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

Date of reserve: 18th February, 2026

Date of decision: 14th July, 2026

IN THE MATTER OF:

\+ CRL.A. 536/2007

SIDHARTH JAIN .....Appellant

Through: Ms. Priya Kumar, Sr. Advocate with Ms. Swaty Singh Malik, Mr. Rohan Kumar & Ms. Ekaa Sharma, Advs. with Appellant-in-person.

versus

STATE OF DELHI .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State with SI Naresh Kumar, PS Anti Corruption Branch.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. By the impugned judgment, the Appellant has been convicted for the offences under sections 7 & 13(2) read with section 13(1)(d) of the PC Act 1998 and by the impugned Order on Sentence, the Appellant has been sentenced to undergo Rigorous Imprisonment (‘RI’) for a period of 2 years and to pay a fine of ₹ 5,000/- and in default, R.I. 6 months under Section 7 of the PC Act 1988 and to RI for 3 years and to pay a fine of ₹7,000/- and

in default, R.I. 9 months under Section 13(2) PC Act read with section 13(1)(d) PC Act 1988, with both sentences to run concurrently.

2. Succinctly stated, it is the case of the prosecution that, in the year 1988, the Appellant herein was posted as a Junior Clerk in the Commercial Section of Delhi Vidyut board, DVB Hudson Lines Kingsway Camp, Delhi. The complainant Abdul Hamid was posted as a Head Constable in the Delhi Police and was the consumer of electricity which was installed at his government flat No. 17D, located at Police Colony Model Town, through K No. 412-135967/ DLI. The complainant herein took voluntary retirement on 31.03.1998 due to which he was required to vacate his government accommodation as per procedural mandate. It was for this purpose that the complainant was required to obtain a No Objection Certificate (NOC) from the DVB for surrendering possession of the government accommodation which was allotted to him for the duration of his service under the Delhi Police. The complainant accordingly applied for the issuance of the aforementioned NOC on 18.09.1998 vide diary No 3202 which has been marked as Ex. PW-5/A and on the same day, he had deposited an amount of ₹26,028/- for the purpose of settling the outstanding bill for the electricity consumed.

3. According to the complainant, he had paid several visits to the DVB subsequent to his initial application for the NOC on 18.09.1998. However, despite repeated visits to the DVB the complainant's NOC was not issued for some or the other reason. However, it was only on 22.12.1998 that the complainant, while on a visit to the DVB Office Hudson Line, had met the Appellant herein in connection with the issuance of the NOC. The

Appellant demanded ₹1,000/- as a bribe for the said NOC, which was subsequently reduced to ₹500/- at the request of the complainant. Once the amount of ₹500/- was agreed upon, the Appellant instructed the complainant to meet him with the aforementioned bribe amount on 23.12.1998. It was this conversational negotiation which took place between the complainant and the Appellant, that the complainant approached the Anti Corruption branch on 23.12.1998 with his complaint Ex. PW-9/A. Acting upon the complaint, the Anti-Corruption Branch organized a trap on 23.12.1998. The complainant produced 5 Government Currency (GC) notes of Rs. 100/-, which were treated with phenolphthalein powder. A panch witness (PW-11) was associated, and standard pre-raid formalities were completed.

4. The raiding party reached the DVB office at around 12:50 PM on 23.12.1998 after which the complainant and the panch witness proceeded to meet the Appellant at his office which was at the first floor of the DVB Office Hudson Line. When the agreed upon amount of ₹500/- was offered by the complainant to the Appellant, the Appellant took the complainant towards the staircase while asking the panch witness to remain at the first floor of the office. On reaching the terrace on the fourth floor, the Appellant directed the complainant to place the bribe amount in some old registers that had been kept there. At around 1:45 PM the Raid officer, who was keeping a watchful eye on the Appellant and the complainant as they moved towards the staircase, noticed the both of them coming down from the fourth floor to the first floor. It was then that the complainant informed the Raid officer about the acceptance of the bribe money by the Appellant

and the location of the bribe amount, i.e., in one of the old registers stored on the fourth floor. Subsequently, the Raid officer apprehended the Appellant, following which the raiding party went up to the fourth floor and recovered five GC notes of ₹100/- each which had been kept inside the register on the fourth-floor terrace. The serial numbers of the recovered GC notes were tallied with those recorded in the pre-raid proceedings and were found to match. Thereafter, the wash of the paper of the register which had come into contact with the tainted currency notes was taken in a colourless sodium carbonate solution with the help of a cotton piece, which turned pink, confirming the presence of phenolphthalein.

