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

% Date of Decision: 23.09.2025

\+ **CRL.A. 981/2016**

STATE .....Appellant

Through: Mr. Pradeep Gahalot, APP for State

versus

SHIV KUMAR .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been filed against the judgement of acquittal dated 24.01.2015 passed by Special Judge, (PC Act-05), Tis Hazari Courts, Delhi in Corruption Case No. 20/2013 arising out of FIR No. 08/2011 registered under Sections 7/13 of Prevention of Corruption Act, (hereinafter, referred to as 'PC Act') at P.S. Anti-Corruption Branch, Delhi.

Vide the impugned judgement, the respondent was acquitted for the offences under Sections 7/13 PC Act.

2. The facts in a nutshell are that on 03.10.2011, the complainant/*Inder Mohan Verma* approached PS-ACB, Delhi, alleging that respondent/*Shiv Kumar*, an official of the Delhi Jal Board, demanded a bribe of Rs. 600/- for processing his application for water connection. On the basis of this complaint, a raiding party was constituted, consisting of the complainant (PW9), the *panch* witness Mr. Bhagwati Prasad (PW10), Insp. Yash Pal

Singh (PW12) who was the Raid Officer, Inspector B.K.Singh, Ct. Jai Krishnan and Ct. Ramesh. Complainant had brought one GC note of Rs.500/- & Rs. 100/- each. Their serial numbers were recorded, and phenolphthalein powder was applied to the notes. *Panch* witness was given instructions to signal by hurling his head twice over his head, on handing over of the bribe. At 05:15 PM, the raiding party left the ACB office for Sant Nirankari Public School. They met the respondent at the gate of the school. The Raid Officer received the pre-determined signal from the *panch* witness at 05:55 PM, and along with rest of the raiding party, rushed to the spot. *Panch* witness told him that on demand by the complainant, respondent handed over his water connection file to the complainant and on demand of the respondent, complainant handed over treated GC notes to him. On instructions of the Raid Officer, the *panch* witness recovered the bribe money of Rs.600/- from the left side pocket of shirt of the respondent. Raid Officer prepared the raid report and washed the hands and pocket of the respondent, which turned pink indicating phenolphthalein powder, which had been previously applied to the currency notes recovered. Accused was apprehended and the present FIR was registered.

3. Following investigation, charges came to be framed under Sections 7/13(l) (d) r/w section 13 (2) of the PC Act, to which the respondent pleaded not guilty and claimed trial.

4. The complainant was examined as PW9. He turned hostile and did not support the prosecution case. He said it was one third person, *Parvez*, who demanded Rs. 1,000/- from him to facilitate his water connection application which was negotiated down to Rs. 600/-. Though he identified his handwriting and signature on the complaint, he stated that the same was

prepared after the respondent was arrested, on the dictation of the Raid Officer. In his cross examination, he denied the suggestion that the respondent demanded bribe from him. He denied the recovery of notes from the respondent as well.

5. The *panch* witness, examined as PW10, also did not support the prosecution case. Though he deposed as to the conduction of pre-trap proceedings and going to the spot where the respondent came to be arrested, he deposed that when he was walking with the complainant to meet the respondent, he was hit by a cow and had fallen down. By the time he got up, he saw that the respondent had been apprehended and was being taken away. He denied giving the pre-determined signal, or recovering the GC notes from the respondent. Although admitting his signatures on the Raid report, in his cross examination, the *panch* witness denied that the hand wash and pocket wash proceedings had been done in his presence.

6. The Raid Officer, examined as PW12, supported the prosecution case. Apart from proving the Pre-Trap Proceedings, he deposed as to the *panch* witness giving the pre-determined signal, the apprehension of respondent, the recovery of treated GC Notes from left side shirt pocket of the respondent, tallying of the notes so recovered, taking of the right hand wash of respondent and left side pocket wash of his shirt, and both the solutions turning pink.

7. Learned APP assails the impugned judgement by contending that the Trial Court erred in not appreciating the material evidence put on record by the prosecution. Learned APP submits that the recovery of treated GC notes from the possession of the respondent and his presence at the spot when the raid was conducted, presence of phenolphthalein powder on his hands and

pocket, the complaint having been admitted by the complainant, establishes a conscious acceptance of the bribe by the respondent.

8. *Per contra*, Learned Counsel for the Respondent supported the acquittal, submitting that there is no evidence of demand and acceptance of bribe. The complainant as well as the *panch* witness have not supported the prosecution case.

9. 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 a *sine qua non* for securing a conviction under Sections 7 and 13 (1)(d) (i) and(ii) of the PC Act. It is deemed apposite to refer to the case of B. Jayaraj v. State of Andhra Pradesh reported as **(2014) 13 SCC 55**, where the Supreme Court has categorically observed that :-

> *" 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*."

The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta v. 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:*
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> *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.*
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> *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."

10. In the present case, the complainant has specifically denied that the respondent demanded a bribe of Rs. 600/- from him. He has named some third person, *Parvez* or *Parvesh* as the person who had actually demanded the bribe. Thus, he is of no assistance to the prosecution to establish demand. The *panch* witness has also not supported the prosecution case by stating that he was hit by a cow and then he saw that the respondent was already apprehended. He also, failed to mention any demand being made. Though the Raid Officer has supported the prosecution case, and proved the pre-trap and post trap proceedings, he was not in a position to hear or witness the demand of bribe. Even if his entire testimony is taken at its face value, the aspect of demand and acceptance is still not proved as he has

stated that the *panch* witness told him that the demand was made. The presence of the respondent at the spot, and recovery of water connection file, though corroborative of a raid having taken place, would still not be sufficient to prove demand.

11. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

> *"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)*
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> > *"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.""*

12. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

"14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

"...

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

'... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

13. Since both the complainant as well as *panch* witness have not stated that demand of illegal gratification was made by the respondent, the Trial Court has rightly held that the prosecution has failed to establish the factum of demand by the respondent beyond reasonable doubt. Since proving demand is a *sine qua non* for securing a conviction under Sections 7 and 13 (1)(d) (i) and(ii) of the PC Act, failing to prove the same must result in the

acquittal of the respondent. This Court does not think that the impugned judgement suffers from any infirmity. The acquittal of respondent is upheld.

14. Consequently, the appeal is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 23, 2025
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