



2025:DHC:1777



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

% **Date of order: 20th March, 2025**

+ CRL.A. 1002/2010 & CRL.M.A. 40928/2019

D K SHARMA

.....Appellant

Through: In person.

versus

STATE OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP for the State
along with SI Naresh Kumar

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CRL.M.A. 40928/2019 (For taking additional evidence on record)

1. For the sufficient cause being shown, the instant application stands allowed and additional evidence is taken on record.
2. Accordingly, the instant application stands disposed of.

CRL.A. 1002/2010

3. The instant criminal appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") on behalf of the appellant seeking setting aside of the judgment dated 31st July, 2010 and the order on sentence dated 12th August, 2010, both passed by the learned Special Judge, Tis Hazari Courts, Delhi (hereinafter "Trial Court"), wherein, the appellant was convicted for offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter



“PC Act”) and sentenced to undergo three years of rigorous imprisonment on each count along with a fine of Rs. 10,000/- on each count.

4. The brief facts which led to the filing of the present appeal are:
- a. The prosecution’s case originated from FIR No. 52/2003, registered on 21st October, 2003, at the Anti-Corruption Branch, Delhi. The case was initiated on a complaint lodged by the complainant, Shekhar Ranjan Bandopadhyay, who alleged that the appellant, a Junior Engineer in CPWD had demanded a bribe of Rs. 10,000/- for releasing part-payment of a bill related to security services.
 - b. Acting on this complaint, a trap team was arranged by the Anti-Corruption Branch. Phenolphthalein powder was applied to the bribe money and the complainant was instructed to hand over the amount only on a specific demand.
 - c. As per the prosecution’s version, on 21st October, 2003, at about 2:15 PM, the complainant entered the appellant’s office. The appellant allegedly directed the complainant to place the money in a rack instead of accepting it directly. Following this, the pre-decided signal was given by the panch witness to the trap team and the appellant was apprehended. The bribe money was subsequently recovered from a stack of files in the rack.
 - d. The hand wash of the appellant was not taken, but the wash of the carbon paper and the cardboard where the currency notes were allegedly kept yielded a positive result for phenolphthalein powder, indicating prior contact with the tainted currency notes.



- e. On 23rd April, 2004, the Anti-Corruption Branch sought sanction for prosecution of the appellant. The request was placed before Sh. Sudhir Kumar, Director II, CPWD, who, after perusing the investigation materials such as the site plan, raid report, seizure memo accorded sanction for prosecution.
- f. The learned Trial Court, after evaluating the evidence, concluded that the allegation of the demand, acceptance and recovery of bribe money had been proved beyond reasonable doubt. Consequently, the appellant was convicted and sentenced to undergo three years of rigorous imprisonment on each count along with a fine of Rs. 10,000/-
- g. Aggrieved by the conviction and the order on sentence, the appellant filed the present appeal seeking setting aside of the judgment as well as the order on sentence.
5. Appellant, appearing in person, submits that his conviction under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act is contrary to the law, facts on record and suffers from procedural infirmities that vitiate the trial.
6. It is submitted that the sanction for prosecution was granted by an incompetent authority, rendering the entire prosecution null and void. The appellant relies on the testimony of PW-9 (Sudhir Kumar, Director II, CPWD), who deposed that he granted sanction for prosecution. However, it is submitted that Director II, CPWD is not the competent authority to remove the appellant from service, as the Superintending Engineer was the designated appointing and disciplinary authority for the post of Junior



Engineer (Civil).

7. It is also submitted that the sanction order is invalid as it was accorded without proper application of mind and was issued by an official who did not have the requisite authority. The appellant places reliance on *State of Karnataka v. C. Nagarajaswamy (2005) 8 SCC 370*, wherein the Hon'ble Supreme Court held that the prosecution launched without a valid sanction is null and void.

8. It is submitted that the appellant received information under the Right to Information Act, 2005, vide letter no. 48/09/2016/EC.V dated 13th June, 2016 being the certified copies of the CPWD Manual Volume – I (1992 Edition) which confirm that no notification or delegation of powers was made in favor of Director II, CPWD, empowering him to remove a Junior Engineer from service or accord sanction for prosecution. These documents, being public records under Section 74 of the Indian Evidence Act, 1872, are admissible in evidence and conclusively establish that the prosecution was vitiated at the very outset.