5. Thereafter, the raid officer prepared the post-raid proceedings and made an endorsement on the complaint, on the basis of which a rukka was sent to Police Station Anti-Corruption Branch where FIR (Ex. PW-3/A) under Sections 7 and 13 of the Prevention of Corruption Act, 1988 was registered. The investigation was thereafter entrusted to PW-13, Inspector Y.S. Negi, who formally arrested the Appellant, prepared the site plan (Ex. PW-13/A), seized the relevant articles including the tainted currency notes, the register and the wash samples. The learned trial court, vide order dated 08.07.2002, framed charges against the Appellant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, to which the Appellant pleaded not guilty and claimed trial.

6. The prosecution examined a total of 13 witnesses, namely PW-1 Sh. Dev Trivedi, PW-2 Sh. P.P. Singh,PW-3 SI/HC Birju Singh, (registered the FIR), PW-4 Sh. P.C. Verma (Executive Engineer, DVB), PW-5 Sh. H.C. Mehta, PW-6 Ct. Mahender Singh, PW-7 HC Surender Singh, PW-8 Sh.

Vijay Kumar, PW-9 Abdul Hamid (the complainant), PW-10 ASI R.K. Pandey, PW-11 K.N. Nigam, (the panch witness), PW-12 Inspector P.S. Patwal (raid officer) and PW-13 Inspector Y.S. Negi, (Investigating Officer). The Appellant's statement under Section 313 Cr.P.C. was recorded in which he denied knowing the complainant, or having any knowledge about the complainant's application for the NOC or that the complainant had deposited a sum of ₹ 26,028/- towards the final bill on 18.09.98. He also denied the initial demand of bribe of ₹1,000/- and the subsequent lowering of said amount to ₹500/- and further stated that it was not within his duties or his capacity to issue the NOC in the first place, following which he denied the entire raid procedure as well as the findings/ seizures of the raid.

7. However, in view of the language employed in Explanation 2(i) of Section 7 of the Prevention of Corruption Act, the absence of authority to issue the NOC is not by itself determinative, as the provision extends to cases where a public servant seeks an undue advantage to perform or cause performance of a public duty through another public servant, the relevant portion has been extracted below:

> *"Explanation 2.—For the purpose of this section,—*
>
> *(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;"*

8. After due consideration of the evidence on record, the learned Special Judge observed that the prosecution has been able to establish the

essential ingredients of demand and obtaining of illegal gratification beyond reasonable doubt. The court placed primary reliance on the testimony of PW-9 Abdul Hamid (complainant), who deposed to the prior demand of bribe by the Appellant, initially for ₹1000/- which was later settled at ₹500/-, and the arrangement made for payment on 23.12.1998, pursuant to which the complaint Ex. PW-9/A was lodged before the Anti-Corruption Branch. The court further noted that the complaint led to pre-raid proceedings conducted by PW-12 Inspector P.S. Patwal (Raid officer) wherein the numbers of the five Government Currency (GC) notes of ₹100/- each were recorded and treated with phenolphthalein powder. The learned Trial Court found that the recovery of the tainted currency notes from the Register on the fourth-floor terrace stood proved through the consistent testimonies of PW-11 K.N. Nigam (panch witness) and PW-12 Inspector P.S. Patwal, and that the seizure of the currency notes vide memo Ex. PW-9/C, as well as the wash of the paper of the register which turned pink in sodium carbonate solution and was seized vide memo Ex. PW-9/D, provided scientific corroboration to the prosecution case. The court further relied upon the FSL report Ex. PW-13/C, which confirmed the presence of phenolphthalein in the wash samples, thereby substantiating that the recovered currency notes were the same treated GC notes used in the trap proceedings. The learned Special Judge further observed that the recovery was also corroborated by PW-4 Sh. P.C. Verma, Executive Engineer, DVB, who was associated with the raiding team at the time of recovery from the terrace. On the cumulative appreciation of the evidence and circumstances, and upon invoking the statutory presumption under Section 20(1) of the

Prevention of Corruption Act, the learned trial court concluded that the Appellant had demanded and obtained illegal gratification from the complainant and thereby committed offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

9. It would be worth going through the ingredients of section 7 and section 13 of the Prevention of Corruption Act; which are required to be established, as detailed in the cause célèbre of ***Neeraj Dutta v. State (NCT of Delhi),*** (2023) 4 SCC 731 and goes as under:

> *"5. The following are the ingredients of Section 7 of the Act:*
>
> *(i) the accused must be a public servant or expecting to be a public servant;*
> *(ii) he should accept or obtain or agrees to or attempts to obtain from any person;*
> *(iii) for himself or for any other person;*
> *(iv) any gratification other than legal remuneration; and*
> *(v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.*
>
> 6. *Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely:*
> *(i) The accused must be a public servant.*
>
> *(ii) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or any other person any valuable thing pr pecuniary advantage without any public interest.*
>
> *(iii) To make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.*
>
> *(iv) An agreement to accept or attempt to obtain does not fall within Section 13(1)(d).*

(v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.

(vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.

(vii) Since the legislature has used two different expressions, namely, "obtains" or "accepts", the difference between these two must be noted."

