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

% ***Judgment Reserved on: 22.04.2026***
Judgment pronounced on: 28.04.2026

\+ **CRL.A. 359/2002**

RAVINDER KUMAR CHOPRA .....Appellant

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Vishwajeet Singh, Ms. Mugdha and Ms. Priti Verma, Advocates.

versus

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

Through: Mr. Kamal Kant Goel, SPP with Ms. Jyoti Goel, Advocate.

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 first accused (A1), in C.C. No. 42/1993 on the file of the Special Judge, Delhi, assails the judgment dated 30.03.2002 and order on sentence dated 01.04.2002 as per which A1 and the second accused (A2) have been convicted and sentenced for the offence punishable under Section 120B of the Indian Penal Code, 1860 (the IPC) and further

A1 has been convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the PC Act).

2. The prosecution case is that R.K. Chopra (A1) while working as Desk Officer, Udyog Bhawan, Department of Industrial Development, Ministry of Industries, Government of India, Delhi, on 06.06.1989 demanded illegal gratification of ₹50,000/- from PW2, Director, M/s. Aries Granites, Bangalore and through the co-accused, A.S.M. Swami (A2), a retired officer, Ministry of Commerce, New Delhi and obtained ₹10,000/- for getting a licence issued in PW2's favour for 100% Export Oriented Industries for manufacture of cut and polished granites. Accordingly, as per the charge-sheet/final report dated 29.05.1990, A1 and A2 were alleged to have committed the offences punishable under Section 120B IPC and Sections 7 and 13(1)(d) of the PC Act.

3. Sanction for prosecution was accorded by PW1, Director, Department of Industrial Development, New Delhi, against A1 *vide* Ext. PW1/A Sanction Order dated 09.04.1990.

4. Crime no. RC No. 28(A)/89-DLI/CBI/ACB, i.e., Ext. D1 FIR, was registered on the basis of PW2/D complaint of PW2. After completion of investigation by PW7, a charge-sheet/final report was filed against A1 and A2 alleging the commission of the offences punishable under the aforementioned Sections.

5. When A1 and A2 were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.PC. After hearing both sides, the trial court *vide* order dated 07.10.1993, framed a Charge under Section 120B IPC and Sections 7 and 13(1)(d) of the PC Act, which was read over and explained to A1 and A2, to which they pleaded not guilty.

6. On behalf of the prosecution, PWs. 1 to 8 were examined and Exts. PW1/A-C, PW2/A-R, PW2/DA, PW2/DR,

PW3/A, PW4/A-B, PW5/A and Mark A were marked in support of the case.

7. After the close of the prosecution evidence, A1 and A2 was questioned under Section 313(1)(b) Cr.PC regarding the incriminating circumstances appearing against them in the evidence of the prosecution. A1 denied all those circumstances and maintained his innocence. He submitted that PW2, an accomplice in the eyes of law, got him falsely implicated because the application of the latter's firm for licence was rejected by the Board. The two *panch* witnesses being government servants are partisan witnesses and that they have deposed out of fear of Departmental action. The evidence of the other witnesses are formal in nature and the evidence of the Investigating Officer (IO) and raiding officer is that of interested witnesses.

7.1. A2 also submitted that PW2 is an accomplice in the eyes of law. He further submitted that when he was posted as Senior Director, AERC, he had lodged several complaints against

Government Exporters who indulged in various malpractices while carrying out government exports which were controlled by specific orders of Ministry of Textiles. PW2 was also associated with some of the exports in his capacity as an advisor and that pressure had been put on him to withdraw those cases or dilute the cases to some extent. However, he refused to cooperate with the exporters and so PW2 was in inimical terms with him and hence took the opportunity to implicate him in the present case.

8. No oral or documentary evidence was adduced in support of the defence case.

9. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court *vide* the impugned judgment dated 30.03.2002 held A1 and A2 guilty of the offence punishable under Section 120B IPC and further held A1 guilty of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act. *Vide* order on sentence dated 01.04.2002, A1 has been sentenced to undergo rigorous

imprisonment for a period of five years each along with fine of ₹5000/- each, and in default of payment of fine, to undergo rigorous imprisonment for 6 months each for the offences punishable under Section 120B IPC and Sections 7 and 13(2) of the PC Act. The sentences have been directed to run concurrently. A2 has been sentenced to undergo rigorous imprisonment for a period of five years along with fine of ₹5000/-, and in default of payment of fine, to undergo rigorous imprisonment for 6 months for the offence punishable under Section 120B IPC. Aggrieved, A1 has preferred this appeal.

