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

% ***Judgment Reserved on: 22.01.2026***
Judgment pronounced on: 28.01.2026

\+ CRL.A. 567/2001

BALDEV SINGH .....Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Riya Kumar, Advocate.

versus

C.B.I. .....Respondent

Through: Ms. Avshreya Pratap Singh Rudy, CGSC with Mr. Ankit Khatri, Ms. Usha Jamnal and Ms. Nyasa Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, (the Cr.P.C.) the sole accused, in C.C. No. 72/99 on the file of the Special Judge, Tis Hazari Court, Delhi, assails the judgment dated 02.08.2001 and order on sentence dated 03.08.2001 as per which he has been convicted and sentenced for the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the PC Act).

2. The prosecution case is that the accused, while posted as

Assistant Sub Inspector (ASI) at Police Post Shakur Basti, on 08.11.1995 demanded illegal gratification of₹ 10000/- from PW1 for not harassing him in connection with the complaints initiated at the instance of the latter's brother and, on 09.11.95actually received ₹ 5000/-.

3. Sanction for prosecution was accorded by PW2, Deputy Commissioner of Police (North-West District), Delhi, *vide* Ext. PW2/A order dated 18.04.1996.

4. Crime no.98(A) 95-DLI, that is, Ext.PW7/A FIR, was registered on the basis of PW1/A complaint of PW1.After completion of investigation by PW8, a charge-sheet was filed against the appellant alleging the commission of the offences punishable under Sections 7 and Section 13(2) read with Section 13 (1)(d) of the PC Act.

5. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. After hearing both sides,

the trial court *vide* order dated 19.02.1998, framed a charge under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act and also under Section 384 of the Indian Penal Code, 1860, (the IPC), which was read over and explained to the accused, to which he pleaded not guilty.

6. On behalf of the prosecution, PWs. 1 to 8 were examined and Exts. PW1/A-D, PW2/A, PW3/A, PW3/A, PW4/A-D, PW5/A, PW6/A, PW7/A and PW8/A were marked in support of the case.

7. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he has been falsely implicated in this case as PW1 had a grudge against him. He stated that he had gone to '*Standard Sweet Shop'* to meet PW1an acquaintance, but he neither demanded nor accepted any money. According to him, it was one Sanjay Yadav, the companion of

PW1, who tried to thrust money into his pocket which he resisted, and as a result thereof, the currency notes fell down on the ground and his scooter also fell down in the process. Immediately, he was surrounded by the CBI officials, who falsely implicated him in this case.

8. After questioning the accused under Section. 313 Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr. PC has caused any prejudice to him.

9. On behalf of the accused, DWs. 1 to 5 were examined and Ext. DW3/A was marked in support of his defense.

10. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court *vide* the impugned judgment dated 02.08.2001 held the accused guilty of the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the PC Act. *Vide* order on sentence dated 03.08.2001, the appellant has been sentenced to undergo rigorous imprisonment for a period of two and half years with fine of ₹10,000/-, and in default of payment of fine, to undergo simple imprisonment for two months for the offence punishable under Section 7 of the PC Act, and to rigorous imprisonment for one and half years with fine of ₹5,000/-, and in default of payment of fine, to undergo simple imprisonment for two months for the offence punishable under Section 13(2) read with Section 13(1)(d) of the PC Act. He has been acquitted of the charge under Section 384 IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

11. The learned senior counsel for the appellant submitted

that the conviction is vitiated for want of proof of demand, which is *sine qua non* for the offences punishable under Sections 7 and 13 of the PC Act. It was argued that PW1 gave materially contradictory versions regarding the amount, date, and place of the initial demand. In examination-in-chief, PW1 stated that ₹20,000/- was demanded at '*Standard Sweet Shop*' in the 10th or 11th month of 1995, whereas in cross-examination he stated that ₹10,000/- was demanded at his Health Centre on 08.11.1995, later correcting the amount as ₹20,000/-. PW1 further deposed that he did not recollect whether the initial demand was made on 08.11.1995 or whether such demand was mentioned in his complaint or in his statement to the police. These contradictions, it was submitted, strike at the root of the prosecution case. Reliance was placed on ***Subhash Parbat Sonvane v. State of Gujarat;*** **JT 2002(4) SC 348** to contend that in the absence of clear proof of demand, conviction cannot be sustained.

11.1 It was further submitted that the alleged demand on the

day of the trap has also not been proved beyond reasonable doubt. Apart from the bare assertion of PW1, there is no independent corroboration of the alleged telephonic call directing him to '*Standard Sweet Shop'* with money. PW5, the shadow witness, though present with PW1 merely stated that the latter spoke to someone on the phone and could not confirm that the appellant made the call or demanded money. It was argued that this assumes significance as the prosecution relies upon the telephonic call to explain the change of venue for the trap. Further, the versions of PW1 and PW5 regarding the events at '*Standard Sweet Shop*' are mutually inconsistent. While PW1 stated that he and PW5 waited at the gate and the appellant arrived thereafter, PW5 stated that they had already gone upstairs and that the appellant was brought upstairs by PW1's companion. PW1 also contradicted himself by stating at one stage that a conversation regarding money took place upstairs and at another stage that no demand was made there.

