turning to the evidence in the present case, PW-2 is the complainant and the person from whom the alleged demand was made. His testimony is, therefore, of particular significance. The prosecution's case is that the appellant demanded ₹5,000/- and that the complainant subsequently agreed to pay ₹1,000/- as an initial payment. However, PW-2 did not affirm the allegation of demand in his testimony before the Court. Instead, he denied that the appellant had demanded the bribe and stated that the appellant refused to accept the money and that the complainant himself inserted the currency notes into the pocket of the appellant's shirt.

23. The fact that PW-2 was declared hostile does not mean that his testimony must be rejected in its entirety. It is settled that the evidence of a hostile witness remains part of the record and may be relied upon to the extent that it is found credible and is supported by other evidence. The Court must, however, examine the substance of the testimony and determine which portions, if any, can safely be accepted. On this very aspect, the Apex court in ***K.P. Tamilmaran v. State by Deputy Superintendent of Police,*** 2025 SCC OnLine SC 958, held that the declaration of hostility does not automatically render the witness's testimony completely adverse or undependable to the prosecution's case, nor does it permit the Court to disregard the portions which are inconsistent with the prosecution's case without assigning reasons. The relevant portion of ***K.P. Tamilmaran*** (supra) has been reproduced hereunder:

> *"36. It is though trite and much overstated but the maxim "falsus in uno, falsus in omnibus"3, 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*

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> *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."*

24. In the present case, the complainant's testimony is material not merely because it fails to support the allegation of demand, but because it provides a peculiarly convenient explanation for the presence of the treated currency notes in the appellant's pocket. The complainant's version, if accepted, would indicate that the appellant did not voluntarily accept the money and that the notes came to be placed in his pocket through the complainant's own act. The prosecution was, therefore, required to demonstrate through other reliable evidence that this explanation could not reasonably be accepted and that the appellant had, in fact, knowingly and voluntarily accepted the gratification.

25. The complaint (Ex. PW-2/A) recorded before the trap proceedings undoubtedly explains how the investigation commenced. However, the

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complaint cannot, merely by virtue of having been recorded and signed, be treated as substantive proof of the truth of its contents once the maker does not affirm the material allegations in Court. A previous statement may be used in accordance with the applicable rules of evidence, including for contradiction, but it does not automatically become substantive evidence of the facts asserted therein.

26. The next material witness is Radha Kishan (PW-7), who was assigned as the shadow witness. The purpose of associating a shadow witness is to provide independent evidence of the relevant transaction, to the extent that the witness is in a position to observe it. The evidentiary value of such testimony must, however, be assessed by reference to what the witness actually saw and heard. The mere fact that a person was designated as a shadow witness does not mean that every part of the transaction necessarily falls within his personal knowledge.

27. The testimony of Radha Kishan (PW-7), the shadow witness, assumes significance in determining whether the appellant voluntarily accepted the treated currency notes. PW-7 deposed that he saw the complainant return and hand over something to the appellant, who accepted it in his right hand and kept it in the pocket of his pants. However, the two treated currency notes were subsequently recovered from the left pocket of the appellant's shirt. PW-7 also denied the suggestion put to him in cross examination that he had previously stated that the appellant accepted the money with his left hand, transferred it to his right hand and thereafter placed it in his pocket. Thus, while Radha Kishan's testimony supports the prosecution to the extent that he witnessed the complainant hand over an object to the appellant and the appellant accept it, his account of the manner in which the treated currency notes were retained differs from the place from which the currency

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notes were recovered during the post-raid recovery. This discrepancy must be weighed while assessing the reliability of his testimony. However, it does not, by itself, negate his evidence that the transfer and acceptance took place. The material question is whether PW-7's testimony, notwithstanding this discrepancy, considered alongside the recovery of the treated currency notes and the other evidence on record, establishes the appellant's voluntary acceptance of the gratification.