9. It is submitted that the prosecution failed to establish the essential ingredients of the offence under Sections 7 and 13(1)(d) of the PC Act. It is further submitted that the prosecution relied primarily on the testimony of PW-3 (complainant) and PW-7 (panch witness), but their statements do not unequivocally prove the demand and acceptance of bribe by the appellant.

10. It is submitted that the hand wash of the accused was not undertaken, which is crucial deficiency in the trap proceedings. Instead, the prosecution relied on the wash of a carbon paper and cardboard, which is inconclusive



and does not directly implicate the appellant.

11. It is submitted that PW-7, the panch witness, was not an eyewitness to the alleged demand or acceptance of the bribe, as he was instructed to leave the room before the transaction allegedly took place. This lack of corroboration weakens the prosecution's case significantly.

12. It is submitted that the judgment of conviction is based on conjectures and surmises and the benefit of doubt should have been extended in favor of the appellant. The burden of proof under Section 7 of the PC Act was not discharged by the prosecution beyond reasonable doubt.

13. In light of the above contentions, the appellant prays that the conviction and sentence awarded by the learned Trial Court may be set aside and the present appeal be allowed.

14. *Per Contra*, learned counsel appearing on behalf of the respondent submitted that the prosecution has established the guilt of the appellant beyond reasonable doubt and the conviction is well-founded and does not warrant interference.

15. It is submitted that the prosecution sanction was valid, as PW-9 (Director II, CPWD) was the functional authority overseeing the appellant's role at the relevant time. It is contended that even if there was an irregularity in the sanction, it does not vitiate the proceedings unless it has caused a failure of justice.

16. It is submitted that the appellant was caught in a well-planned trap, where the tainted money was recovered from his work area immediately after demand and acceptance. The panch witness (PW-7) and the raid officer



(PW-8) corroborated the sequence of events and the recovery of tainted money from the rack inside the appellant's office conclusively proves his guilt.

17. It is submitted that the absence of a hand wash test does not exonerate the appellant, as the cardboard and carbon paper wash yielded positive results for phenolphthalein powder which is sufficient circumstantial evidence that the appellant was in contact with the tainted currency.

18. It is submitted that the prosecution's case does not solely rest on the complainant's testimony but is corroborated by independent witnesses and forensic evidence. It is further submitted that the absence of direct eyewitness testimony does not negate a corruption case if circumstantial evidence clearly establishes demand and acceptance of illegal gratification.

19. It is submitted that the delay in raising objections regarding sanction during the trial and bringing up the RTI documents only at the appellate stage is a deliberate attempt to create a technical defence.

20. In light of the aforesaid submissions, it is prayed that the present appeal be dismissed and the conviction and sentence of the appellant be upheld in the interest of justice.

21. Heard the parties and perused the material on record including the Trial Court Record.

22. It is the case of the appellant that there was a lack of valid sanction for prosecution, as the sanctioning authority (PW-9) was not competent under the applicable service rules. Moreover, the prosecution failed to establish demand and acceptance of bribe beyond reasonable doubt. It is argued that



the absence of a hand wash test, lack of direct corroboration by the panch witness, and contradictions in the prosecution's case warrant the appellant's acquittal.

23. In rival submissions, the respondent argues that the prosecution has established the appellant's guilt beyond reasonable doubt, relying on circumstantial evidence, corroborative testimonies, and forensic reports. Further, the recovery of tainted currency from the appellant's office, coupled with positive forensic evidence, is sufficient to uphold the conviction.

24. At this juncture, this Court finds it apposite to refer to the impugned judgment dated 31st July, 2010 passed by the learned Trial Court. The relevant portion of the same is reproduced below:

*“The only witness who has testified as to the demand as well as consequential acceptance of bribe is PW-3. Even though, the law requires prudent approach in determining the veracity of the said testimony without corroboration, but the fact that panch witness had been asked to leave the room, there cannot be another witness to the said demand and acceptance, but the circumstance point the needle of suspicion towards the accused as the panch witness who was well aware of his duty, would not have left the room at the behest of the complainant unless the accused would not have required him to do so. The fact that bribe amount was recovered from the custody of the accused raises the presumption which in rebuttal the accused has not discharged. The Hon'ble Delhi High Court in **Sunil Kumar Sharma Vs. State (CBI) 2007 (2) JC 1315** has held the testimony of the complainant can be relied upon without corroboration to inculcate the accused. In my considered opinion the said fact is sufficient to inculcate the accused of the offence U/s 7 & 13 of the POC Act as has been observed in the enunciation of the Hon'ble Supreme Court in **State Vs.***



Zakaullah (Supra). In the said case where both the panch witness and the complainant were not forthcoming with support of the prosecution case. The Hon'ble Supreme Court on the basis of the testimony of the Raid Officer had found case against the accused established. In the instant case also the narrative of the testimony of PW-8 Inspector Anil Kumar Sharma is both substantive and credible to inculcate the accused, notwithstanding, the testimony of DW-2 Akash Choudhary.”