10. CRL.A.250/2002 was filed by A2. A2 died during the pendency of the appeal. The order dated 28.08.2020 in the said appeal reads:

> "*The CBI has submitted the verification report dated 24.08.2020 under the signatures of Inspector Ravinder Kumar Singh of the CBI/ACP, New Delhi along with the copy of the death certificate of Mr.A.S.M.Swamy i.e. the appellant herein indicating his demise on 14.03.2020.*

In view thereof, the CRL.A.250/2002 filed by the appellant (since deceased) against his conviction vide judgment dated 30.03.2002 and vide order on sentence dated 01.04.2002 in RC No.28(A)/89-DLI/CBI/ACB thus, abates and the surety stands discharged."

11. The learned Senior Counsel for the appellant/A1 submitted that the foundation of the prosecution case rests on the demand of illegal gratification. However, the only evidence regarding the initial demand on 05.06.1989 is the uncorroborated testimony of PW2. There are inconsistencies in his version regarding the amount demanded as in Ext. PW2/A complaint it was ₹50,000/- but in the box the case of PW2 is that the initial demand was ₹80,000/- which was finally settled at ₹30,000/-. Further, the testimony of PW2 does not support the claim of any telephonic demand, despite such an assertion being made in the complaint. The prosecution has failed to explain how the meeting at Hotel Marina on 06.06.1989 was arranged between PW2 and the appellant/A1.

11.1. It was also submitted that the voice recording was

found to be of poor quality and largely inaudible, and therefore, reliance ought not to have been placed on it. The recording lacks evidentiary value as no proper forensic analysis was conducted, no voice samples were obtained, and identification was made solely by PW2, an interested witness. The chain of custody was also compromised, and transcripts were prepared after three months, only on 15.09.1989, without examination of the stenographer who prepared them. Moreover, the recording does not establish any demand for a bribe.

11.2. The learned Senior Counsel also submitted that the prosecution has failed to present reliable independent witnesses. One of the *panch* witness was not examined at all despite his central role in the trap proceedings. PW4, the other independent witness, was declared hostile and provided contradictory statements on material aspects, including the source of currency notes and procedural steps during the trap. The presence of PW4 after return from Hotel Marina and before the trap at YWCA is

doubtful, as according to PW2, only the other witness was present. The prosecution case entirely rests on the testimony of PW2 and PW6, both of whom are interested witnesses.

11.3. It was further submitted that there is no nexus between A2 and the Appellant/A1. There is no credible evidence to suggest that any money received by A2 was on behalf of the Appellant/A1. On the contrary, A2 submitted in his Section 313(1)(b) Cr.P.C. statement that the money received by him from PW2 was towards consultancy charges for a separate project and not meant for the appellant/A1. This explanation is supported by the PW2's testimony, wherein he acknowledged discussions regarding consultancy fees with A2 and admitted the possibility of such payment. Further, the alleged disclosure statement of A2 is inadmissible under Section 27 of the Indian Evidence Act, as it did not lead to any recovery and cannot be used against the appellant/A1.

11.4. Lastly, it was submitted that the arrest and subsequent search of the appellant/A1 were conducted in the absence of independent witnesses. The testimony of the witnesses regarding who were present during the course of these procedures are contradictory. The presence of signatures of PW2 on the seizure memo, who was not present, casts doubt on the documents. The sanction for prosecution is legally unsustainable as it does not disclose the material considered, nor does it reflect any independent application of mind. Further, the FIR was registered at 10:30 AM, however, PW2 reached the office of the ACB only by 11:00 AM and therefore, the timing of the FIR does not align with PW2's version. No prior verification of the allegations was conducted despite explicit directions. There is also inconsistency regarding who requisitioned the independent witnesses. Therefore, it is evident that the prosecution has failed to prove the essential ingredients of demand and acceptance of illegal gratification. The

benefit of doubt must therefore be extended to the appellant/A1, goes the argument.

12. *Per Contra*, the learned Additional Public Prosecutor submitted that there is no infirmity in the judgment calling for an interference by this Court. The fact that A1 was waiting at the residence of A2 in the late evening corroborates the prosecution case. Even if it is believed that the FIR was registered without verification, prior verification is not mandatory, and the timing in the FIR is approximate.

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 judgment calling for an interference by this court.