11.2 The learned Senior Counsel next submitted

that acceptance of illegal gratification has not been not proved. Even according to PW5, the appellant never accepted money either upstairs or while sitting on his scooter. PW5 stated that PW1 attempted to pass money to the appellant through his companion upstairs, but the appellant declined it. It was further submitted that recovery of money is doubtful. PW4 stated that when he reached the spot, there was grappling between the appellant and Sanjay Yadav, the scooter of the appellant/accused was lying on the ground, and the currency notes were already on the road.PW4 denied that the appellant/accused took the notes out of his jacket and threw them on the ground. PW6 testified that the scuffle and recovery took place about 15–20 shops away from the place of the alleged meeting. Reliance was also placed on the dictum of **Suraj Mal v. State;** ***(1979) 4 SCC 725*** and **Smt. Meena w/o Balwant Hemke v. State of Maharashtra; (2000) 5 SCC 21**.

11.3 It was lastly submitted that the prosecution case is further weakened by the non-examination of Sanjay Yadav, PW1's

companion, who was admittedly present throughout and played a crucial role in the alleged incident, including the scuffle and recovery. Failure to examine this material witness, it was argued, warrants an adverse inference. On the issue of sanction, PW2 admitted that he had not brought the sanction file and it is unclear as to what material was placed before him, while DW5 stated that the sanction file was not traceable. In the absence of proof of application of mind, the sanction is vitiated, as held in **Mohd. Iqbal Ahmad v. State of A.P.; 1979 4 SCC 172** and **Jaswant Singh v. State of Punjab**; **AIR 1958 SC 124**. It was also submitted that PW1 has criminal antecedents and had a motive to falsely implicate the appellant/accused, as the latter had earlier taken preventive action against the former under Section 107 and Section 151 of the Cr.P.C. Yet, another argument that was raised was that there is no link evidence to prove the prosecution case. Evidence is lacking as to how and where the seized currency notes were kept in the station or in whose custody the same was or the

manner in which it was kept in the station. It was also pointed out that there has been an inordinate delay in sending the material objects to the FSL for examination, which delay has also not been explained.

12. *Per contra*, it was submitted by the learned Special Public Prosecutor for the respondent/CBI that the essential ingredients of demand and acceptance of illegal gratification stand established primarily through the testimony of the PW1, which is duly corroborated by PW7, a member of the trap team. It was argued that minor discrepancies regarding the quantum of the initial demand do not affect the substratum of the prosecution case, particularly when the testimony was recorded after a considerable lapse of time. The learned prosecutor submitted that the law does not require corroboration of the complainant's testimony as a matter of rule and that the complainant in a trap case is not an accomplice. Reliance was placed on the dictum of **C.M. Sharma v. State of A.P.; (2010) 15 SCC 1**, wherein it was held by the

Apex Court that if the complainant's testimony is found reliable, it can form the sole basis of conviction. It was submitted that, even if the *panch* witnesses have turned hostile on certain aspects, their entire testimony does not become unreliable or unusable. PW4 and PW5 admitted several material facts including the laying of the trap, the presence of the appellant at the spot, the recovery of tainted currency notes, and the conduct of post-trap proceedings. In this regard, reliance was placed on **S.C. Goel v. State; (2016) 13 SCC 258**, wherein it was held that the evidence of a hostile witness can be relied upon to the extent it supports the prosecution case.

12.1 The learned prosecutor further submitted that the phenolphthalein test results, which were positive in respect of the hand as well as the jacket pocket of the appellant, stand conclusively proved through the testimony of PW3, the CFSL expert, fully corroborate the prosecution case regarding acceptance of illegal gratification. It was argued that the site plan

demonstrates that PW7 was positioned close enough to hear the demand being made, and his testimony is reliable and inspires confidence, there being no suggestion of prior animosity or motive for false implication. On the issue of sanction for prosecution, it was submitted that PW2, the sanctioning authority, categorically deposed that he had perused the relevant material before according sanction, and once such application of mind is stated on oath, the legal requirement stands satisfied, as held in **Prakash Singh Badal v. State of Punjab; (2007) 1 SCC 1**. It was further contended that the recovery memo, search memo, site plan, and *panchnamas* have been duly proved and corroborated by the prosecution witnesses. *Panchnamas* constitute corroborative evidence under Section 157 of the Indian Evidence Act, as held in **Yakub Abdul Razak Memon v. State of Maharashtra; (2013) 13 SCC 1**. There is no infirmity in the impugned judgement, calling for an interference by this court, argued the prosecutor.

13. Heard both sides and perused records.

14. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgement calling for an interference by this court.

15. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. The initial demand in this case is alleged to have taken place on 08.11.1995 and the trap laid on 09.11.1995. PW1 submitted a written complaint, that is, Exhibit PW1/A on 09.11.1995 in the office of the CBI in which he has stated thus: - He is engaged in the business of sale and purchase of motor car and is also the owner of a Health Center named 'Kapil Body Temple'. The appellant/accused, ASI, posted at Police Post Shakur Basti, Saraswati Vihar Police Station, at the behest of his elder brother, Tara Chand, constantly threatened and harassed him for no reason. On 14.07.1995, at the request of Tara Chand, the appellant/accused detained PW1 and his coach in a false case. On 08.11.1995 at approximately 7:00 PM, the appellant/accused came to his Health Centre (Kapil Body Temple)

and threatened him stating that if he did not pay ₹10,000/- as bribe by 09.11.1995 between 06:00 PM and 08:00 PM, the former would register four or five cases against the latter and label him a "*B.C.*" (Bad Character/History Sheeter). Upon PW1 expressing his inability to pay, the appellant agreed to take ₹5,000/- on 09.11.1995 and stated that the remaining ₹ 5,000/- should be paid later. According to PW1, he is a law-abiding citizen (……..प्रार्थी एक अच्छा नागरिक है……..) and that he does not wish to pay bribe, and therefore sought necessary legal action against the appellant.

15.1 PW1, when examined before the trial court, deposed that his relations with his brother Tara Chand was strained. In July 1995, on the complaint of his brother, the appellant/accused arrested him and his coach under Section 107 and Section 151 Cr.P.C. They were released by the ACP after two or three hearings. According to PW1, even thereafter the appellant/accused continued to visit his Health Centre along with constables and threatened to put him behind bars. In the 10th or 11th month of

1995, the appellant/accused called him to '*Standard Sweet Shop*', Rani Bagh and demanded ₹20,000/- as illegal gratification, which was reduced to ₹5,000/- upon his expressing inability. At this juncture, the prosecutor is seen to have sought permission to "cross-examine" PW1 on the ground that he had resiled from the statement made to the CBI. The request was allowed and on being further examined by the prosecutor, admitted that on 08.11.1995 the appellant/accused visited his Health Centre in the evening and demanded that ₹10,000/- be paid on 09.11.1995 between 6:00 PM and 8:00 PM, failing which he would be implicated in false cases. PW1, then corrected himself by stating that the demand was for ₹20,000/- and not ₹10,000/-.PW1 further deposed that he could neither admit nor deny whether the initial demand was made on 08.11.1995 as he was unable to recall the date. He cannot recollect whether his statement had been recorded by the CBI during investigation. PW1 deposed that he could not admit or deny whether he had stated to the CBI that on 08.11.1995 the

appellant/accused had visited his Health Centre and demanded ₹10,000/- to be paid on 09.11.1995. He further deposed that he had told the appellant/accused that as he was not that well off, he was unable to pay the amount demanded and had suggested to the latter that he would make an initial payment of ₹ 5,000/-, which was agreed to by the latter. PW1 also deposed that the appellant/accused had told him that the latter would come to his Health Centre on 09.11.1995 between 06:00 PM and 08:00 PM or he would intimate the place on telephone. In the morning of 09.11.1995, he went to the office of the CBI around 10:00 or 11:00 AM and submitted his written complaint, Ex. PW1/A.

15.2 PW1 also deposed regarding the manner in which the trap was arranged and the officers involved in it. He further deposed that the trap party left the office of the CBI at about 5:00 PM and reached Rani Bagh after about 1 ½ hours. They went to his Health Centre and waited. Then, a telephone call was received from the appellant/accused who directed him to be at '*Standard*

Sweet Shop', Rani Bagh with the demanded amount. Pursuant to the call, he along with the members of the trap team left for the sweet shop. On reaching the shop, he and PW5 stood at the door of the shop. At about 7:05 PM, the appellant arrived on his scooter. As directed by the appellant/accused, they went upstairs and sat at a table. The other members of the trap team also took their respective positions. The appellant/accused asked him whether the full amount had been brought, he answered in the affirmative. The appellant told him that the remaining amount should be paid within two days and assured him that there would be no trouble thereafter. According to PW1, as directed by the appellant/accused they came downstairs, the appellant sat on his scooter, started it and asked for the money. PW1 then handed over the currency notes, which the appellant accepted with his left hand and put it in the left pocket of his jacket, whereupon PW5 gave signal to the CBI team. PW7, a member of the trap team caught hold of the appellant's left wrist. The appellant then took out the currency notes from his jacket with

his right hand and threw them on the road. CBI official, Rajbir Singh then caught the accused. The officer disclosed his identity. The appellant/accused remained silent for some time and then said that he may be pardoned for the wrong done by him. PW1 further deposed regarding the formalities that were complied with by the CBI team thereafter, including the fact that the carbonate solution turned pink when the appellant/accused was made to dip his left hand in the same. The inner lining of the pocket of the garment worn by the appellant/accused also turned pink on being dipped in the solution.

15.3 PW1 further deposed that he does not recall whether he had stated in his complaint that the demand was for ₹20000. He admitted that his statement that the accused on 09.11.1995 had visited his Health Centre between 6:00 PM to 8:00PM and had demanded an amount of ₹10000/- to ₹20000/- is incorrect. According to PW1, as a matter of fact, the appellant/accused had come to his Health Centre on 08.11.1995.However, he does not

remember the time at which the accused had come to his Health Centre. But, he had come during the evening hours.