25. Upon perusal of the above, it is made out that the learned Trial Court primarily relied on the testimony of PW-3 (complainant) to establish demand and acceptance of the bribe, noting that while corroboration is generally prudent, it was unavailable since the panch witness (PW-7) had been asked to leave the room before the transaction took place.

26. The Court below reasoned that the circumstantial evidence, particularly the panch witness's compliance with leaving the room, indicated the accused's involvement. Additionally, the recovery of tainted money from the accused's custody was deemed sufficient to invoke the statutory presumption under Section 20 of the PC Act, which the accused failed to rebut, according to the Court concerned.

27. Relying on *Sunil Kumar Sharma v. State (CBI) 2007 (2) JC 1315*, where a complainant's testimony was found reliable even without corroboration, and *State v. Zakaullah AIR (1998) 1 SC 557*, where the Hon'ble Supreme Court convicted the accused based on the Raid Officer's testimony despite lack of support from the complainant and panch witness, the learned Trial Court held that PW-8 (Raid Officer) provided substantive



and credible evidence to sustain the conviction, overriding any doubts created by the testimony of DW-2 (defense witness). The presence of phenolphthalein powder traces on the carbon paper and the cardboard where the currency was kept was deemed sufficient to corroborate the prosecution's case.

28. In view of the above, the learned Trial Court dismissed the appellant's defence that he was falsely implicated due to a personal grudge, holding that the absence of an eyewitness to the direct exchange of bribe did not negate the guilt as the circumstantial evidence sufficiently established the chain of events leading to the recovery.

29. The Court below awarded a sentence of three years of rigorous imprisonment on each count to the appellant, observing that public officials must be held to the highest standard of integrity, and leniency in cases of corruption would undermine public confidence in governance.

30. Based on the submissions of both parties and the scrutiny of the impugned order, the following issues emerge for adjudication:

1. Whether the sanction for prosecution granted by PW-9 (Director II, CPWD) was legally valid under Section 19 of the PC Act?

and

2. Whether the recovery of tainted money from the stack of files in the appellant's office, rather than from his person, is sufficient to establish his guilt under Sections 7 and 13(1)(d) of the PC Act?

31. The first issue that this Court shall deal with is ***whether the sanction for prosecution granted by PW-9 (Director II, CPWD) was legally valid under Section 19 of the PC Act?***



32. As per the settled position of law, validity of sanction for prosecution under Section 19 of the PC Act is a prerequisite to initiate prosecution against a public servant under the PC Act. A finding on this issue is essential before examining the merits of the prosecution's case as it goes to the very jurisdiction of the Court concerned to take cognizance.

33. At the outset, this Court shall examine whether the sanction for prosecution granted by PW-9 (Director II, CPWD) satisfies the legal requirements under Section 19 of the PC Act.

34. The validity of sanction is a jurisdictional prerequisite, and any defect therein goes to the root of the prosecution, potentially rendering the entire trial *void ab initio*. Therefore, this Court must determine whether the sanctioning authority in the present case was competent under the applicable statutory framework.

35. The appellant contends that the prosecution sanction was granted by Director II, CPWD (PW-9), who was not competent under the applicable service rules, thereby, rendering the entire prosecution *void ab initio*. The appellant relies on CPWD Manual Volume – I (1992 Edition), which clearly establishes that the authority competent to impose penalties on a Junior Engineer (Civil) is the Superintending Engineer. This official, being the disciplinary authority is the only competent authority empowered to grant sanction for prosecution under Section 19 of the PC Act.