15. I shall first refer to the evidence on record relied on by the prosecution in support of the case. PW2 submitted a written complaint, that is, Ext. PW2/D, dated 06.06.1989 before the office of the Anti-Corruption (A.C.) Branch, C.B.I. in which he has

stated thus: - He is a Director of M/s Aries Granites (P) Ltd., Bangalore. They had applied to the Ministry of Industries, Department of Industrial Development on 02.02.1989 for a licence to put up a 100% Export oriented industries for manufacture of cut and polished granites. The Company received a telegram from the Desk Officer R.K. Chopra (A1) in March 1989 seeking certain clarifications, to which clarifications were sent by the Company on 21.03.1989. Thereafter, on 05.04.1989 a letter was received from Ministry of Industries, Department of Industrial Development and Secretariat for Industrial Approvals (M.C. Section) rejecting the plea for permission with liberty to represent the case within three weeks. In the last week of April 1989 he came to Delhi and contacted the Ministry of Commerce and came to know that R.K. Chopra (A1) was the Desk Officer who was dealing with his Company file, pursuant to which he met R.K. Chopra (A1) who advised him to furnish another detailed clarification. He again came to Delhi with his papers on the night of 04.06.1989 and on

05.06.1989 at 11:00 A.M., he called A1 to inform the latter that all the necessary documents required were ready. R.K. Chopra (A1) then asked him to meet the former for lunch at Hotel Marina in Connaught Place at 01:00 P.M. Pursuant to the same when he met R.K. Chopra (A1) at Hotel Marina and informed him that he had brought the necessary documents, R.K. Chopra (A1) replied that those details would not be sufficient for issuance of the licence and that…..“*we must enter into a business understanding*”. On asking A1 as to what sort of business understanding the former was referring to, A1 responded by saying that if he paid ₹50,000/- (fifty thousand rupees) as illegal gratification, the licence would be issued within a month. When PW2 replied that it was not possible for him to pay ₹50,000/-, R.K. Chopra (A1) said that he would send one A.S.M. Swamy (A2) to meet him in the hotel where the former was staying, i.e., YMCA Blue Triangle Hostel, Ashoka Road at 07:00 P.M. who would negotiate on behalf of A1, after which A1 left after taking down his address. Thereafter, on the

same day evening i.e. 05.06.1989 at about 07:00 P.M. a man came to his room in the YMCA Blue Triangle Hostel and introduced himself as A.S.M. Swamy (A2) and said that he represented R.K. Chopra (A1). After a few minutes of informal conversation, A2 asked regarding the application for 100% Export Oriented Unit licence and demanded ₹80,000/- to be paid to R.K. Chopra (A1) for getting the licence, out of which ₹40,000/- was to be paid in advance. On 06.06.1989 morning, at about 10:00 a.m., he contacted R.K. Chopra (A1), over telephone and informed the latter of the meeting with A.S.M. Swamy (A2). Finally, R. K. Chopra (A1) said that the work could not be done for less than ₹30,000/-. R.K. Chopra (A1) also asked him to meet the former again at Hotel Marina, Connaught place at 12.30 p.m. for further discussion, including instructions regarding the mode of payment of the money. He is a law abiding citizen and hence action may be taken against the aforesaid persons.

16. PW2 when examined before the trial court to an extent stood by his case in Ext.PW2/A. On 04.06.1989, he came to Delhi to enquire about his application for licence. He met officials, including G.P. Mathur, who advised him to meet R.K. Chopra (A1), the Desk Officer handling the file. On 05.06.1989, he met Chopra (A1), who informed him that the project had been rejected but could be revived upon entering into a business arrangement. (A1) initially demanded ₹80,000/-, which was later reduced to ₹30,000/-. The demand was made at Hotel Marina around 12:30 - 01:00 PM. Chopra (A1) further informed him that one Swamy (A2), his representative, would meet him in the evening to collect signed blank application forms and letterheads. Swamy (A2) met him around 06:30 PM and reiterated the demand for ₹80,000/-. PW2 expressed his inability and stated that he would consult his co-directors. On 06.06.1989 at around 10:00 AM, he called the office of the CBI and spoke to Amit Verma, Superintendent of Police (the S.P.), who advised him to meet the latter in person. At

11:00 AM, he reached the office of the CBI. The S.P. gave necessary directions to B.N. Jha (PW6) for the raid. On 06.06.1989, he did not contact or meet anyone before contacting the CBI. He submitted Ext. PW2/D written complaint in his own handwriting. Two independent government witnesses were called, who reached the office within 15 to 20 minutes. Verma showed a small tape recorder and explained its working to him. The tape was played in the presence of all including the two government officials witnesses. They were convinced that the tape was blank. The tape was wrapped in a piece of paper and kept in his pocket. He was directed to meet Chopra (A1) to meet at a common place and discuss business. According to PW2, one of the government official witnesses was Amarnath from the department of telephone, but he was unable to recall the name of the other witness. Pre-trap proceedings were recorded *vide* Ext. PW2/E memo.