28. The aforementioned discrepancy is not necessarily conclusive in isolation. A witness may fail to recall every movement accurately, particularly where the transaction occurs quickly and logically it cannot be expected of such a witness to have a photographic memory or a frame by frame account without having minor discrepancies and inconsistencies. However, the importance of a discrepancy depends upon the issue to which it relates. In the present case, the dispute concerns whether the appellant voluntarily accepted the money or whether the complainant inserted the notes into the appellant's pocket despite his refusal. The precise manner in which the money was allegedly received and retained is, therefore, directly relevant to the disputed question of voluntary acceptance.

29. The more significant aspect of the testimony of PW-7, however, is that he did not merely state that the complainant and the appellant were present at the spot or that some object changed hands between them. In his examination in chief, he specifically deposed that the complainant returned and gave something to the appellant, who accepted it in his right hand and kept it in the pocket of his pants. The relevant portion of Radha Kishann's (PW-7) examination in chief has been reproduced hereunder for reference:

> "*Thereafter, complainant went to somewhere and came back and gave something to the accused which he accepted in his right hand*

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> *and had kept the same in his pocket of his pant. Thereafter, I gave pre-determined signal by hurling my hand over my head. The members of raiding party immediately came at the spot and Raid Officer apprehended the accused while the accused was putting the money in his pocket."*

30. More importantly, in cross-examination, when confronted with the suggestion that the complainant had thrust the money into the appellant's pocket despite his refusal to accept it, PW-7 denied the suggestion. His testimony, therefore, does not support the defence version in the manner suggested by learned counsel for the appellant. On the contrary, it provides affirmative evidence of a transfer of an object by the complainant to the appellant and of the appellant receiving it, while expressly negating the suggestion that the transfer was forcibly effected against the appellant's will. Relevant portion of PW-7's cross-examination has been reproduced hereunder for reference:

> "*I do not remember if the accused denied to accept the money saying that the license would be given by the MCD not by the police. It is incorrect to suggest that the complainant thrust the money in the pocket of the accused while accused was denying to accept the same."*

31. The fact that PW-7 did not testify to having heard the alleged demand does not render his testimony irrelevant to that issue. The question of demand cannot be examined in isolation from the circumstances in which the transaction took place. Although PW-7's evidence does not directly establish the precise words allegedly spoken by the appellant, his account of the transaction is a circumstance which the Court is required to consider while determining whether the payment was voluntary and whether the circumstances surrounding it support the prosecution case that the money was being paid as illegal gratification. The distinction between direct

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evidence of demand and circumstantial evidence bearing upon demand must be maintained. The absence of direct testimony to the demand does not foreclose an inference arising from the cumulative effect of the proved circumstances.

32. In this regard, the complaint (Ex. PW-2/A), cannot be treated as substantive proof of the truth of the allegations recorded therein merely because it preceded the trap. Nevertheless, the evidentiary limitations attached to the complaint do not require the Court to disregard the entire sequence of events which led to the trap. The fact that the complainant approached the Anti-Corruption Branch, that the complaint was recorded, that the pre-trap proceedings were thereafter undertaken and recorded vide pre-raid report (Ex. PW-2/B), and that the complainant subsequently participated in the transaction witnessed by PW-7 form part of the surrounding circumstances. These circumstances must be considered alongside the testimony given in Court, without elevating the allegations in the complaint to the status of independently proved facts. The inference, if any, must ultimately arise from the evidence which has been brought on record and not merely from the existence of the complaint.

33. Learned counsel for the appellant has placed considerable emphasis on the discrepancy between the pocket described by PW-7 and the pocket from which the treated currency notes were ultimately recovered. This circumstance undoubtedly requires consideration, as it concerns the manner in which the appellant allegedly retained the money. It would, however, be inappropriate to treat this discrepancy as such that it would result in effacing the entire testimony of PW-7, especially without examining the remaining evidence relating to the transaction and the recovery. PW-7 described the appellant as having accepted the treated currency notes in his right hand and

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placed it in the pocket of his pants, whereas the treated currency notes were recovered from the left pocket of his shirt. While it may be noted that the discrepancy concerns the precise movement and retention of the treated currency notes after it was received, it does not, by itself, displace PW-7's deposition that the complainant handed over an object to the appellant and that the appellant accepted it. Its significance must be assessed cumulatively, particularly in view of PW-7's denial of the suggestion that the complainant had forcibly inserted the money into the appellant's pocket. Moreover, the defence version that the complainant forcibly inserted the treated currency notes into the appellant's pocket also requires consideration in light of the fact that the notes were ultimately recovered from the left breast pocket of his shirt. The suggestion that the complainant managed to insert the notes into that pocket, despite the appellant's alleged resistance, is difficult to accept, especially in the context the circumstances of the transaction and the sequence of events deposed to by PW-7.