36. It is contended that despite the above, Director II, CPWD, who lacked such authority, accorded sanction for prosecution. This act, undertaken without jurisdiction, amounts to an unauthorized usurpation of power,



rendering the sanction legally untenable

37. Here, this Court has referred to the Hon'ble Supreme Court's ruling in *State of Karnataka vs. C. Nagarajaswamy*, (2005) 8 SCC 370, which laid down that grant of sanction by a competent authority is a *sine qua non* for taking cognizance of an offence under the PC Act. While the issue of sanction is ideally determined at the stage of cognizance, if the competence of the sanctioning authority is questioned later—whether at the final arguments or even before an appellate court—the court is bound to examine the validity of such sanction. The relevant paragraphs of the abovesaid precedent are reproduced below:

“13. The appellant proceeded against the respondents under the Act. Section 5 of the Act provides for the procedure and powers of the Special Judge. Section 19 of the Act mandates that no court shall take cognizance of offence punishable under the provisions specified therein except with the previous sanction by the authorities specified therein.

14. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

*15. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regards sanction may be determined at an early stage. (See *Ashok Sahu v. Gokul Saikia* [1990 Supp SCC 41 : 1990 SCC (Cri) 611] and *Birendra K. Singh v. State of Bihar**



[(2000) 8 SCC 498 : 2001 SCC (Cri) 17 : JT (2000) 8 SC 248]
)

16. *But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. (See **B. Saha v. M.S. Kochar [(1979) 4 SCC 177 : 1979 SCC (Cri) 939]** SCC para 13 and **K. Kalimuthu v. State [(2005) 4 SCC 512 : 2005 SCC (Cri) 1291]**.)*

20. *In **Yusofalli Mulla Noorbhoy v. R. [AIR 1949 PC 264 : 50 Cri LJ 889 : 76 IA 158]** it was held : (IA p. 168)*

*“[16.] ... A court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law, and Section 14 prohibits the institution of a prosecution in the absence of a proper sanction. The learned Magistrate was no doubt competent to decide whether he had jurisdiction to entertain the prosecution and for that purpose to determine whether a valid sanction had been given, but as soon as he decided that no valid sanction had been given the court became incompetent to proceed with the matter. Their Lordships agree with the view expressed by the Federal Court in **Agarwalla case [1945 FCR 93 : AIR 1945 FC 16 : 46 Cri LJ 510]** that a prosecution launched without a valid sanction is a nullity.”*

38. In the aforesaid judgment, the Hon’ble Supreme Court reiterated that prosecution launched without valid sanction is a nullity and renders the entire trial *void ab initio*, as held in **Yusofalli Mulla Noorbhoy v. R., AIR 1949 PC 264**, where it was established that a court lacks jurisdiction to proceed with a prosecution instituted without a proper sanction.

39. Further, in **Mohd. Iqbal Ahmed v. State of A.P., (1979) 4 SCC 172**, the Hon’ble Supreme Court held that the grant of sanction is not a mere



procedural requirement but a substantive safeguard designed to protect government servants from frivolous or malicious prosecutions. The Hon'ble Court emphasized that sanction must be accorded by the competent authority after due application of mind and any failure to adhere to this statutory requirement renders the entire prosecution *void ab initio*. The relevant portion of the same is reproduced below:

“3. ...The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

5. For these reasons, therefore, we are satisfied that the present prosecution was launched without any valid sanction and, therefore, the cognizance taken by the Special Judge was completely without jurisdiction.”

40. Applying these principles to the case at hand, it is evident that the sanction for prosecution of the appellant was granted by Director II, CPWD, who was competent authority under the applicable service rules. As per the CPWD Manual, the Superintending Engineer was the competent authority to remove a Junior Engineer (Civil) from service and consequently, the only authority empowered to grant sanction under Section 19 of the PC Act. The table from the CPWD Manual which lists the appointing authority, disciplinary authority and appellate authority in respect of various group of government servants in CPWD is reproduced below:



Sl. No.	Post/Services	Appointing authority	Authority competent to impose penalties and penalties which it may impose (with reference to Rule 11 of CCS (CCA) Rules, 1965)		Appellate Authority
			Authority	Penalties	
1	2	3	4	5	6
I.	Group 'A' (Other than officers belonging to the CSS) viz Central Engineering service, Central Elect. & Mech. Engg., Service Group 'A' and General Central Service Group 'A' Consisting of the following :—DG(W)/ADG(W)/ADG(ARCH)/CE/SE/EE/ABB/CA/ACA/SA/Architech./Dy. ARCH/Dir. of Hort./Addl. Dir. of Hor./FO to DG(W)/DD(H).	President	President	All	President
II.	Group 'B' (other than officers belonging to the CSS/CSSS. Central Engg. Service Group 'B' C & Central Elect. Engg. service Group 'B' and General Central Service Group 'B' consisting the following : (a) Asstt. Director of Horticulture, (b) Asstt. Architectt. (c) Chief Architectural Assistant (non-gazetted) (previously designated as Chief Draftsman) (d) Financial Officer to the Chief Engineer.	DG(W)	(a) DG(W) (b) CE (Vig.)	(a) All President (b) for (i) to (iv) only.	DG(W)
III.	Group 'C' (Other than officers belonging to CSS/CSSS/CSCS) (1) Architectural Assistant (previously designated as Architectural Draftsman/Asstt. (Arch. Department). (2) Circle Office Superintendent (3) Ministerial & Engineering Drawing staff of Subordinate Office cadre. (4) Junior Engineer (Civil/Elect.) (5) Sectional Officer (Horticulture)	Director of Admn. DG(W) S.E./Director of Horticulture. S.E. Director of Horticulture.	Director of Admn. DG(W) S.E./Director of Horticulture. S.E. Director of Horticulture.	All (i) to (iv) All All	DG(W) Secretary in the Ministry of Urban Development. DG(W) for penalties (i) to (iv). (a) DG(W) for all penalties (b) CE (Vig.) for Penalties (i) to (iv). Concerned CE for all penalties. Do.

41. Since Director II, CPWD had no authority to remove the appellant from service, it follows that he was also not empowered to grant sanction for prosecution under Section 19 of the PC Act. The Hon'ble Supreme Court in



C. Nagarajaswamy (Supra) has clearly held that only the competent authority can grant valid sanction for prosecution. In the present case, the Superintending Engineer was the competent authority for the appellant's post and no notification or delegation of powers was ever issued granting such authority to Director II, CPWD. As a result, the sanction in question is legally untenable and lacks jurisdictional validity.

42. Moreover, in *Mohd. Iqbal Ahmed (Supra)*, the Hon'ble Supreme Court reiterated that sanction is not a mere procedural requirement but a substantive safeguard meant to prevent arbitrary or malicious prosecutions of public servants. The Court emphasized that the sanctioning authority must apply its independent mind before granting sanction, ensuring that the material before it justifies the initiation of prosecution.

43. In the present case, the sanction order was issued by an officer lacking the requisite jurisdiction, thereby, undermining the entire prosecution. As a necessary consequence, the very foundation of the case is eroded, leading to the conclusion that the entire trial was without legal authority and, therefore, a nullity.

44. Given that sanction is a jurisdictional prerequisite, its absence is not a mere irregularity but a fundamental defect that vitiates the entire prosecution. In law, proceedings initiated without proper jurisdiction are considered *non-est*, meaning they have no legal standing. As held in *Yusofalli Mulla Noorbhoy v. R. (Supra)*, when a court finds that no valid sanction was accorded, it becomes incompetent to proceed with the matter, and any further trial proceedings become *void ab initio*. This Court,



therefore, finds that the lack of valid sanction strikes at the very root of the prosecution, rendering the entire trial unsustainable.

45. This Court is of the view that the learned Trial Court erred in failing to hold that the sanction for prosecution was invalid, and as a result, the proceedings against the appellant are vitiated. Accordingly, the first issue stands decided.

46. Having determined that the prosecution was vitiated due to the absence of a valid sanction, it is nonetheless imperative to examine whether the evidence on record independently supports the allegations of demand and acceptance of illegal gratification. The onus lies on the prosecution to establish beyond reasonable doubt that the appellant not only demanded but also voluntarily accepted the alleged bribe. Hence the second issue for consideration of this court is *whether the recovery of tainted money from the stack of files in the appellant's office, rather than from his person, is sufficient to establish his guilt under Sections 7 and 13(1)(d) of the PC Act?*

47. In order to establish guilt under Sections 7 and 13(1)(d) of the PC Act, the prosecution must prove not only the recovery of tainted money but also the crucial elements of demand and voluntary acceptance of illegal gratification by the accused. Mere possession or recovery of money, without credible evidence of demand and conscious acceptance, is insufficient to sustain a conviction. Therefore, the key question before this Court is whether the recovery of tainted money from the stack of files in the accused's office, rather than from his person, satisfies the legal threshold required to prove



culpability under the Act.