10. In addition to this the Apex Court in ***Neeraj Dutta (supra)*** had laid down the guiding principle for an offence under Section 7 or 13 of the PC Act and held that the factum of prior demand for illegal gratification by the public servant has to be proved as a fact in issue as has been reproduced hereunder:

"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."*

The prosecution as such is required to bring the evidence to establish the case within the above parameters.

11. Aggrieved by the impugned judgment and sentence, the present appeal has been filed seeking setting aside of impugned judgment of conviction dated 13.08.2007 and impugned order on sentence dated 17.08.2007.

12. It is submitted that there is no substantial evidence on record connecting the Appellant with the alleged offences. Significant gaps exist in the prosecution case, including in the evidence of the complainant himself. The complainant admitted that the alleged demand was not made in the presence of the panch witness, that the tainted money was not recovered from the Appellant, and that the Appellant never physically received the money. Consequently, the foundational facts of demand and acceptance remain unsupported by any independent witness and are sought

to be established solely on the testimony of the complainant, rendering the prosecution version doubtful and entitling the Appellant to the benefit of doubt.

13. It has been further contended by learned counsel for the Appellant that the impugned judgment is contrary to law and unsupported by the evidence on record, inasmuch as the prosecution has failed to establish the essential ingredients of the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988. It was contended that it is a settled principle of law that in order to sustain a conviction under the said provisions, the prosecution must prove both the demand for illegal gratification as well as its voluntary acceptance by the accused. In the present case, however, the evidence led by the prosecution does not satisfactorily establish either of these foundational facts and therefore the conviction recorded by the learned trial court cannot be sustained.

14. It was contended that the testimony of the complainant PW-9 Abdul Hamid itself demolishes the prosecution case on the aspect of demand. During cross-examination the complainant admitted that the alleged demand of money by the Appellant was not made in the presence of the panch witness PW-11 Sh. K.L. Nigam, despite the fact that he had been specifically instructed by the raid officer to remain with the panch witness and to conduct the transaction in his presence. The complainant PW-9 further admitted that the alleged tainted money was not recovered from the possession of the Appellant. According to the Appellant, this admission strikes at the very root of the prosecution's case, since the alleged demand is unsupported by any independent witness and the recovery is also not

from the Appellant. The relevant part of the cross examination of PW-9 is reproduced hereunder:

> *"I had not told the police in my statement that the accused had asked the panch witness to remain in his office and I also asked the panch witness to remain sitting in the room of the accused and that panch witness remained there. (Confronted with portion A to A of his statement Ex. PW9/DA where it is so recorded.) The accused was arrested on the upper floor and was brought downwards in his office. It is wrong to suggest that on challenge, accused denied having demanded or accepted the money. The accused was searched but the tainted money was not recovered from his possession"*

15. It was further contended that the evidence of the panch witness PW-11 Sh. K.L. Nigam also does not support the prosecution's case rather contradicts the version of the complainant on material aspects. The panch witness deposed that the complainant merely whispered something in the ear of the Appellant and thereafter both of them proceeded towards the terrace, while he was asked to remain behind near the seat of the Appellant. Significantly, in his cross-examination the panch witness categorically admitted that the Appellant never demanded any bribe or money from the complainant in his presence and that no money was accepted by the Appellant in his presence. It was submitted that this admission from the independent witness accompanying the complainant during the trap proceedings seriously undermines the prosecution's case regarding the alleged demand and acceptance of illegal gratification.

16. It has also been contended that even the surrounding circumstances relied upon by the prosecution do not support the theory of demand and acceptance. Reliance was placed on the testimony of PW-4 Sh. P.C.

Verma, Executive Engineer, DVB, who in his cross-examination stated that the Appellant was merely working as a Junior Clerk in the Commercial Section and was not competent to issue a No Objection Certificate (NOC) to the complainant. PW-4 further stated that there was no complaint pending in the department regarding any demand of money by the Appellant, and that the place from where the alleged tainted currency notes were recovered was an open space on the terrace where old registers were stored and which was accessible to anyone during office hours. According to the Appellant, these facts render the alleged recovery doubtful and do not connect the Appellant with the alleged placement of the currency notes in the register. The relevant portion of his cross-examination has been reproduced hereunder:

> *"it is an open space where the old registers are stacked. There is no checking therefore, anybody can have access to the place at anytime during the office hours."*

17. It was also vehemently contended that the complainant himself had served as a Head Constable in Delhi Police for nearly twenty-five years, having worked in various police stations under several Sub-Inspectors and Inspectors, and therefore was well acquainted with the procedure of trap proceedings conducted by the Anti-Corruption Branch, which gave him the benefit of having a 'trained mind' with regard to the subject matter. It was contended that the complainant, being familiar with such procedures, falsely implicated the Appellant, who was merely performing clerical duties relating to receipt and dispatch of applications and had no authority either to process or issue the NOC sought by the complainant. However there was no evidence brought on record either in the form of

documentation or official records to substantiate the contention to the extent of the complainant's service record from which he would have gained such knowledge and experience. As such, this argument is brushed aside.