16. In the cross-examination, PW1 denied the suggestion that the accused was sitting with the owner of the shop namely, PW6 on the relevant day. PW1 deposed that he does not know if Sanjay Yadav was the devar of his niece.PW1 denied the presence of Sanjay Yadav on the date of the incident. He further deposed that while he and the accused were sitting at a table inside the sweet shop, he did not offer money to the accused and that the accused had not demanded the money at that time. He denied the suggestion that the accused had never demanded the money while sitting on the scooter. He further denied the suggestion that he had thrust the currency notes in the left pocket of the jacket of the accused. He also denied the suggestion that the accused had questioned his act and had thereafter had thrown the notes on the ground. He admitted that when the accused was apprehended, many persons had gathered there. He also denied the suggestion

that the accused had in fact, informed the CBI officials that he had forcibly thrust the notes in the pocket of the accused and in protest, the latter had taken out the notes and thrown the same on the ground.

17. PW2, the then DCP, (North-West district, Delhi), deposed that he had accorded sanction for prosecution, *vide* Ext. PW2/A order and that before according sanction, he had perused the materials particularly, the seizure memo as well as the 161 statements of the witnesses. In the cross examination, PW2 admitted that he could not recall whether he had received a written request from the CBI for sanction; that he cannot recall whether a draft sanction order had been placed before him; that he had not mentioned the date on the sanction order due to inadvertence and that he does not recollect the names of the witnesses whose statements he had considered before sanction was granted.

18. PW3 deposed that on 07.06.1996, he had received three sealed bottles with the seals of the CBI intact and that the official

specimen was enclosed along with a forwarding letter from the SP, CBI, ACB New Delhi, which was received at the office of the CFSL. The contents of all the three bottles were chemically analysed in the laboratory and on analysis exhibit marked RHW, LHW and LJPW gave positive test for phenolphthalein and sodium carbonate. PW3 deposed that Ext. PW3/A is the report prepared by him. The worksheet was prepared at the time of analysis of the exhibits in the case. The writings in the worksheet are in the handwriting of his assistant who had taken down the same on his dictation. He denied the suggestion that the chemical analysis was not done under his direct supervision and that he had signed the worksheet without any supervision whatsoever.

19. PW4, Superintendent, (Vigilance NDMC, Palika Kendra New Delhi) deposed that on 09.11.1995, he along with PW5 went to the office of the CBI as directed by the Director(Vigilance). At the office of the CBI, he was introduced to PW1 and Ext. PW1/A complaint was shown to them. One Sanjay Kumar Yadav was also

present along with PW1. After ascertaining the genuineness of the complaint, they made arrangements for the trap. PW5 was directed to act as a shadow witness and remain with PW1 and also directed to overhear the conversation between the accused and PW1. PW5 was also directed to give signal by scratching his head as soon as the transaction was completed. At about 5:00 PM, they left the office of the CBI and reached the Health Centre of PW1. Then Sanjay Yadav telephoned somebody which he could not hear. From the Health Centre, they left for the sweet shop at Rani Bagh. After reaching there, PW1, PW5 and Sanjay Yadav went inside the shop at which time he stood in front of the shop. The other members of the team took suitable positions in the shop. PW1, PW5 and Sanjay Yadav was present in the shop for about 30 minutes. Thereafter, PW5 came out and informed the team that the accused had not taken the money from PW1. At this juncture, the prosecutor sought the permission of the Court to 'cross examine' him as he was suppressing the truth, which request is seen allowed

by the trial court. On further examination by the prosecutor, PW4 deposed that he had been told by the CBI officers that the presence of Sanjay Yadav would not be shown in the records and that he will have to cooperate with them to the said extent. He admitted that PW1 had informed them that the accused had called him to *Standard Sweet Shop* with the money. He also admitted that PW1 and PW5 had been directed to stand outside the sweet shop and that the other members of the team had taken suitable positions. PW4 further deposed that he had not seen the said three persons going inside the sweet shop, but thereafter he deposed that he had seen PW1, PW5 and the accused going inside the sweet shop. About 15 to 20 minutes thereafter, he saw PW1, PW5 and the accused coming outside the sweet shop. According to him, PW1 and PW5 were not there, when the accused sat on his scooter and started the same. According to PW4, as a matter of fact, PW1 and the *panch* witness (PW5) came to them and told that the accused had not accepted the money. He further deposed that PW5 had not

given any signal. PW1 and the *panch* witness informed the Inspector, CBI and team that the trap had not materialised, and so the CBI officials asked the members to return. At this time, the appellant/accused started his scooter and Sanjay Yadav sat on the back seat. Thereafter, they heard a commotion. When they went and looked, they saw Sanjay Yadav and the accused grappling and the scooter of the accused was lying on the ground. When the accused was apprehended, he noticed that the currency notes were lying on the ground. He denied the suggestion that on receipt of signal, the trap party had reached near the scooter of the accused and the accused had been apprehended with the currency notes. PW4 admitted that he had picked up the currency notes from the ground. However, he denied the suggestion that the left hand of the accused was held by Sub Inspector Alok Kumar (PW7) when the accused had taken out the notes from his jacket pocket and threw it on the ground. He also denied the suggestion that when the accused was challenged by the trap team, the accused had begged

pardon. PW4 further admitted that the left hand of the accused when dipped in the solution of sodium carbonate had turned pink. He also admitted that when the pocket of the jacket of the accused was dipped in the solution, the same had also turned pink.

