



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

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+ **CRL.A. 234/2003**

SURESH KUMAR GUPTAAppellant

Through: Mr. Vikas Pahwa, Sr. Advocate with Ms.
Purniam Maheshwari, Mr. M.L. Yadav, Mr.
Kushagra Bansal and Mr. Jasmeet Singh,
Advocates alongwith appellant in person

versus

STATE (NCT OF DELHI)Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Bheem Singh, PS ACB, GNCTD, Delhi
Mr. Krishan Kumar and Mr. Anubhav Kumar,
Advocates for victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgment of conviction dated 19.04.2003 and order on sentence dated 22.04.2003 passed in CC No. 32/2000 arising out of FIR No. 37/1999 registered under Sections 7/13 of the Prevention of Corruption Act, 1988 ("PC Act") at the Anti-Corruption Branch.

Vide the impugned order on sentence, the appellant was sentenced to undergo RI for a period of 3 years alongwith payment of fine of Rs.12,500/-,



in default whereof he would undergo RI for a period of 4 months, for the offence punishable under Section 7 PC Act. He was further sentenced to undergo RI for a period of 4 years alongwith payment of fine of Rs.12,500/-, in default whereof he would undergo RI for a period of 4 months, for the offence punishable under Section 13(1)(d) PC Act. Both sentences were directed to run concurrently.

2. The case of the prosecution, as emerging from the record, is that the appellant was apprehended in a trap organised by the Anti-Corruption Branch officials for having demanded and obtained illegal gratification from the complainant/*Sanjeev Chauhan* for showing favour to him in discharge of his duties as an Inspector in the Factory Licensing Department of Municipal Corporation of Delhi (MCD). Being aggrieved, the complainant lodged a complaint (Ex. PW-3/A) on 27.09.1999 against the appellant. It was stated that on 23.09.1999, the complainant went to Factory Licence Department, MCD, Kashmere Gate for renewal of the factory licence which was originally in the name of “Gemini Exports”, of which one *Rakesh Sood* was a partner. He met the appellant and showed him the original license for the year 1993-94. The appellant told the complainant that he would renew the license, but it would cost him Rs.25,000/-, out of which Rs.3,600/- will be deposited as late fee and the balance amount would be his service charges. The complainant told the appellant that it was excessive and stated that he would talk to Mr. *Rakesh Sood*. At this, the appellant stated some reasonable amount and asked him to come back on 24.09.1999 at 12 noon. However, 24.09.1999 was declared a holiday, the complainant talked to the appellant over the phone and the appellant told him to come to his office with the



money on 27.09.1999 at 12 noon. The complainant stated that he and his boss, Mr. *Rakesh Sood*, did not want to pay the bribe amount, but out of helplessness, Mr. *Sood* consented to the same.

3. The prosecution examined a total of 16 witnesses in support of its case. The complainant was examined as PW-13, the shadow/*panch* witness as PW-3, and the Raid Officer was examined as PW-9. The owner of the company of which the complainant is an employee, Mr. *Rakesh Sood*, was examined as PW-6. The remaining witnesses were largely formal in nature.

4. The appellant's statement under Section 313 Cr.P.C. was recorded, wherein he admitted that he was a public servant employed with the MCD at the relevant time, but denied the allegations put to him regarding him demanding and accepting a bribe from the present complainant. He did not lead any defence evidence.

5. Mr. Vikas Pahwa, learned senior counsel, contended that there is no evidence on record to suggest that the appellant had ever demanded any illegal gratification. In this regard, he submitted that both the complainant as well as the shadow witness have not supported the prosecution case.

6. Learned APP for the State, on the other hand, submits that the evidence on record proves the guilt of the appellant under the concerned provisions of the law beyond reasonable doubt. He submitted that there is no dispute as to the identity of the appellant.

7. I have heard the learned senior counsel for the appellant and the learned APP for the State. On a careful perusal of the material on record, the primary question arising for consideration before this Court is whether the prosecution has proved the factum of the appellant demanding and accepting



gratification beyond reasonable doubt.

8. The complainant/PW-13, on the aspect of demand, deposed that he visited his office on 27.09.1999 and was told by the owner of the factory, Mr. *Rakesh Sood*, that the license of the factory had to be renewed and he had a conversation with one Inspector *S. K. Gupta* who is making a demand for Rs.25,000/- for the renewal of the factory license. Thereafter, the witness and Mr. *Sood* went to the Anti-Corruption Branch, where Mr. *Sood* lodged the complaint under the witness' signature. After pre-raid preparations were made and a raiding party formed, the witness along with Mr. *Sood* and the *panch* witness were sent ahead to make the transaction with the appellant. He stated that they went inside the office of the accused and he handed over the currency notes to the appellant as per the directions of Mr. *Sood*. He stated that the appellant refused to take the money and pushed his hand away, stating that the license will be renewed on the ground floor of the office. Acting on the instructions of Mr. *Sood*, the witness thrust the money inside the left pant pocket of the appellant although he had refused to take the same. The appellant said to the witness "*Yeh kiya kar rehey ho, kiya kar rahe ho*" and caught hold of his hand, but in the meantime the *panch* witness gave the predetermined signal and the police officials rushed in and apprehended the accused.