34. The prosecution has also relied upon the recovery of the two treated currency notes of ₹500 each from the appellant's shirt pocket and the resulting positive hand, shirt and pant pocket washes. There is no ambiguity regarding the relevance of the chemical test as evidence towards the fact, that is to say that it, by itself, cannot establish the purpose for which the money was transferred, nor can it independently prove a prior demand. However, when considered with PW-7's testimony regarding the transfer and acceptance, the recovery of the very currency notes which had been treated during the pre-trap proceedings lends corroborative support to the prosecution version of the transaction. The recovery and the positive hand and shirt pocket washes must thus be treated as corroborative circumstances and not as substitutes for proof of the essential ingredients of the offences.

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35. The version advanced by the learned counsel for the appellant, on the other hand, is that the appellant refused to accept the money and that the complainant himself inserted the notes into the appellant's shirt pocket. If this version were supported by the remaining evidence, it would undoubtedly be material to the question of voluntary acceptance. However, the complainant's assertion in this regard cannot be accepted without testing it against the testimony of PW-7 and the circumstances surrounding the recovery. PW-7, who was associated with the trap as a shadow witness, expressly denied the suggestion that the complainant had thrust the money into the appellant's pocket while the appellant was refusing to accept it. His evidence on this aspect is significant because it directly contradicts the particular explanation advanced by the complainant (PW-2) in Court and subsequently relied upon by the appellant.

36. The testimony of the Raid Officer, Inspector S.S. Sandhu (PW-9), must also be considered within its proper limits. It is correct that PW-9 did not personally witness the alleged demand and that his evidence concerning the events preceding the signal cannot be treated as direct proof of words or conduct which he did not himself observe. His testimony nevertheless remains relevant to the proceedings conducted upon the signal, the apprehension of the appellant, the recovery of the treated currency notes and the subsequent hand and pocket washes. To the extent that these proceedings are proved through his testimony and the other evidence on record, they corroborate the circumstances in which the appellant was apprehended and the treated notes were recovered. The fact that PW-9 was not an eyewitness to the alleged demand does not render his evidence concerning the recovery and subsequent proceedings immaterial and at the same time, such evidence

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cannot be relied upon to establish matters falling outside his personal knowledge.

37. This Court is conscious that recovery of treated currency notes, even when accompanied by positive hand washes, does not automatically establish the offence of demand and acceptance of illegal gratification. The prosecution must prove the relevant facts beyond reasonable doubt, and the statutory presumption cannot be invoked to fill a complete absence of proof of the foundational facts. Likewise, the evidence on record cannot be examined in fragments of isolated events, on the contrary, the larger evidentiary picture must be assessed as a whole. The shadow witness Radha Kishan's (PW-7) evidence provides consistent account of the transfer and willing acceptance of the treated currency notes by the appellant. His testimony does not support the allegation or claim that the appellant, at the outset, had refused the money and that the complainant forcibly planted it upon him. The recovery of the treated notes from the appellant's person and the positive washes provide corroborative circumstances concerning the handling of those notes. The cumulative effect of this evidence must be assessed in deciding whether the prosecution has established the transaction alleged against the appellant.

38. The explanation furnished by the appellant in his statement recorded under Section 313 Cr.P.C., when considered alongside the testimony of the complainant, Lakhan Singh (PW-2), requires closer scrutiny. Both versions seek to explain the presence of the treated currency notes on the appellant's person on the premise that the complainant had forcibly thrust the money into his pocket despite his refusal to accept it. However, this explanation does not find support in the testimony of the shadow witness, Radha Kishan (PW-7), who specifically denied the suggestion that the complainant had

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forcibly inserted the money into the appellant's pocket while the appellant was refusing to accept it. The said explanation must, therefore, be tested against the evidence of the witness who observed the transaction, rather than accepted merely because the complainant subsequently resiled from the prosecution case.