20. In the cross examination, PW4 deposed that PW6 was present at the time of the post raid proceedings.

21. PW5, Superintendent (Vigilance), NDMC New Delhi deposed that he was also in the trap team and that he had been directed to remain with PW1 with the direction to overhear the conversation between PW1 and the accused. On reaching Rani Bagh, they went to the Health Centre of PW1. PW1 was talking to somebody on the telephone. From the Health Centre of PW1, they went to the sweet shop. PW5 further deposed that they had proceeded to the sweet shop because PW1 told them that the accused had directed him to go to the said shop. On reaching the shop, they went upstairs. He took a seat on one of the tables while PW1 and his companions took their seats on the adjacent table.

While he was taking coffee, PW1 probably might have gone downstairs. After a few minutes, PW1 came upstairs along with the accused. They sat on the table where PW1 was sitting. While they were talking, he heard PW1 telling the accused that he was being harassed by the police. Then the accused assured him that there will be no further trouble, at which time, PW1 took out currency notes from his pocket and tried to give it to the accused through his companion. However, the same was not accepted by the accused as the latter was facing him. After that PW1, his companion and the accused went downstairs and so he followed them. After coming down, the accused started his scooter and then the companion of PW1 sat on the pillion seat of the scooter. The accused started his scooter and moved for about a distance of about 15 to 20 shops. He thought that the trap would not succeed. Then he heard –'*Pakad Liya Pakad Liya*'. When he rushed to the spot, he saw that notes were lying on the ground and the accused being arrested. At this juncture, the prosecutor sought the

permission of the court to 'cross examine' which request was allowed by the trial court.

21.1 On further examination, PW5 admitted that when he entered the office, he heard PW 1 talking to someone on the telephone. PW1 told him that it was accused on the phone and that he should reach the sweet shop with the money. He denied the suggestion that on reaching the sweet shop he and PW 1 had been directed to stand at the door of the shop, but he admitted that some of the members of the trap team had taken positions around. PW 5 denied that the accused had arrived at the shop at about 7 PM on his two-wheeler. He denied having made such a statement to the Investigating Officer. He denied the suggestion that the accused was received by PW1 at the entrance of the shop; that they had exchanged greetings and then as directed by the accused, had gone upstairs. According to PW 5,these conversation did not take place in his presence. PW 5 further deposed that inside the shop he did not hear any talk about the money between the accused and PW 1.

He only heard PW1 saying that he was being harassed by the police and the accused saying – '*Chinta mat karo*'. He also denied having stated to the police that he had seen PW 1 handing over ₹ 5000 to the accused, who in turn had accepted the same and put it in the left pocket of his jacket. He also denied having given any signal to the raiding team. PW5 admitted that PW 4 *panch* witness, had picked up the notes from the ground. He denied the suggestion that he had been won over by the accused and hence the reason why he had become hostile to the prosecution case.

22. PW6, Proprietor, '*Standard Sweet Shop'*, deposed that on 09.11.1995 PW 1 along with 5 to 6 persons had come to his shop and later the appellant also arrived. He observed that something was being offered to the appellant by PW 1, but the appellant refusing it. PW6 denied that the appellant was arrested at or in front of his shop. According to him, Sanjay Yadav, the companion of PW1 was offering something to the accused and the latter refused to accept it. At this juncture, the prosecutor sought the

permission of the court for 'cross examining' the witness which request was allowed by the trial court. On further examination, PW6 denied the suggestion that he had stated to the CBI that the accused had accepted the bribe from PW 1 in front of his shop. During cross examination PW6 deposed that on hearing a commotion outside his shop about 15 to 20 shops away, he saw currency notes on the ground and Sanjay Yadav grappling with the appellant. While the appellant was protesting, money was being put into his pocket. PW6 admitted that when the CBI officials brought the accused into the shop and wanted to do some paperwork inside his shop, he protested to the same on the ground that his business was being affected. But the CBI officials threatened him that he would also be implicated if he refused permission and so he kept silent.

23. PW7, Sub-Inspector Anti-corruption, Delhi, another member of the trap team supported the prosecution case. In the cross examination, PW7 deposed that he does not recollect the

name of the person who had brought the chemical powder from the malkhana or the person who had taken back the residue powder of phenolphthalein and deposited the same in the malkhana.

24. Finally, PW8, the Investigating Officer, in this case deposed regarding the various steps taken by him during the course of investigation.