18. According to the Appellant, the evidence of PW-4 P.C. Verma clearly establishes that the Appellant had no role in issuing the NOC and therefore had no motive to demand any illegal gratification. It was further submitted that the prosecution has failed to establish the complete chain of circumstances necessary for sustaining a conviction under the PC Act. According to the Appellant, the law requires that the prosecution must prove demand, acceptance and recovery in a coherent and reliable manner. In the present case, the alleged demand itself is doubtful and unsupported by independent evidence. The alleged acceptance has also not been proved, and the recovery of the tainted currency notes was not effected from the possession of the Appellant. It was, therefore, contended that when the foundational fact of demand itself remains unproved, the statutory presumption under Section 20 of the Prevention of Corruption Act cannot be invoked.

19. It is further noteworthy that, even assuming for the sake of argument that the possibility of false implication is to be considered, no material has been brought on record to demonstrate any motive on the part of the complainant to falsely implicate the Appellant. The defence itself has consistently maintained that the Appellant was merely a Junior Clerk with no authority to process, approve or issue the NOC sought by the complainant. If that indeed was the position, it remains unexplained as to

why the complainant would single out the Appellant from amongst the various officials and employees present in the office and expose himself to the rigours of criminal proceedings by making a false complaint against a person who, according to the defence, was incapable of either advancing or obstructing his request. In the absence of any prior animosity, personal dispute, or other discernible reason for such false implication, the contention remains a mere suggestion unsupported by any evidence on record and does not, by itself, create a reasonable doubt regarding the prosecution's case.

20. It was lastly argued that the learned trial court erred in invoking the presumption under Section 20(1) of the Prevention of Corruption Act, 1988, and in concluding that the Appellant had demanded and obtained illegal gratification from the complainant as a motive or reward for issuing the NOC. According to the Appellant, the presumption under Section 20 arises only after the prosecution proves the foundational facts of demand and acceptance, which have not been established in the present case either through oral testimony or documentary evidence. It was therefore submitted that the impugned judgment dated 14.08.2007 suffers from serious infirmities and that the Appellant is entitled to the benefit of doubt at least.

21. In order to support the arguments, the Ld. Counsel for the Appellant has relied on the following judgments:

> *In **Neeraj Dutta v. State (Government of NCT of Delhi)** (2023) 4 SCC 731, It was held by the Hon'ble Supreme Court that proof of demand and acceptance of illegal gratification is the essential and indispensable requirement for establishing offences under Sections 7 and 13(1)(d)(i) and (ii) of the Prevention of*

Corruption Act. The prosecution must first establish, as a foundational fact, that illegal gratification was either demanded by the public servant or offered by the bribe-giver and subsequently accepted, and such fact may be proved through direct evidence or circumstantial evidence. Mere recovery of tainted money, in the absence of proof of demand or offer, is insufficient to sustain conviction. Once these foundational facts are established, a presumption under Section 20 of the Act may arise in respect of offences under Section 7, though such presumption remains rebuttable by the accused, while the presumption of fact regarding demand and acceptance may also be drawn by the court based on the evidence on record. The Court further clarified that even if the complainant turns hostile, dies, or becomes unavailable, the prosecution may still prove the demand and acceptance through other evidence, including testimony of witnesses or circumstantial material.

*In **Jagtar singh v. State of Punjab**, (2023) 19 SCC 498, It was held by the Hon'ble Supreme Court, relying upon the Constitution Bench judgment in Neeraj Dutta v. State (NCT of Delhi), that proof of demand and acceptance of illegal gratification is an indispensable requirement for sustaining conviction under the Prevention of Corruption Act, and mere recovery of tainted currency notes is not sufficient in the absence of evidence establishing demand. The Court observed that although recovery of phenolphthalein-treated currency notes may raise suspicion, such recovery by itself cannot lead to an inference of demand unless the foundational facts relating to demand and acceptance are proved either through direct or circumstantial evidence. In the present case, both the complainant and the shadow witness had turned hostile and there was no independent evidence to prove that the accused had demanded illegal gratification. The Court further noted that the High Court erred in presuming demand merely on the basis of recovery of money, particularly when the prosecution failed to establish any circumstantial chain indicating such demand. Consequently, it was reiterated that conviction under the Act cannot be sustained solely on proof of recovery without proof of demand.*

*In **State of Lokayuktha Police, Davanagere v. C.B. Nagaraj,** 2025 SCC OnLine SC 1175, It was held by the Hon'ble Supreme*

Court that for sustaining conviction under the Prevention of Corruption Act the prosecution must establish an unbroken chain consisting of demand, acceptance and recovery of illegal gratification, and mere proof of payment or recovery of money cannot by itself lead to a presumption that the amount was paid pursuant to a demand for bribe. The Court observed that where the alleged demand itself appears doubtful or suspicious, the chain of proof remains incomplete even if payment and recovery are established. It was further held that penal statutes must be strictly construed and that the presumption under Section 20 of the Act can arise only after the foundational fact of demand is proved; in the absence of such proof the statutory presumption does not operate. The Court also held that where the testimony of the complainant is inconsistent, unreliable or does not inspire confidence, the prosecution case regarding demand cannot be accepted, thereby rendering the conviction unsustainable.