39. The testimony of PW-7, read with that of the Raid Officer (PW-9) concerning the sequence of events following the predetermined signal, indicates that the transaction was followed by the arrival of the raiding party and the apprehension and search of the appellant. The defence version, on the other hand, would require this Court to accept that the appellant protested against the transfer of the money, that the complainant nevertheless managed to thrust the currency notes into his pocket, and that the notes remained there until they were recovered during the ensuing proceedings. Although the appellant's failure to remove the notes from his pocket cannot, by itself, establish voluntary acceptance, the explanation advanced by him assumes significance when considered alongside PW-7's affirmative testimony regarding the transfer and acceptance of the object and his express rejection of the suggestion that the money was forcibly thrust into the appellant's pocket. In these circumstances, the defence explanation qua the statement of the accused recorded under 313 Cr.P.C. and the submissions of the learned counsel for the appellant falls flat as it fails to create a reasonable doubt sufficient enough to displace the prosecution's case.

40. The principles laid down by the Constitution Bench in ***Neeraj Dutta*** (supra), are instructive in this regard. The Constitution Bench clarified that the facts constituting demand and acceptance may be proved by direct as well as circumstantial evidence. The inability or refusal of the complainant

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to support the prosecution case does not, in itself, render conviction legally impermissible, provided the remaining evidence establishes the necessary ingredients of the offence beyond reasonable doubt. The decision also makes clear that this Court must distinguish between proof of demand and the mere fact of recovery, and that an inference of demand must arise from the circumstances proved in the particular case rather than from recovery alone. Applying these principles, the testimony of Lakhan Singh (PW-7) cannot be excluded from the assessment of demand merely because he did not depose to having directly heard the alleged demand. His evidence regarding the actual transaction, the manner in which the transfer of the treated currency notes took place, the appellant's acceptance coupled with PW-7's denial of the suggestion of forcible insertion of the treated currency in the appellant's pocket, must be considered together with the other proved circumstances.

41. The objection regarding the absence of pre-trap verification also requires consideration in the context of the entire prosecution case. The failure to verify the complaint before arranging the trap is a circumstance which may bear upon the reliability of the investigation and the weight to be attached to the prosecution version. It does not, however, follow that every subsequent event proved through admissible evidence must be disregarded solely because the complaint was not independently verified beforehand. The evidence of the witnesses examined at trial, the circumstances of the transaction, and the recovery proceedings must still be assessed on their own merits. In the present case, the deficiency alleged by the appellant in the pre-trap procedure does not, by itself, displace the affirmative testimony of PW-7 concerning the transfer and acceptance, particularly when that testimony is considered with the evidence relating to recovery and the positive washes. The admission of PW-4, the initial Investigating Officer, that he did not

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verify the correctness of the complaint is relevant to the assessment of the investigation, but it cannot be treated as sufficient, standing alone, to negate the evidence subsequently brought on record at trial.

42. The fact that Constable Dharambir, who was also named in the complaint, was not charge-sheeted likewise does not establish that the allegation against the appellant was false nor does it diminish the evidence that ultimately concerns the implication and the involvement of the appellant in the present case. The prosecution's case against the appellant must be assessed on the evidence led against him and him alone insofar as the confines of the present case and the law governing it dictates. The failure to prosecute another person named in the complaint may invite some level of scrutiny of the investigation and the manner in which the allegations were dealt with, but whether such scrutiny would be warranted and whether it would serve the ends of justice at this stage is a question which may be answered in the negative, especially as far as the present case is concerned. Nevertheless, the failure to chargesheet Ct. Dharambir does not and would not absolve the appellant in any manner, where the evidence concerning his own conduct is otherwise found reliable. This Court must guard against drawing an adverse inference merely from the investigating agency's decision in relation to another individual, while at the same time ensuring that the appellant's guilt is not inferred simply from the fact that he was the person apprehended during the trap. The Hon'ble Supreme Court, in ***Suvarna Coop. Bank Ltd. v. State of Karnataka,*** (2021) 17 SCC 268 had held that failure to chargesheet other persons who might have committed an offence does not vitiate the charge or the evidence proved against those accused persons. The relevant portion of ***Suvarna Coop.*** (supra) has been reproduced hereunder:

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> ***4.3.*** *The aforesaid cannot be a ground to quash the criminal proceedings against the accused who was charge-sheeted by the investigating officer after thorough investigation. Merely because some other persons who might have committed the offences, but were not arrayed as accused and were not charge-sheeted cannot be a ground to quash the criminal proceedings against the accused who is charge-sheeted after a thorough investigation. During the trial if it is found that other accused persons who committed the offence are not charge-sheeted, the Court may array those persons as accused in exercise of powers under Section 319CrPC. Merely because some of the persons who might have committed the offences are not charge-sheeted, cannot be a ground to quash the proceedings against the accused charge-sheeted after having found prima facie case against him after investigation. Nothing has been further observed by the High Court on merits and/or on the allegations against the private respondent herein-original Accused.*

43. The objection concerning the appellant's examination under Section 313 Cr.P.C. must also be considered in the same manner. The questions put to an accused under that provision are intended to afford him an opportunity to explain the circumstances appearing against him. While it is very well settled that such questions cannot themselves constitute substantive evidence in support of the facts alleged by the prosecution, nor can an omission in the prosecution evidence be cured merely by putting an incriminating question to the accused. The findings in the present appeal therefore, rest upon the evidence adduced by the prosecution and not upon the formulation and the substance of the questions put to the accused.

44. Learned counsel for the appellant has also raised an objection with regards to question Nos. 13 and 15 put to the appellant during the recording of his statement under Section 313 Cr.P.C., contending that the questions proceeded on the premise that the appellant had demanded and accepted illegal gratification, despite the alleged demand not having been independently established by the prosecution's evidence. This submission, however, does not, by itself, disclose any such material infirmity as would

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undermine the prosecution's case or warrant interference with the findings of the learned Trial Court. This court is aware that the questions put to the appellant under Section 313 of the Cr.P.C. are intended to afford him an opportunity to explain the incriminating circumstances appearing against him in the evidence. They are neither substantive evidence of the facts stated therein nor can they, by themselves, remedy a deficiency in the prosecution's case. At the same time, the mere formulation of Questions Nos. 13 and 15 in terms which refer to the alleged demand and acceptance does not render the entire proceedings defective or displace the evidence otherwise brought on record. The relevant inquiry remains whether the circumstances put to the appellant find support in the evidence adduced during trial and whether the prosecution has established the necessary ingredients of the offences charged. Accordingly, these questions must be considered in the context of the evidence as a whole.

45. The appellant has also furnished an explanation for his presence at the jhuggi of the complainant at the relevant time. In his statement recorded under Section 313 of the Cr.P.C., the appellant stated that he was present at the police station when he received a telephone call from the complainant informing him that some dispute was taking place at his jhuggi. This explanation finds some corroboration in the testimony of Constable Pratap Singh (DW-2), who deposed that he was present with the appellant at the police station on the date of the raid and that a telephone call was received regarding a dispute at the complainant's jhuggi. At first glance, this circumstance may appear to provide a plausible explanation for the appellant's presence at the spot at the relevant time. However, the explanation must be examined in the light of the entirety of DW-2's testimony and the other circumstances emerging from the record.

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46. A closer examination of the deposition of DW-2 reveals that, although he claimed to have heard the telephone call being received, he categorically stated in his cross-examination that he could not hear the conversation between the appellant and the complainant. His knowledge regarding the purpose of the call, therefore, was not derived from having personally heard the conversation, but from what the appellant subsequently told him. This is also consistent with his examination-in-chief, wherein he stated that the appellant had informed him that a dispute was taking place at the complainant's jhuggi and that he was proceeding there in response to the same. Thus, while the testimony of DW-2 lends some support to the appellant's explanation regarding the receipt of a telephone call, it does not independently establish either the nature of the dispute or the circumstances in which the appellant was required to proceed to the complainant's jhuggi. It is also pertinent to note that neither the appellant nor DW-2 made any Daily Diary entry in connection with the receipt of the alleged call or the appellant's departure from the police station pursuant thereto. This circumstance assumes some significance, particularly when the appellant claims to have proceeded to the spot in the discharge of his official duties.