25. Now coming to the defence evidence. DW1, Constable, Police Post, Rani Bagh, deposed that on 09.11.1995 he was on duty as Rojnamcha munshi (duty officer) from 8:00AM to 8:00PM. At about 6.30 PM, he received a telephone call from one Ashok Yadav of Kapil body temple (PW1) enquiring about the appellant. He informed the caller that the appellant was not present in the police post and that he had gone to '*Standard Sweet Shop'* to meet his friend Niranjan Singh Chawla (PW 6).

26. DW2 produced a copy of crime no. 57/98, that is, Ext. DW 2/A alleging the commission of offences punishable under Section 308, 324 and 34 IPC against Ashok Yadav (PW 1) and two

others. In the cross examination, DW2 deposed that the aforesaid crime had been investigated by SI Sanjeev Kumar and subsequently by SI Rajesh Kumar.

27. DW3 produced a copy of crime no.748/92 alleging commission of offences under Sections 506, 323 read with Section 34 against Ashok Kumar Yadav (PW1) which was marked as Ext. DW3/A. In the cross examination, DW3 deposed that the accused in the said case had been acquitted.

28. DW4 deposed that that he was unable to produce the file relating to file relating to the proceedings by which the officer concerned had granted sanction for prosecution of the accused. According to him, the file was not in his custody.

29. DW5 deposed that the file relating to grant of sanction was not traceable.

30. I will first deal with the argument advanced by the learned Senior counsel for the appellant/accused that that the sanction order is defective/invalid. In **Jaswant Singh v. State of**

Punjab, AIR 1958 SC 124, relied on, it has been held that it should be clear from the Form of the sanction that the sanctioning authority considered the evidence before it and after consideration of all the circumstances of the case sanctioned the prosecution. Therefore, unless the matter can be proved by other evidence, the sanction itself should refer or indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case.

31. In this case, PW2 has quite categorically deposed that he had gone through the seizure memo as well as the Section 161 statements of the witnesses before the sanction order was issued. PW2's testimony has not been discredited in any way and therefore, I do not find any reasons to disbelieve his version. Hence, the argument that the sanction order is not valid cannot be accepted.

32. It is true as pointed out by the learned Senior counsel that there are certain inconsistencies in the statement of the prosecution

witnesses. I have already referred to their testimony in detail. However, a whole reading of the entire materials on record would only show that the inconsistencies are minor and not quite material and they have not affected the core prosecution case. I conclude so, because coupled with the evidence of the prosecution, the appellant/ accused admits that he was at the sweet shop at the relevant time. DW1, one of the witnesses of the accused, seems to be more loyal than the king. According to the accused, he went to the said shop to meet PW1 as the latter is an acquittance. But DW1 went one step ahead and put forward a case that even the appellant/accused does not have. According to DW1, the appellant/accused had gone to the said sweet shop to meet PW6. Neither the accused nor PW6, who is partially hostile to the prosecution has such a case. Why did the appellant/accused go to meet PW1 at a private place? No explanation is forth coming on this aspect. Admittedly PW 1 had criminal antecedents as two crimes had been registered against him. In such circumstances,

what was the necessity for the appellant/accused to go and meet him at a private place? This coupled with the remaining evidence on record clearly establishes the prosecution case. Though PW 4 and 5, the *panch* witnesses, are partially hostile, they have admitted certain material aspects of the prosecution case to which also I have already referred. Merely, because the witnesses are partially hostile is no ground to reject their entire testimony. It is settled that the testimony of hostile witnesses can be looked into to the extent it supports the prosecution case, provided the same is credible. (**Mohan Lal v. State of Punjab; AIR 2013 SC 2408, Ramesh Harijan v. State of U.P.; AIR 2012 SC 1979, Prithi v. State of Haryana; 2010 8 (SCC) 536, Lella Srinivasa Rao v. State of A.P.; AIR 2004 SC 1720, Koli Lakhmanbhai Chanabhai v. State of Gujarat; AIR 2000 SC 210**).

33. It is true that no materials have come on record as to how, when and in what manner the material objects were preserved or the person in whose custody the same were till they were sent to

the laboratory for examination. It is also true that there has been delay in forwarding the material objects for examination. It is settled that mere delay is no reason to disbelieve or discard the entire prosecution case, unless materials come on record to doubt the prosecution case. The appellant/accused during the trial, never had a case that the material had objects had been tampered with or that they were not kept safely till it reached the laboratory. WhenPW8 the Investigating Officer was examined, this aspect is not seen challenged. Therefore, though there is delay in the material objects reaching the laboratory, in the light of the remaining materials on record, which evidence has not been discredited in any way, I find that the delay has not adversely affected the prosecution case.

34. The materials on record coupled with the conduct of the accused in being personally present at the aforesaid sweet shop in the company of PW1, for which explanation whatsoever has been given by him, clearly establishes the prosecution version and

therefore, I do not find any infirmity in the impugned judgment calling for an interference by this Court.