48. The prosecution contends that the recovery of Rs. 10,000/- from the accused's work area is sufficient to establish guilt. The appellant argues that the tainted money was placed in a stack of files and not on his person, and no evidence exists to prove that he had actual custody or knowledge of the money being placed there. The prosecution witnesses failed to clarify whether the accused himself retrieved or attempted to retrieve the bribe amount, further weakening the case. The panch witness (PW-7) did not see the transaction directly, and the raid officer (PW-8) entered the room only after the signal was given. There is no clear evidence that the accused accepted the money voluntarily.

49. The Hon'ble Supreme Court in *C.M. Girish Babu v. CBI, (2009) 3 SCC 779*, reaffirmed that mere recovery of tainted money, without credible evidence establishing the demand and voluntary acceptance of a bribe, is insufficient to convict the accused. The relevant paragraphs are reproduced herein:

“18. In Suraj Mal v. State (Delhi Admn.) [(1979) 4 SCC 725 : 1980 SCC (Cri) 159] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.



21. *It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification.*

22. *It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.*

“4. ... It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.”

50. In the aforesaid judgment, the Hon'ble Supreme Court, relying on



Suraj Mal v. State (Delhi Administration) (1979) 4 SCC 725, emphasized that the circumstances under which the money was recovered must be considered, and if the substantive evidence is unreliable, the recovery alone cannot sustain a conviction. Additionally, while Section 20 of the PC Act, raises a presumption that any gratification received by a public servant is illegal, this presumption is not absolute and can be rebutted by the accused through cross-examination or by presenting a probable alternative version of events.

51. Pertinently, the Hon'ble Court clarified that the burden on the accused is not to prove his case beyond reasonable doubt, but merely to establish a preponderance of probability in his favor, after which the burden shifts back to the prosecution to prove the case beyond reasonable doubt.

52. Applying these principles, this Court finds that the prosecution has failed to establish the crucial element of demand and voluntary acceptance of a bribe by the appellant. While the recovery of Rs. 10,000/- from the appellant's work area is not disputed, the circumstances surrounding this recovery remain questionable. The prosecution's key witness, PW-7 (panch witness), did not witness the transaction directly, and PW-3 (complainant) is the sole witness to the alleged demand, whose testimony remains uncorroborated by any material evidence. Further, the absence of a hand wash test of the accused does not give strength to the prosecution's case.

53. In light of *C.M. Girish Babu (Supra)* and *Suraj Mal (Supra)*, this Court holds that the mere recovery of tainted money, without unimpeachable evidence of demand and voluntary acceptance, is insufficient to sustain the



conviction of the appellant. The appellant has successfully rebutted the statutory presumption under Section 20 of the PC Act by creating a reasonable doubt regarding the voluntariness of the alleged acceptance. Accordingly, this Court is of the view that the prosecution has failed to discharge its ultimate burden of proving guilt beyond reasonable doubt, and the appellant's conviction cannot be sustained. Accordingly, the second issue stands decided.

54. This Court has examined the validity of the sanction accorded by PW-9 (Director II, CPWD) and finds that he was not the competent authority, as established by the CPWD Manual Volume-I (1992 Edition). Since the competent disciplinary authority for the appellant's post was the Superintending Engineer, the sanction granted by Director II, CPWD was without jurisdiction and legally untenable.

55. The prosecution's case hinges on the recovery of tainted money from the stack of files in the accused's office, rather than from his person. The lack of a hand wash test of the accused, the absence of eyewitness testimony *qua* demand and acceptance, and the failure of the prosecution to prove the essential ingredients of the offence beyond reasonable doubt collectively weaken the case.

56. In light of the observations made hereinabove, this Court holds that the prosecution sanction granted by PW-9 (Director II, CPWD) was invalid, rendering the trial a nullity. Additionally, the prosecution failed to establish the essential elements of demand and acceptance of bribe, and the reliability of the trap proceedings remains doubtful. The failure to conduct a hand wash



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test, absence of an eyewitness to the demand, and inconsistencies in witness testimonies further weaken the prosecution's case. As a result, the conviction cannot be sustained.

57. In view of the foregoing discussions, the present appeal, accordingly, succeeds and is allowed. Accordingly, the conviction and sentence imposed upon the appellant *vide* judgment dated 31st July, 2010 and order on sentence dated 12th August, 2010 passed by the learned Special Judge, Tis Hazari District, Delhi in CC No. 156/09 are, hereby, set aside.

58. The appellant is acquitted of the charges against him. The appellant's bail bonds, if any, shall stand discharged.

59. TCR be sent back to the learned Trial Court, if any on record.

60. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 20, 2025

Rk/kj/ryp

Click here to check corrigendum, if any