47. There is, however, another circumstance which further weakens the explanation furnished by the appellant. The shirt worn by the appellant at the time of the raid, from whose pocket the treated currency notes were recovered and which was subsequently subjected to the phenolphthalein test, was described as a purple-blue shirt which was reproduced during trial to both PW-7 and PW-9 as Ex. P-9. The appellant's explanation is that he was on duty at the relevant time, a fact which finds some support in the testimony of DW-2. However, the nature of the clothing worn by the appellant at the time of the raid is a circumstance which requires

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consideration in this context. It is a matter of common knowledge that police constables of the Delhi Police, when performing their ordinary beat duties, are ordinarily required to wear their prescribed uniform, subject to the nature of their deployment and the applicable instructions. The fact that the appellant was wearing a purple-blue shirt, rather than the prescribed 'khaki' coloured uniform, therefore, does not sit comfortably with the explanation that he had proceeded to the spot in the ordinary discharge of his official duties. Considered cumulatively, these circumstances materially weaken the appellant's explanation that he was present at the spot merely in response to an emergency call and was thereafter falsely implicated.

48. Learned counsel has further raised an objection concerning Question No. 29, which, according to the appellant, incorrectly referred to the Deputy Commissioner of Police as the authority granting sanction for prosecution. This objection must be distinguished from a substantive challenge to the validity of the sanction itself. The mere description of the sanctioning authority in a question put to the appellant cannot determine whether the sanction was validly granted. That issue must be examined with reference to the sanction order on record, the identity and designation of the officer who actually granted it, the authority vested in that officer under the applicable law, and the evidence led by the prosecution to prove the sanction. In the present case, R.S. Yadav (PW-5) was examined to prove the sanction, he has deposed regarding his position as Additional Deputy Commissioner of Police and his competence to grant the same. The objection concerning the wording of Question No. 29 would, therefore, assume significance only if the record establishes a substantive defect in the authority of the officer who granted sanction or in the sanction itself. It cannot, in isolation, establish such a defect. The validity of the sanction must consequently be determined

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on the basis of the sanction order and the evidence concerning its grant, rather than on the description employed in the question put to the appellant.

49. Upon an overall consideration of the evidence, this Court is unable to accept the submission that the complainant's hostility necessarily destroys the prosecution's case. The complainant did not support the prosecution on the allegation of demand and furnished an explanation that the appellant had refused the money and that the complainant himself inserted the notes into the appellant's pocket. However, this explanation is contradicted by the testimony of PW-7, who witnessed the transfer and acceptance and specifically denied the suggestion that the money had been forcibly thrust into the appellant's pocket despite his refusal. The recovery of the treated currency notes from the appellant's person, together with the positive hand and pocket washes, lends further support to the evidence concerning the transfer and handling of the money. The discrepancy regarding the precise pocket in which PW-7 claimed the object was placed is a circumstance to be weighed, but it is not sufficient, in the facts of the present case, to erase the substance of his testimony or to compel acceptance of the defence version.

50. What now falls before this court is the inference concerning demand, which this court is aware, must be drawn cautiously and from the circumstantial evidence proved on record. The complaint (Ex. PW-2/A) cannot be treated as substantive proof of the allegations, neither the recovery of the treated currency nor the positive washes can independently establish a prior demand. Nevertheless, the prosecution's case is not founded upon recovery or veracity of the complaint (Ex. PW-2/A) alone. The complaint may lend assistance to the prosecution's case to the limited extent that it put into motion the events leading up to the trap while providing the context in which the alleged transaction took place. Even if the complaint were to be

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kept aside momentarily, Lakhan Singh(PW-7) supplies direct evidence of the transfer and acceptance and rejects the explanation that the money was forcibly inserted into the appellant's pocket as well as the appellant's alleged refusal to accept the same. Apart from this, PW-7 also provides a direct account about the recovery of the treated currency notes as well as the subsequent hand washes thus, providing and account for both scientific as well as procedural evidence. While the deposition of PW-7 with respect to the recovery and the hand wash may not lend much assistance towards the core requirement of evidence i.e. towards the factum of demand and acceptance, it nevertheless provides a first-hand account and an unbroken chain of events which in turn, lends considerable credibility to the testimony of PW-7. Considered cumulatively, these circumstances support the prosecution case that the payment was not an accidental or forcibly engineered transfer, but a transaction involving the appellant's knowing and voluntary receipt of the money in the circumstances of the trap.