In ***Ram Chander v. State (Govt. of NCT of Delhi) and Another****, 2025 SCC OnLine Del 9276, It was held by the Hon'ble Supreme Court that for establishing offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, the prosecution must prove both the demand and acceptance of illegal gratification, as proof of demand constitutes the sine qua non for securing conviction and mere recovery or possession of currency notes is insufficient in the absence of such proof. The Court reiterated that demand and acceptance may be proved through direct or circumstantial evidence, but the foundational fact of demand must be established before any inference of guilt can be drawn. It was further clarified that the expression "gratification" under Section 7 denotes a demand for illegal gratification and not merely a demand for money. Where the testimonies of the complainant, accompanying witnesses and panch witness are inconsistent or fail to support the prosecution case on the aspect of demand and acceptance, the essential ingredients of the offences remain unproved and the conviction cannot be sustained.*

22. Per contra, the learned Additional Public Prosecutor for the State supported the impugned judgment and contended that the learned Special Judge had rightly appreciated the evidence on record and had correctly

concluded that the prosecution has proved the demand and acceptance of illegal gratification beyond reasonable doubt. It has been submitted that the testimony of the complainant PW-9 Abdul Hamid clearly establishes that the Appellant had demanded a bribe of ₹1000/-, which was later reduced to ₹500/-, for issuance of the No Objection Certificate. The learned APP argued that the said testimony remained substantially unshaken during cross-examination and was sufficient to prove the factum of prior demand which led to the organisation of the trap on 23.12.1998.

23. It was further contended that the prosecution case is duly corroborated by the testimony of the panch witness PW-11 K.N. Nigam as well as the raid officer PW-12 Inspector P.S. Patwal, who have deposed regarding the trap proceedings, recovery of the tainted currency notes and the subsequent steps taken during the investigation. It was submitted that the evidence on record establishes that the complainant and the Appellant had gone towards the terrace and that the Appellant had directed the complainant to place the tainted currency notes inside a register lying on the fourth-floor terrace. According to the prosecution, the recovery of the five GC notes of ₹100/- each from the said register, whose serial numbers matched those recorded during the pre-raid proceedings, conclusively establishes the involvement of the Appellant in the transaction.

24. The learned APP further submitted that the recovery of the tainted currency notes was duly proved through the seizure memo Ex. PW-9/C, and that the wash of the paper of the register which had come into contact with the tainted notes was taken in sodium carbonate solution and seized vide memo Ex. PW-9/D. It was contended that the said wash turned pink,

thereby confirming the presence of phenolphthalein powder, and the same was further corroborated by the FSL report Ex. PW-13/C, which scientifically confirmed the presence of phenolphthalein and sodium carbonate. It was, therefore, argued that the recovery proceedings and scientific evidence lend complete assurance to the prosecution's version. It was also submitted that the evidence of PW-4 Sh. P.C. Verma, Executive Engineer, DVB, further corroborates the prosecution case to the extent that he was associated with the raiding party and was present at the time when the Register containing the tainted currency notes was recovered from the terrace. According to the prosecution, the presence of an independent officer during the recovery proceedings adds credibility to the trap proceedings and dispels the allegation that the recovery was planted or manipulated.

25. The learned APP further argued that the contention of the defence that the Appellant was not competent to issue the No Objection Certificate is legally untenable. It was submitted that even if the Appellant was not the final authority to issue the NOC, the offence under the Prevention of Corruption Act would still be made out if a public servant demanded or accepted illegal gratification by holding himself out as capable of facilitating or influencing the official act.

26. In this regard the observations by the Hon'ble Apex Court in ***Sita Soren v. Union of India***, (2024) 5 SCC 629, can be relied upon as reproduced hereunder:

> *"IV.* ***Delivery of results is irrelevant to the offence of bribery***
> *119. Another aspect that arises for consideration is the stage at which the offence of bribery crystallises. It has been urged by*

the Solicitor General that the offence is complete outside the legislature and is "independent" of the speech or the vote. Therefore, the question of privilege does not arise in the first place and the question is answered by the provisions of the Prevention of Corruption Act, 1988. Similarly, Mr Gopal Sankarnarayanan, learned Senior Counsel has submitted that the offence of bribery is complete on receipt of the bribe well before the vote is given or speech made in Parliament. It has been urged that the performance of the promise is irrelevant to the offence being made out, and hence, the distinction made in P.V. Narasimha Rao [P.V. Narasimha Rao v. CBI, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] is entirely artificial.
This extract is taken from Sita Soren v. Union of India, (2024) 5 SCC 629 : 2024 SCC OnLine SC 229 at page 709