16.1. He then along with the raid team proceeded to Hotel Marina, where they arrived at about 12:30 PM. PW6 and the

two *panch* witnesses sat on a table facing him and the accused, which was at a distance of about 06 to 08 feet away. Just before 01:00 PM, Chopra (A1) arrived at the hotel. They exchanged greetings, and he switched on the tape. He told Chopra (A1) that Swamy (A2) had visited his hotel in the evening between 06:30 - 07:00 PM on 05.06.1989 and had demanded ₹80,000/-. Chopra (A1) after negotiations agreed to do the job for ₹30,000/- which was to be paid to Swamy (A2), who would meet him on the same day at around 06:00 PM.

16.2. After the meeting Chopra (A1), he along with the team returned to the office of the CBI where he handed over the audio cassette to PW6 who sealed it in his presence as well as in the presence of the shadow witness Amarnath. The trap was arranged for the evening. Again, a blank cassette was given to him. Amarnath, the shadow witness, was instructed to remain with him and watch and hear the proceedings. Currency notes amounting to ₹10,000/- provided by him were treated with phenolphthalein

powder, and their serial numbers were noted. He along with the raiding team proceeded to his hostel room. By about 06:30 - 07:00 PM, Swamy (A2) arrived at his room at the YMCA Hostel. He switched on the tape recorder. He invited Swamy (A2) to come inside the room and offered him a seat. He introduced Amar Nath, the *panch* witness as his brother's friend. He told Swamy (A2) that due to short notice, he was unable to arrange the required amount and that he could only arrange ₹10,000/-. Swamy (A2) replied that he had come to collect the money on behalf of Chopra (A1). He then handed over the currency notes of ₹10,000/- to Swamy (A2). At his request, Swamy (A2) counted the notes. On receiving the pre-arranged signal, the CBI team entered the room. PW6 caught hold of both hands of Swamy (A2). PW6 challanged Swamy (A2) that he had received bribe of ₹10,000/- on behalf of Chopra (A1). The hand wash of Swamy (A2) taken turned pink. Swamy (A2) disclosed to PW6 that Chopra (A1) was waiting for him at the former's residence to receive the money. The entire raid team,

along with Swamy (A2) , proceeded to the latter's residence at Rajouri Garden, Delhi where they reached at about 08:30 PM. He along with Swamy (A2) and PW6 entered the residence. Chopra (A1) on seeing Swamy (A2) asked "*have you collected the money from Mr. Rajendran*".

16.3. PW2 in his cross-examination admitted that 20 days after the raid, the transcript of his conversation with A2 had prepared. PW2 deposed that he was unaware as to whether there was any order of the Court permitting PW6 to break open the seal of the audio cassette. PW2 admitted that he was aware that Swamy (A2) was a retired Government official from the Ministry of Commerce and was working as a consultant. Swamy (A2) had told him that he was working for Companies in Hyderabad and also for John Myers Granites Ltd. Swamy (A2) had suggested that he could prepare a project report for obtaining a licence. During his conversation with Swamy (A2), there was no discussion regarding filling up of fresh applications for the grant of *licence* pertaining to

their project. However, there was discussions to the effect that Swamy would prepare a fresh representation for the revival of the already rejected application. Swamy (A2) said that he would charge fees for consultation and services rendered in that regard. Discussions also took place regarding the mode of payment of consultancy charges. Swamy (A2) said that he would accept the payment *in in*stalments. On being asked about his consultancy charges, Swamy (A2) initially stated that his charges would be ₹30,000/- and that depending upon the nature of the project, his charges might vary from ₹30,000/- to ₹50,000/-. Swamy (A2) did not specifically state the amount of the initi*al instalment. PW2 further admitted that during* the said discussion, Swamy (A2) demanded ₹10,000/-, and he accordingly handed over ₹10,000/- to him, which the latter kept in his handbag.