51. So far as Section 7 of the PC Act is concerned, the distinction explained in ***Neeraj Dutta*** (supra) assumes significant importance. The prosecution's original case was that the payment followed a demand for illegal gratification. The absence of direct testimony from the complainant does not preclude the Court from considering whether the relevant facts have been established circumstantially. Further, for the purpose of Section 7 of the PC Act, the law recognises that knowing and voluntary acceptance of an independent offer of illegal gratification may constitute the offence even in the absence of proof of a prior demand by the public servant. While every receipt of money cannot be converted into an offence under Section 7 of the PC Act, in the present case, the evidence of PW-7 regarding voluntary acceptance, considered with the recovery and the positive washes,

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establishes more than the mere presence of the treatedcurrency notes on the appellant's person. The circumstances in which the complainant handed over the money, the appellant's receipt of it, and the subsequent recovery of the very treated notes, when read together, support the conclusion that the appellant knowingly and willingly accepted the illegal gratification.

52. The charge under Section 13(1)(d) read with Section 13(2), requires separate consideration because the former provision, as applicable in the present case, concerns the public servant obtaining illegal gratification by the means specified therein. In this regard, the prosecution's case is that the appellant obtained the money pursuant to the demand alleged to have been made in connection with the complainant's factory. As explained in ***Neeraj Dutta*** (supra), the requisite demand and obtainment may be established through circumstantial evidence, but the Court must be satisfied that the circumstances prove the facts constituting the offence beyond reasonable doubt. For the reasons already discussed, the testimony of PW-7 cannot be treated as neutral or irrelevant merely because he did not hear the demand. On the contrary, his account of the voluntary transfer, his rejection of the suggestion of forcible insertion, and the corroborative evidence of recovery and chemical washes must all be considered in their cumulative effect. In the facts of the present case, these circumstances, considered with the sequence in which the complaint was made and the trap was arranged, support the prosecution's case that the appellant obtained the illegal gratification in the course of the raid and the transaction alleged against him.

53. The findings of the learned Trial Court, therefore, cannot be set aside merely on the ground that the complainant turned hostile or that PW-7 did not provide direct testimony to the precise words of the alleged demand. The law on this aspect has been propounded at length and it does not require this

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Court to accept the version of the defence simply because the complainant resiled from his earlier allegations, nor does it permit this Court to convict an accused solely because the treated notes were recovered. In the present case, the testimony of the shadow witness Radha Kishan (PW-7) concerning the transaction, supplemented by the deposition of the Raid Officer Insp. S.S. Sandhu (PW-9) the circumstances of recovery, and the positive hand and pocket washes, when assessed together, provide a sufficient evidentiary basis to sustain the conclusion that the appellant knowingly and voluntarily accepted the illegal gratification and that the prosecution has established the relevant ingredients of the offences charged.

54. For the foregoing reasons, this Court finds no sufficient ground to interfere with the judgment of conviction dated 07.11.2008. The prosecution has established the appellant's guilt beyond reasonable doubt for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2), of the Prevention of Corruption Act, 1988.

55. The conviction recorded by the learned Trial Court is accordingly upheld, and the appeal, insofar as it challenges the judgment of conviction, is dismissed.

56. The Appellant shall surrender forthwith to undergo the sentence awarded and shall be entitled to the benefit of set off under Section 428 Cr.P.C., as already granted by the learned Trial Court.

57. Appeal along with pending application(s), if any, stand disposed of accordingly

58. Copy of the judgment be transmitted to the Trial Court and Prison Authorities for information and requisite compliance.

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VIMAL KUMAR YADAV, J

NOVEMBER 04, 2026/*ij*

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