120. Interestingly, the judgment of the majority in P.V. Narasimha Rao [P.V. Narasimha Rao v. CBI, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] did not consider this question at all. The minority judgment, on the other hand, discusses this aspect and notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. Agarwal, J. observed : (P.V. Narasimha Rao case [P.V. Narasimha Rao v. CBI, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108], SCC pp. 675-76, para 50)

> *"50. The construction placed by us on the expression "in respect of" in Article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal*

promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way."

(emphasis supplied)

121. Section 7 of the Prevention of Corruption Act, 1988 reads as follows:

*"7. **Offence relating to public servant being bribed**.—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.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, S asks a person, P to give him an amount of five thousand rupees to process his routine *ration card application on time. S is guilty of an offence under this section.*

Explanation 2.—For the purpose of this section—

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party."

(emphasis supplied)

122. Under Section 7 of the PC Act, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed. The First Explanation to the provision further strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained."

27. It was lastly contended that the learned trial court had rightly invoked the statutory presumption under Section 20(1) of the Prevention of Corruption Act, once the recovery of the tainted currency notes connected with the trap proceedings stood proved. According to the prosecution, the Appellant failed to offer any plausible explanation either in his statement under Section 313 Cr.P.C. or through defence evidence regarding the

circumstances in which the tainted currency notes came to be placed in the register on the terrace. In these circumstances, it was argued that the presumption under Section 20 of the Act squarely applied and the conviction recorded by the learned Special Judge under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 was fully justified.

28. Having considered the contentions raised by the contesting sides and after perusing the material placed on record, the inferences and findings, in addition to those dealt with in preceding paragraphs are as under:

29. White collar crime and criminals stand on a different footing as compared to the ordinary and conventional offences, as given in the Indian Penal Code. The evidence in such cases is not easily forthcoming inasmuch as the offence, like the one in hand, takes place in the close confines, in privacy and invariably there are only two persons involved i.e. the perpetrator of the crime and the victim. In such circumstances, there is practically one witness and, therefore, for the offences under P.C. Act and such like other offences, investigation takes a different path altogether in which scientific and technical apparatus is involved and attempts are made to join some independent public witness in order to give credibility to the case. The evidence brought on record by the prosecution and the contentions raised are required to be appreciated keeping in view the aforesaid circumstances and ground realities of life, situation and circumstances.

30. It has come on record that the complainant, examined as PW-9 i.e. Abdul Hamid, was an employee of Delhi Police and took Voluntary

Retirement Scheme (VRS) w.e.f. 31.05.1998. Since he was occupying an official accommodation, therefore, for his pensionary and retiral benefits, he was supposed to hand over the vacant and peaceful possession of the premises with all dues paid including water and electricity charges. In this context, he required the No Objection Certificate (NOC) or say No Due Certificate from the then electricity provider i.e. Delhi Vidyut Board (DVB). He initiated the process in this context from 31.03.1998, but till the date of the raid i.e. 23.12.1998, despite repeated visits, the requisite NOC was not forthcoming. Since he had retired w.e.f. 31.05.1998 and therefore, he was supposed to hand over the physical possession of the official accommodation within a specified time, which normally is four months extendable by another two months on normal licence fee. Thereafter, the Employer would start charging revised and higher licence fee. Since the Appellant herein was also a government servant, fully aware of this situation and that seems to be the reason why he was able to visualize the vulnerability of the complainant Abdul Hamid and sought to make some quick money. The complainant Abdul Hamid had applied for NOC on 18.09.1998, the harassment meted out to him in a way forced him to approach the Anti Corruption Branch of Delhi Police, where he lodged the complaint on 23.12.1998. A period of about 8 months and 23 days had gone in between since the day of initiation of the process and more than 3 months from, the date of application for NOC. In such circumstances, one can easily visualize that the complainant was driven to the wall and had no option but to resort to measures he had fallen back upon.

31. Apart from the complaint lodged by Abdul Hamid, examined as PW-9, his testimony is there which is indicative of the fact that he was made to run from pillar to post in order to obtain the NOC and it was not provided to him. This brought the Appellant into the picture, who demanded, as per the deposition of PW-9 Abdul Hamid, a sum of ₹1,000/-, which was later negotiated down to ₹500/-.

32. It has also come in evidence that pre raid proceedings were conducted in the presence of the complainant and panch witness. It has also come in evidence that the numbers of five currency notes of ₹100/- were noted which were treated with the phenolphthalein powder were given to the complainant. Those very currency notes were recovered from a register, which was kept on the terrace where old records were lying.