Upon being cross-examined by the learned APP for the State, he denied the suggestion that the appellant had accepted the Rs.25,000/- from him and kept it in his pocket on his own and that he did not thrust the money into the appellant's pocket. He stated that since the Raid Officer did not ask him anything, he did not tell him that the appellant was not willing to accept



the money from him and that he himself had thrust the currency notes into the appellant's pocket at the direction of his boss, *Mr. Sood*. During cross-examination by defence, he admitted the suggestion that when he went to hand over the money to appellant, the appellant pushed his hand with both of his; and when he put the money in the appellant's pocket, the appellant caught hold of his wrist, which is when the police officials and the *panch* witness came inside the room. He further stated that he did not tell the police that the appellant had refused to accept the bribe money because of fear of losing his job with *Mr. Rakesh Sood*.

9. The *panch* witness/PW-3, on the other hand, stated that only he and the complainant were sent to the first floor of the MCD office, where the complainant made him stand outside the room while the complainant went inside. He stated that while he could not hear their conversation, he saw that the complainant was offering money to the appellant and the appellant was not accepting the same; and thereafter, the complainant thrust the money into the pocket of the accused forcibly. He further stated that the appellant refused to accept the money and warded off the complainant's hands while he was thrusting the money into the appellant's left pant pocket. The appellant caught hold of the complainant's hand and in this process the money fell down on the table. At this point, he gave the predetermined signal, and the Raid Officer, *M. S. Sangha*, and other members of the raiding party came there.

During cross-examination by the learned APP, the witness stated that he had told the Raid Officer that the appellant had refused to accept the money and that the complainant had forcibly tried to thrust the money in the



appellant's left pant pocket, during which the money had fallen on the table. During cross-examination by defence, the witness admitted the suggestions that when the complainant tried to give the money to the appellant, he pushed it with both his hands; and that when the complainant tried to thrust the money in the appellant's left pant pocket, he caught hold of the complainant's hand by the wrist.

10. Inspector *M. S. Sangha*, the Raid Officer, was examined as PW-9. He stated that upon receiving the predetermined signal from the shadow witness, he along with other members of the raiding party rushed to the spot and apprehended the appellant. In his cross-examination, he admitted that when he reached the room, there was a scuffle going on between the appellant and the complainant, and the appellant was murmuring something that the witness could not hear. He further stated that heated words were being exchanged between the complainant and the appellant when he reached the spot and the appellant was holding the complainant's hand by the wrist.

11. It is settled law that to establish an offence under Section 7 or 13 of the PC Act, the factum of demand as well as acceptance, both need to be proved. Mere proof of acceptance would not by itself be sufficient and proof of demand is *sine qua non* for securing a conviction under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act.

12. A gainful reference may be made to the Supreme Court's decision in B. Jayaraj Vs. State of Andhra Pradesh, reported as (2014) 13 SCC 55, where it was held as under:

"8. ...Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence



under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established."

13. The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta Vs. State (Govt of NCT of Delhi), reported as **(2023) 4 SCC 731** and held that:

"88. What emerges from the aforesaid discussion is summarised as under:

88.1 (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2 (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3 (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4 (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the



prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act."

14. Recently, in Soundarajan Vs. State Rep. by Inspector of Police Vigilance Anticorruption Dindigul, reported as (2023) 16 SCC 141, the Supreme Court reiterated the meaning of word "gratification" as under:

"...To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26 July 2018, is 'gratification'. There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification..."

15. In the present case, neither the complainant nor the *panch* witness has supported the prosecution case. The complainant in his deposition has provided a detailed account of him offering the money to the appellant, the appellant refusing to accept the same, and him thereafter thrusting the money into the appellant's pocket. The *panch* witness has also corroborated the complainant's version of him giving money to the appellant and the appellant refusing to accept the same. The Raid Officer, too, has admitted that a scuffle was going on between the appellant and the complainant, and that the appellant was holding the complainant by his wrist when he arrived at the spot, which is consistent with the versions of the complainant and the *panch* witness.

16. The evidence on the aspect of demand and acceptance in the present case is lacking abysmally which is irreconcilable with a voluntary demand and receipt of gratification, due to which the essential ingredients of the offences for which the appellant has been convicted remain unproved.



17. In light of the testimonies of the key witnesses as discussed above and the law as reproduced, it is clear that the present case is one of thrusting money and the essential ingredients of the offences under Sections 7/13(1)(d) read with 13(2) of the PC Act, namely the demand and acceptance of gratification, do not stand proved.

18. Accordingly, the present appeal succeeds and the appellant's conviction under the aforesaid Sections is set aside.

19. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

20. The present appeal is disposed of in the above terms.

21. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 06, 2025

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