17. PW4 posted in NIC, Planning Commission, CGO Complex, Lodhi Road, New Delhi deposed that on 06.06.1989 he was deputed on duty to the office of the CBI, CGO Complex,

Lodhi Road. He reported at about 11:00 AM. When he reached the office of the CBI, PW2, along with another witness from the MTNL were already present in the room of PW6. He was introduced to PW2 and the complaint was shown to him. An official of the CBI brought ₹10,000/- from the bank to be used for the raid and the number of the said currency notes was noted down. At this juncture, the prosecutor is seen to have requested permission to "cross-examine" PW4 on the ground that the latter was resiling from his previous statement. The request is seen allowed. On further examination by the prosecutor, PW4 admitted that the other independent witness in the team was Amar Nath. The prosecutor then brought out the prosecution case by putting several leading questions to PW4.

17.1. PW4, in his cross-examination admitted that when he reported at the office of the CBI, PW2 and PW6 had already left for Hotel Marina. They returned by about 12:00 or 12:30 PM, and then in his presence an audio cassette was played in the office of

the CBI. However, no transcript was prepared. PW4 admitted that when the cassette was played the audio was not properly audible. At the YMCA Hostel, he remained downstairs with the other members of the trap party. On receiving the pre-determined signal over telephone from PW2, he was asked by PW6 to accompany the latter to the room of PW2. He denied the suggestion that when PW6 confronted A2 for having demanded and accepted bribe from PW2, A2 had denied the allegations and said he had only received his consultancy charges. He denied the suggestion that, on being challenged, A2 had not responded by saying that he had received the money from PW2 on behalf of A1. After the day of the raid, he was called to the office of the CBI, on which day an audio cassette was played and its transcript prepared. On that day, *panch* witness Amar Nath was present, but PW2 was absent. PW4 was unable to recall if, during the pre-raid proceedings, the sample voice of PW2 had been recorded.

18. PW6, the Trap Laying Officer (TLO), deposed that on 06.06.1989 at about 10:30 AM, he was directed by Anil Verma, the S.P., to take necessary action on the complaint of PW2. He discussed the matter with PW2. After satisfying himself about the genuineness of the allegations, he called two *panch* witnesses, namely, Amar Nath, Assistant Engineer, Mahanagar Telephone Nigam Limited and B.S. Rana (PW4) from Life Insurance Corporation. He spoke about the various steps taken during the pre-raid, raid and post raid formalities. PW6 during his examination more or less stands by the prosecution case.

19. PW1, Director, Department of Industrial Development, New Delhi, deposed that she had gone through the materials in the case and, after considering the allegations against the accused and the circumstances, granted sanction for prosecution of A1 vide Ext. PW1/A Sanction Order.

20. PW8, Assistant Commissioner of Police, Anti-Corruption branch is stated to have conducted the initial investigation in the

case. PW7, Deputy Commissioner of Police, Anti-Corruption branch, deposed that when he took over, the entire investigation had already been completed by PW8 and so he prepared the final report and submitted the same before the court.

21. The prosecution relies on the testimony of PW2, PW4 and PW6 to prove the case. The question is, whether the same is sufficient/satisfactory to establish the prosecution case? According to PW2, on 06.06.1989, at around 10:00 a.m., he spoke to Amit Verma, Superintendent (SP), CBI and conveyed his grievance. As directed by the SP, he proceeded to the office of the CBI, where he reached by about 11:00 AM. He then held discussions with the SP. Thereafter, he reduced his complaint into writing, that is, Ext. PW2/D. Thereafter the formalities in connection with his complaint were completed by the officials concerned. However, the FIR in this case is seen registered at 10:30 a.m. So, was the crime registered even before PW2 had lodged his complaint? No clarification has been sought by the prosecutor in the re-

examination to the aforesaid testimony of PW2.

22. According to PW2, the amount of ₹ 10,000/- to be offered as bribe during the trap was brought by him and handed over to PW6. But PW4, one of the *panch* witness, deposed that an official of the CBI had brought the amount from the bank. Further, going by the version of PW2, on 06.06.1989 at 12:30 PM, when the meeting at Hotel Marina, Connaught Palace, Delhi took place between him and A1, both the *panch* witnesses and PW6 the TLO, were present and that they sat at about a distance of 06 to 08 feet away from him. But, according to PW4, before he reached the office of the CBI at 11:00 a.m., PW2 and the TLO had already left for the hotel and they came back by around 12:00-12:30 p.m.