33. The contention of the learned counsel for the Appellant revolves around three essential aspects that there is no clear cut evidence of demand of bribe from the complainant, there is no evidence that the bribe was offered by the complainant and was accepted by the Appellant and that there was no recovery from the Appellant. Thus, it is emphasized that none of the essential ingredients of demand, acceptance or recovery could be established by the prosecution and, therefore, the impugned judgment is bad in law and on facts as well, and is required to be set aside.

34. However, as noted earlier also, no reason has been put forth on behalf of the Appellant as to why, if at all, he has been falsely implicated by the complainant. Why the Appellant has been chosen out of the several employees at that particular office to be falsely implicated, if he had no concern and that he was not involved in the manner as deposed by the

complainant. It is though contended on behalf of the Appellant that he was merely a Junior Clerk and was not in a position to influence the system in respect of issuance of NOC to the complainant.

35. Apart from the deposition of the complainant, the panch witness and the members of the raiding team, there are certain circumstances, which are heavily loaded against the Appellant. The Appellant, as anybody else would have, easily visualised the vulnerable position of the complainant who had taken voluntary retirement from service and was hard-pressed to hand over the official accommodation in order to avoid the penal licence fee. The NOC by the electricity provider was an integral part of that process. In such circumstances, when he failed to obtain the requisite documents and a demand was raised from him by the Appellant, he approached the ACB. There appears no reason to disbelieve him as there was no enmity between the complainant and the Appellant and no other reason or motive has been assigned to the complainant to falsely implicate the Appellant. This becomes all the more relevant when the plea of the Appellant is taken into account that he was not in a position to influence the issuance of NOC. Then in these circumstances, why the complainant would name him and allege something harming the service and reputation of the Appellant. He was not the only employee in that office as it was a full-fledged office of the Delhi Vidyut Board. In the absence of any answer coming about false implication, the complainant is required to be believed.

36. The complaint is specific together with the amount/demand specified and that very amount has been recovered from the file and those very currency notes, which were treated with the phenolphthalein powder, were

recovered as has come in evidence. Again, there is no answer with the Appellant as to in what context, the complainant met him on 23.12.1998 and for what reason, the Appellant took the complainant on the fourth floor terrace from his first floor office. It is not the case of the Appellant that he had gone to the terrace where the old records were lying to fetch some record in respect of the NOC of the Appellant. Again, there is no answer with the Appellant as to why the panch witness was asked to stay back and was asked not to follow them to the terrace. It has come in the testimony of PW-4 P.C. Verma, in whose presence seizure memo of the register Ex. PW4/A was prepared that on the terrace, only old and discarded records were lying, no branch or office/sub-office of the DVB was there on the terrace. Therefore, there appears no reason with the Appellant to take the complainant to the terrace from where the bribe money was recovered, lying in the register, purportedly kept there at the instance of the Appellant.

37. The contention on behalf of the Appellant that there was no hindrance to anyone from going to the terrace and, therefore, it cannot be presumed that the currency notes recovered from the register, was kept there at the instance of the Appellant or was construed to be in his possession. However, there has to be a cogent answer as to how come the place i.e. the terrace which has no office or branch except old records, was visited by the complainant and the Appellant together. The recovery of the currency notes, in the register, immediately after their visit, lends credence to the case of the prosecution and the testimony of the complainant. Merely saying that it was accessible to all and sundry, is not enough to save the Appellant. It rather goes against the Appellant, when the entire facts and

circumstances are visualised. The office/cabin/room of the Appellant is at the first floor where the complainant had gone to meet him. If there was nothing to hide or nothing wrong was to be done, then the Appellant would not have not asked the complainant to follow him to the terrace. Whatever was to be talked, could have been talked there at the first floor office of the Appellant. Then the panch witness was consciously asked not to follow. The Appellant was fully aware that terrace was the least visited place of the office, where privacy is there, giving room for him to accept the bribe. He seems to be smart enough not to touch the currency notes and asked the complainant to put those notes into the register. But the circumstances unequivocally and conclusively points out that it was all at his instance. Thus, the constructive as well as the conscious possession of the currency notes, can very well be attributed to him.

38. Possession is a state of mind, where it is not necessary that the physical possession should be there with a person. There are certain things which one may not possess physically like putting a currency note in his pocket, but then it is still assumed and considered to be in possession, for example: a large vehicle may be standing stationary on a public road, but that does not mean that the possession is with somebody else. The possession still remains with the person who owns it and holds the keys, etc. On these parameters, the possession of the currency notes has been rightly attributed to the Appellant by the learned Trial Court despite the fact that it was not recovered directly from his person.