35. Before I conclude, I would like to refer to certain procedure that has been followed by the trial court which does not appear to be correct. The learned Senior Counsel for the appellant/accused during the course of arguments referred to certain '*contradictions and omissions'* brought out in the testimony of PW1. I refer to one among the few to which my attention was drawn to and the same reads -

> *"……I cannot admit or deny if I stated to Inspector Surinder Kumar Bhati that on 8.11.95 ASI Baldev Singh visited my health centre and told me to pay bribe of Rs. 10,000/- on 9.11.95 in between 6.00 to 8.00 PM. (Witness is confronted with portion A to A of his alleged statement mark. A, where it is so recorded)……."*

When this was pointed out, this Court asked the learned counsel whether the procedure for proving a contradiction has been followed and as to whether the Investigating Officer was

asked about the same. The learned Senior Counsel submitted that the same was unnecessary and that the procedure contemplated under the second part of Section 145 of the Evidence Act has been complied with and therefore, the contradiction stands proved. I disagree.

36. The statements made under Section 161 are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to Section 162 (1) Cr.P.C. Under the proviso to Section 162 (1) Cr.P.C., such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145 of the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in Court. (See **Tahsildar Singh v. State of U.P., AIR 1959 SC 1012; Satpal v. Delhi Administration, 1976 (1) SCC 727 and Delhi Administration. v. Lakshman Kumar 1985 KHC 741: (1985) 4**

SCC 476).

37. Now, the question is what constitutes a contradiction or an omission amounting to contradiction and how can the same be proved? As held in **Tahsildar Singh v. State of U. P., AIR 1959 SC 1012: 1959 KHC 577 : 1959 CriLJ 1231**, the object of Section 162 Cr.P.C., as the history of its legislation shows and the decided cases indicate is to impose a general bar against the use of statement made before the police and the enacting clause in clear terms says that no statement made by any person to a police officer or any record thereof, or any part of such statement or record, be used for any purpose. The words are clear and unambiguous. The proviso engrafts an exception on the general prohibition and that is, the said statement in writing may be used to contradict a witness in the manner provided by S.145 of the Evidence Act. While it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for the limited purpose of contradicting

a witness in the manner provided by S.145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor can it be used for contradicting a defence or a Court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar. Further, the contradiction under Section 162 is between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. The procedure for contradicting a witness is by resort to Section 145 of the Evidence Act. S.145 of the Evidence Act is in two parts : the first part enables the accused to cross examine a witness as to previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross examination

assumes the shape of contradiction: in other words, both parts deal with cross examination; the first part with cross examination other than by way of contradiction, and the second with cross examination by way of contradiction only. Resort to S.145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement was reduced to writing, then S.145 requires that his attention must be drawn to those parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement. In such a case all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Apex Court has explained the procedure by way of an illustration also: -'A' says in the witness

box that 'B' stabbed 'C'; but before the police he had stated that 'D' stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer.

38. I also refer to a Division Bench decision of the High Court of Kerala in **State of Kerala v. Thomas, 2005 KHC 1823: 2005 (4) KLT SN 103** wherein it was held thus- S.162 Cr.P.C.. deals with the use of statements in evidence. The statements given by any person and reduced to writing under S.161 Cr.P.C. by a police officer can be used only to contradict the statement of the witness. Under the Evidence Act, a former statement made by a witness can be used to contradict him, to impeach his credit, to corroborate him, or to refresh his memory. S.162 Cr.P.C. imposes an absolute bar to the use of the statements. The intention behind S.162 Cr.P.C.. is to protect the accused from being prejudicially

affected by any dishonest or questionable methods adopted by an overzealous police officer. Under S.145 of the Evidence Act, proof of statements follows the putting up of it to the witness. S.162 Cr.P.C.. states that a previous statement to the police can be used to contradict a witness if it is duly proved. A combined reading of S.161 and 162 Cr.P.C.. shows that the attention of the witness is tobe called to the previous statement before the same can be proved. If the witness admits the previous statement or explains the discrepancy or contradiction, it obviously makes it unnecessary for the statement thereafter to be proved by marking it. If the statement still requires to be proved, that can be done later by calling the police officer before whom the statement was made. It is well settled position of law that before using the statement, the witness must be afforded a reasonable opportunity of explaining the contradictions, after his attention has been drawn to such statements, in a fair and reasonable manner. The entire statement recorded under S.161(3) Cr.P.C.. is not admissible in evidence. So,

the entire statement cannot be marked as an exhibit. The correct procedure to contradict a witness is to draw his attention to the relevant part of the contradictory statement which he had made before the Police Officer and to question him whether he did make that statement. If he replies in the affirmative, that admission establishes the contradiction. When the particular sentence or assertion in the statement under S.161 Cr.P.C.. is put to the witness it must be marked by being underlined or enclosed in a circle and exhibited. That admission is to be recorded in the deposition. If he denies that part of the statement, that is to be proved in accordance with the provisions of the Evidence Act. If he denies having made such a statement or states that he does not remember having made the assertion or spoken the sentence, the officer who recorded the statements will have to be called to prove that he had made or spoken it. When a statement is put to a witness, he may admit it. He may deny having made such a statement or he may admit a part or portion of the statement and deny the rest of it. The admission if