23. According to the prosecution, there are two audio cassette recordings, one in which the conversation between PW2 and A1 and thereafter between PW2 and A2 had been recorded. The trial court declined to rely on the first audio tape conversation between PW2 and A1 due to poor audio quality and as many portions of the

cassette was inaudible. However, the trial court proceeded to rely on the second audio tape which is supposed to have recorded the conversation between PW2 and A2. However, it is clear from the transcript that is alleged to have been prepared regarding the said conversation, the same is also not fully audible at several portions. So the same logic applied for the first audio cassette will have to be applied to the second one too. Further, admittedly when the seal of the audio cassettes was broken and the transcript prepared, no order from the Court concerned had been taken. The tapes were all along with the CBI. It is not clear as to who was in possession of the seal that is alleged to have been used for sealing the packets containing the audio cassettes. Moreover, according to PW2, when the transcript of the conversation was prepared 20 days after the raid, the *panch* witnesses were present. However, if PW4 is to be believed, he along with the other witness, namely Amarnath were very much present, but PW2 was absent. Admittedly, no sample voice of either A1 or A2 had been taken and hence no comparison

of the sample voices with the voices heard in the audio cassette was done. Obtaining an expert opinion on this aspect would have certainly gone a long way in substantiating the case. However, for reasons best known to the investigating officer, no such step is seen taken.

24. The other *panch* witness, namely, Amarnath was also not examined. It is seen from the records that he was present on a few days before the trial court, but for some reasons he could not be examined. Later, it was reported that he was unavailable as he had settled abroad. However, no coercive step is seen taken by the trial court to secure his presence. It is true that evidence has to be weighed and not counted. Therefore, merely because one of the witnesses is not examined, that would not automatically lead to an acquittal. However, in the light of the aforesaid anomalies, the examination of Amarnath, the alleged recovery witness, would certainly have been advantageous to the prosecution.

25. At the risk of repetition, I refer to a portion of the

testimony of PW2 which reads:-

" During my conversation with accused Swami, we did not discuss filling up of new applications for grant of licence pertaining to our project. However, there was a discussion to the effect that Mr. Swami would prepare fresh representation for the revival of our application for licence already rejected. Accused Swami did say that he would charge fee for consultation and services rendered in this regard. He further talked about the mode of payment of consultancy charges etc. It was also discussed that accused Swami would accept payments of consultancy charges in installments. On my enquiry about consultancy charges, initially accused Swami said that his charges would be ₹ 80,000. He also stated that depending upon the nature of the project, his charges may raise from Rs. 30,000 to Rs. 50,000. Accused Swami did not ask me specifically about the initial payment of installment of consultancy charges. It is correct that when these talks were going on, accused Swami, demanded Rs. 10,000 and I gave Rs. 10,000 to him. Thereafter, accused Swami, kept said money in some bag, where I kept my handbag."

(Emphasis Supplied)

Again, no clarification is seen sought by the prosecutor during the re-examination of PW2. So, was it consultancy charges demanded by A2 Swami that had been handed over by PW2 on the said day? Doubts certainly arise in the light of the aforesaid testimony of PW2.

26. Yet another inconsistency seen in the testimony of PW2 is regarding the telephone call he is alleged to have made on 06.06.1989 to A1 during which call, the rendezvous at Hotel Marina in the afternoon of the said day is alleged to have been fixed. Going by Ext. PW2/A complaint, PW2 on 06.06.1989 at 10:00 AM rang up A1 over phone at which time A1 told him quite categorically that the work could not be done for anything less than ₹30,000/- and had also asked the former to meet the latter at 12:30 PM in Hotel Marina, Connaught place where they could have further discussions including the mode of payment. But PW2, in the box has no such case. He deposed that on 06.06.1989 he never called anybody before he spoke to Anil Verma, the S.P., CBI. If that be so, how was the meeting on 06.06.1989 with A1 fixed? Apart from the testimony of PW2, there is only the testimony of PW4, one of the *panch* witnesses, who also does not fully support the prosecution case. It is true that merely because a witness is partially hostile to the prosecution case, that is no

ground to disbelieve him entirely. If the remaining portions of his testimony is credible and inspires confidence in the mind of the court, can certainly be relied on. However, the admissions and inconsistencies in the testimony of PW2; the non-examination of the other *panch* witness; the hostility of PW4 etc., raise several doubts in the mind of this court. There is no doubt that a grave or strong suspicion has been made out against the appellant/A1. But, suspicion however strong, cannot take the place of proof.