39. Learned counsel for the Appellant has also contended that there is no evidence of demand and acceptance. Again the inference, on conjoint

reading of the evidence led by the prosecution, leads towards only one conclusion that what has been deposed by the complainant about the demand, and tacit an implied acceptance followed by recovery, leaves no doubt about the complicity of the Appellant in not only demanding but accepting the bribe, as well. Though, the Appellant was very strategic in planning and executing his escape route. However, that escape route gets choked and does not allow him to scrape through the allegations in view of the evidence lead on behalf of the prosecution.

40. The reliance placed by the Appellant on *Neeraj Dutta (supra)* is misplaced in so far as it is a settled position in law that the proof of demand and acceptance of illegal gratification is a sine qua non for sustaining conviction under Sections 7 and 13(1)(d) of the Prevention of Corruption Act. However, the Constitution Bench has itself clarified that such facts may be proved not only by direct evidence but also through circumstantial evidence and that a court is competent and well within its powers to draw an inference from what is brought on evidence and proved on record.

41. In the present case at hand, the prosecution does not rest merely on recovery of tainted currency notes rather after thorough perusal and appreciation of the evidence on record, it can be established that the Appellant separated the complainant from the panch witness and took him to the terrace where no office work was being carried out and the tainted currency notes were recovered, immediately thereafter from the very place to which the Appellant had taken the complainant, and no plausible explanation has been put forth by the Appellant with regards to these circumstances which have played a role in establishing a chain of events.

Thus, the present case is not one where conviction rests upon direct evidence i.e. the recovery of the tainted notes but upon a complete chain of circumstances from which demand and acceptance can legitimately be inferred in terms of the principles recognised in *Neeraj Dutta (supra)*.

42. The decision in *Jagtar Singh* (*supra)* is clearly distinguishable on facts. In that case, both the complainant and the shadow witness had turned hostile and the trial court had itself recorded a finding that there was no evidence proving demand. The Hon'ble Supreme Court found that the High Court had presumed demand solely from recovery of tainted currency notes. In the present case in hand however, the complainant has remained consistent to the case of the prosecution regarding the demand made by the Appellant. The recovery of the tainted currency notes is not the sole evidence relied upon by the prosecution. The conduct of the Appellant in taking the complainant away from his office to the terrace, directing the panch witness to remain behind, and the immediate recovery of the tainted notes from the very location visited by the Appellant and the complainant constitute significant incriminating circumstances which furnish independent corroboration to the complainant's version. Therefore this judgment, does not advance the Appellant's cause.

43. The judgment in State of *Lokayuktha Police* (*supra)* relied upon by the Appellant also does not assist the Appellant. In that case, the Supreme Court found the initial demand itself to be doubtful and further held that the complainant's testimony was unreliable and did not inspire confidence. It was in those peculiar circumstances that the Court held that recovery and payment alone could not complete the chain required for conviction. In the

present case, the testimony of the complainant has not been found unreliable. On the contrary, it has remained consistent on the point of demand and the circumstances that followed thereafter. There is no material contradiction that creates any reasonable doubt in the prosecution's case. The Appellant has also failed to establish any circumstance suggesting false implication as can be seen from the record that the complainant had no reason or prior motive to falsely implicate the Appellant especially when the Appellant himself has admitted that it was not within his official capacity to issue the NOC. Consequently, the foundational fact of demand cannot be said to be doubtful. The factual background upon which the said decision was made is therefore absent in the present case.

44. The reliance on *Ram Chander (supra)* is equally misplaced for the Appellant. The said decision merely reiterates the settled principle that demand and acceptance are essential ingredients of offences under Sections 7 and 13 of the PC Act and that mere recovery of tainted money is insufficient. Again, the present case in hand does not involve a conviction founded solely upon recovery. The evidence of the complainant regarding the demand, coupled with the conduct of the Appellant in taking the complainant to the spot of recovery, away from the panch witness, constitute a very unusual type of behaviour especially for someone who allegedly had nothing to hide. Furthermore, when this type of behaviour can be and has been proved on record then the only inference that can be drawn by following the chain of events is that the demand and acceptance of illegal gratification stands proved beyond reasonable doubt.

Consequently, the said decision in *Ram Chander (supra)* is of no assistance to the Appellant.

45. In view of these facts and circumstances, the judgments discussed above which have been relied upon by the learned counsel for the Appellant are not going to come to the rescue of the Appellant. The facts of the instant case are such which do not attract the judgments as discussed. As a result, the impugned judgment is upheld.

46. On the aspect of sentence, nothing has been argued and in any case, the sentence awarded to the Appellant appears already commensurate to what has been done. Learned Special Judge has considered all the aspects and took a lenient view as noted in the order on sentence. The Appellant shall, however, be entitled to the benefit of set off under Section 428 Cr.P.C.

47. As a result, the appeal together with application(s), if any, stands dismissed. Appellant to surrender forthwith to undergo the remaining sentence.

48. Copy of the judgment be transmitted to the learned Trial Court and Prison Authorities for information and necessary compliance.

VIMAL KUMAR YADAV, J.

JULY 14, 2026/*akc/ij*