it amounts to a contradiction is to be recorded and it needs no further proof and rest of it alone is to be proved. He may also plead lack of memory and state that that he does not remember. If the witness states that he does not remember, then also the statement has to be properly proved. An omission may amount to a contradiction. Before the police a witness may state that 'A' and 'B' committed the murder. But in court he may state that 'A, B and C' took part in the commission of the offence. That omission is in the form of a positive contradiction. If the witness admits that he did not state the name of 'C' before the police officer, that admission proves the omission. But if the witness asserts that he had stated the name of 'C' also to the police officer, that omission is to be proved by putting that omission to that officer during his examination. He must be asked whether a certain statement was made by the witness before him. The records must show that the statement of the witness recorded under S.162 Cr.P.C.. was read out to him and his attention was drawn to the non-existence of a

certain statement therein.

39. Further, it is seen that when some of the prosecution witnesses did not fully support the prosecution case, the Prosecutor sought permission of the Court to '*cross-examine'* them, which permission was granted. The request and the Order of the trial court reads-

"(*at this stage, ld. prosecutor requests for permission to cross examine the witness on the ground that he is resiling from the statement made to CBI. Heard. Request is allowed.)*

XXXXXXX by Shri……, ld. PP for CBI"

This is also wrong. Here, it would be apposite to refer to Sections 137 and 138 of the Indian Evidence Act. Section 137 reads-

> "***137. Examination-in-chief.***
>
> *The examination of a witness by the party who calls him shall be called his examination-in-chief.*
>
> *Cross-examination - The examination of a witness by the adverse party shall be called his cross-examination.*
>
> *Re-examination. - The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.*"

Section 138 reads –

> *"**138. Order of examinations.***
> *Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*
> *The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.*
> *Direction of re-examination. - The re-examination shall be directed to the explanation of the matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."*
>
> (Emphasis supplied)

The Evidence Act, nowhere provides for 'declaring a witness hostile' nor allows a person to 'cross-examine' his own witness. Whatever be the form and nature of the questions put to the witness, examination of a witness by the person who calls him is 'examination-in-chief' if it is before the examination of that witness by the adversary, and re-examination' if the same is after the adversary examines him. 'Cross-examination' means

examination of the witness by the adverse party. To say that one may cross-examine his own witness is, in the face of the definition of the word 'cross-examination' as aforesaid, a contradiction in terms. S.142 of the Evidence Act bars leading questions or questions suggestive of answers in examination-in-chief and re-examination. Under S.154 Evidence Act, however, the court may allow a person to put to his own witness such questions as might be put in cross-examination by the adverse party. But, grant of such permission does not mean that the witness is 'hostile' or 'unfavourable' or 'adverse witness' and therefore, a liar. Under S 146 of the Evidence Act, when a witness is cross-examined questions which tend to test his veracity, to discover who he is and what is his position in life, and to shake his credit may be asked. With permission granted under S.154, such questions can be put in examination-in-chief also. Again, under S.155 of the Act, with the consent of the court one may impeach the credit of his own

witness in the manner provided therein one of which is by the proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. S.145 of the Act says that if a previous statement in writing or reduced to writing is intended to contradict a witness, before the writing is proved, his attention is to be called to the portions intended to be used for that purpose. However, it should be remembered that the only object of cross-examination of a witness or putting in examination-in-chief with the permission of the court questions of the kind allowed only in cross-examination, is not to discredit the witness but also to bring out evidence which would advance the case of the cross-examiner or the person calling the witness, as the case may be**(See Janardhan v. State of Kerala 1978 KHC 136: 1978 KLT 546).**

39.1 In **Sat Paul v. Delhi Administration**, AIR 1976 SC294, 305, the Apex Court has highlighted this aspect when it said: *"The grant of such permission does not amount to an adjudication by the*

court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Court".

40. Therefore, when a witness does not support the case of the person who called him as a witness, in the case on hand the prosecution, the prosecutor can seek the permission of the court to put questions as put in cross examination, which power is contained under Section 154(1) of the Evidence Act, which reads –

> *"(1) The Court may, in its discretion, permit the person who calls a witness to put <u>any questions to him which might be put in cross-examination by the adverse part</u>."*
>
> (Emphasis supplied)

When such a permission is sought for, the trial court may grant permission and the Order passed should read- "*permission granted under section 154 of the Evidence Act, read with the first proviso to Section 162 (1) Cr.P.C.*" or at least "*permission granted*

to put questions as put in the cross examination". On grant of such request, the prosecutor would still continue to conduct examination-in-chief of the witness with liberty to put questions as put in cross-examination, namely, leading questions. The said examination is not cross-examination. The cross examination of the witness will only be by the adverse party and not by the party who calls the witness.

41. There is no infirmity in the impugned order relating to the guilt of the accused for the offences charged against him and hence, I do not find any grounds calling for an interference into the same.

42. The appeal, *sans* merit, is thus dismissed.

43. Application(s), if any, pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

JANUARY 28, 2026
RS/RN