27. In the aforesaid circumstances, I find that the evidence on record to be unsatisfactory to find the appellant/A1 guilty of the offences charged against him beyond reasonable doubt. Hence, I find that the trial court erred in relying on the aforesaid unsatisfactory evidence to conclude regarding the guilt of the accused.

28. Before I conclude, I refer to certain patent infirmities/illegalities committed by the trial court. The 161 statements of the prosecution witnesses are seen marked as Exts.

PW2/DB; Mark A; Ext. PW6/DA etc. This in complete ignorance of the provisions of Sections 161 and 162 Cr.P.C. 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**).

28.1. The wholescale marking of the statement under Section 161 Cr.P.C. without resorting to the procedure contemplated under Section 145 of the Evidence Act has been deprecated in **Bhagwan**

Singh vs. State of Punjab, AIR 1952 SC 214; **Mohanan v. State of Kerala, 1989 KHC 603: ILR 1990 (3) Ker 801 and Thankappan Mohanan v. State of Kerala, 1990 KHC 5: ILR 1990 (2) Ker 22)**

29. Further, coming to Ext. PW2/K, which is stated to be the "*disclosure statement*" of A2. It reads:-

"

RC No 28 (A)/89 DLI

Disclosure Memo (Under Section 27 I.E.Act)

In the presence of signatories to this memo including independent witnesses Shri Amar Nath, AE Cables MTNL Lakshmi Nagar Telephone Exchange Delhi and Shri Balwant Singh Rana, LDC, NIC, Planning Commission, A Block, CGO complex New Delhi, accused Shri A S M Swamy s/o Shri A R S Iyer r/o 118C, DDA flats, MIG, Rajouri Garden, Near Subhash Nagar More, New Delhi arrested in the above said case in police custody, today i.e 6-6-89 at about 7 PM voluntarily disclosed as under

"The bribe money of Rs 10,000/- which I had accepted from one Shri S. Rajender on the directions of Shri R.K. Chopra, Desk Officer, Ministry of Industry, Udyog Bhavan, N. Delhi today will be collected by Shri R.K. Chopra from my residence in Rajouri Garden after 8.30 p.m today."

Hence the disclosure Memo is prepared accordingly in Room No 307 at 2nd floor of Y.M.C.A Hostel, Ashoka Road, N Delhi.

(Signature)
Dy.S.P.,CBI

A.C.B.N. Delhi"
(Emphasis supplied)

30. According to the appellant/A1, "*the aforesaid disclosure memo found admissible under Section 27 of the Evidence Act by the trial court as a discovery of a fact is improbable since –*

a. *In the alleged voice recording sought to be relied upon by the Prosecution A2 – ASM Swamy clearly stated that he would not be meeting the appellant on 06.06.19890.*

b*. Even otherwise, the disclosure is inadmissible in terms of Sections 25-27 IEA since it did not lead to any recovery. In any case, the disclosure made by A2 – ASM Swamy cannot be used against the appellant in view of Section 30 IEA."*

30.1. The learned Special Public Prosecutor asserted that the aforesaid disclosure statement is certainly admissible because on the basis of the disclosure statement given by A2 Swami, the fact that A1 was waiting in the house of the former is a fact discovered, and hence admissible in evidence.

31. I am afraid I disagree with the aforesaid arguments. The

finding of the trial court that the aforesaid disclosure statement is admissible under Section 27 of the Evidence Act is apparently a perverse finding for the following reasons. Section 27 of the Evidence Act reads –

> *"**27. How much of information received from accused may be proved.**—Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

31.1. This Section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made by a person who is in police custody unless it is made in the immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus, even a confession statement before the police, which distinctly relates to

the discovery of a fact may be proved under Section 27. The extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to the past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody, *" I will produce a knife concealed in the roof of my house "* leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and the knife is proved to have been used to the commission of the offence, the fact discovered is very much relevant. If, however, to the statement the words be added '*with which I stabbed a*', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant. (See **K. Chinnaswamy Reddy v. State of Andhra Pradesh (AIR**

1962 SC 1788).

31.2. In **State of Himachal Pradesh v. Jeet Singh, AIR 1999 SC 1293**, the Apex Court relying on the dictum in **Pulikuri Kottaya, AIR 1947 PC 676** held that the discovery of fact referred to in S.27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it. The ratio in **Pulikuri Kottaya** (*Supra*) has received unreserved approval in successive decisions of the Apex Court and to name a few - in **Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872; K. Chinnaswamy Reddy v. State of Andhra Pradesh (AIR 1962 SC 1788**; **Earabhadrappa @ Krishnappa v. State of Karnataka (1983) 2 SCC 330; Shamshul Kanwar v. State of U.P. (1995) 4 SCC 430; State of Rajasthan v. Bhup Singh (1997) 10 SCC 675** and also in several other later decisions.

31.3. The manner of proving the disclosure statement under S.27 of the Evidence Act has been the subject matter of

consideration by the Apex Court in various judgments, some of which are being referred to. The statement which is admissible under S.27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in S.27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but

if it results in discovery of a fact, it becomes a reliable information. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. (**Bodh Raj v. State of Jammu and Kashmir, (2002) 8 SCC 45**).

31.4. In **Babu Saheba Goudar Radragoudar v. State of Karnataka, 2024 KHC 6222: AIR 2024 SC 2252,** it has been held that the statement of an accused recorded by a police officer under S.27 of the Evidence Act is basically a memorandum of confession of the accused recorded by the Investigating Officer during interrogation which has been taken down in writing. The confessional part of such statement is inadmissible and only the

part which distinctly leads to discovery of fact is admissible in evidence as laid down by this Court in the case of **State of Uttar Pradesh v. Deoman Upadhyaya, AIR 1960 SC 1125**. Thus, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down into writing leading to the discovery of incriminating fact(s).

31.5. In the case of **Mohd. Abdul Hafeez v. State of Andhra Pradesh**, **1983 (1) SCC 143**, it was held that if evidence otherwise confessional in character is admissible under S.27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating

evidence against that person.

32. Therefore, it is only that part of the statement which distinctly relates to the discovery of a fact that is admissible. It would also be apposite to refer to the dictum in **Joseph v. State of Kerala, ILR 1997 (3) Kerala 632**, which was a case involving offences punishable under Section 457, 379 read with Section 34 IPC. One piece of evidence the prosecution relied on in the said case was a recovery alleged to have been made at the instance of the accused. After the arrest of the accused in the said case, the prosecution alleged that he had given a statement to the effect, that if he is taken to a shop, he would point out the person to whom he had sold the necklace. Relying on the decisions of the Apex Court in **Mohmed Inayatullah v. The State of Maharashtra AIR 1976 SC 483, Jaffar Hussain Dastagir v. State of Maharashtra, 1971 NLJ Criminal 212 and Himachal Pradesh Administration v. Shri Om Prakash AIR 1972 SC 975**, it was held that the aforesaid statement is inadmissible as any statement to be

admissible under Section 27 of the IEA must lead to a discovery of fact which was found wanting in the disclosure statement of the accused. The "fact discovered" means not only the physical object produced but also the place from which it is produced and the knowledge of the accused as to this. Only such portion of the information given as is distinctly connected with the recovery is admissible against the accused and that the discovery of fact must relate to the commission of some offence and the essential ingredient to the Section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. What should be discovered is a material fact and the information that is admissible is that which has caused that discovery so as to connect the information and the fact with each other as the cause and effect. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material being discovered is not admissible under Section 27 of the

Evidence Act and cannot be proved. A witness cannot be said to be discovered under Section 27 of the Evidence Act though the statement of the accused may be taken into consideration as conduct relevant under Section 8 of the Evidence Act.

33. Reference to yet another decision would be profitable in the circumstances of the case. In **A.P. Chandran v. the CB CID, Wayanad CRL.A. No. 1575 of 2006, High Court of Kerala (2023 : KER : 12855**), one of the accused persons was alleged to have stated that if he is taken, he would point out the residence of another accused. Relying on **Joseph** (*supra*), it was held that the same was not a statement which is admissible under Section 27 of the Evidence Act.

34. In the light of the aforesaid discussion, I find that the materials of record is insufficient to find the appellant/A1 guilty of the offences charged against him beyond reasonable doubt and that he is entitled to the benefit of doubt.

35. In the result, the appeal is allowed. The appellant/A1 is

acquitted under Section 248(1) Cr.PC of the Charge under Section 120B IPC and Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. He shall be set at liberty and his bail bond shall stand cancelled.

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

CHANDRASEKHARAN SUDHA
(JUDGE)

APRIL 28, 2026
Rs/mj