



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

% Reserved on : 27.11.2025
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+ **CRL.A.614/2002**

MOHD. ABBAS

.....Appellant

Through: Mr K S Singh with Ms Tripti N Singh, Ms Ayushi Jain, Ms. Divyanshi Singh and Mr. Rahul Singh, Advocates.

versus

STATE (CBI)

.....Respondent

Through: Mr Atul Guleria, SPP CBI with Mr Aryan Rakesh and Ms Aekyi Chatterjee, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred against the impugned judgment dated 26.07.2002 vide which the appellant was convicted for the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 [hereafter referred to as 'PC Act'] and vide order on sentence dated 27.07.2002, he was sentenced to undergo rigorous imprisonment for four years with a fine of Rs.500 for each offence, which were directed to run concurrently. It was further directed that in default of payment of fine, the appellant shall further undergo rigorous imprisonment for three months on each count. The present appeal was admitted and the appellant's sentence was suspended on 12.08.2002.



2. The impugned judgment was rendered in the context of a complaint received at the behest of Wing Commander M. Sharma, who alleged that on 27.07.1994, the appellant, who was working as a Junior Engineer (“JE”) in DDA, at about 10.15 A.M. demanded a sum of Rs.2,000/- as bribe for handing over the possession of a DDA SFS flat no.4300 on ground floor, in category II, Pocket- 5 & 6, Sector - B , Vasant Kunj to the wife of the complainant, who was the allottee of the said flat. As per further case of the prosecution, after carrying out the trap proceeding on the same day at about 4.30 PM, the appellant again demanded a sum of Rs.2,000/- towards bribe and accepted a sum of Rs.1000/- with his right hand and kept the same in the table drawer. The appellant was charged for offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, to which the appellant pleaded not guilty and prayed for trial.

3. A perusal of record would show that initially during trial, the prosecution did not produce even a single witness and eventually, right to produce evidence by the prosecution was closed on 06.02.1999 and consequently, the appellant was acquitted for want of evidence. The said order came be challenged before this Court in Criminal Appeal No.418/1999 wherein vide order dated 26.11.2001, the respondent was given another opportunity of three months to produce evidence and the matter was remanded back to the Trial Court.

4. The respondent thereafter produced 7 witnesses in total in support of its case. The complainant was examined as PW-2. *Panch* witness/Mr *Anesh Kumar* was examined as PW-5; recovery witness/*Anil Kumar* was examined as PW-3; *Pritam Singh*, Assistant Director (later Deputy Director) who produced the documents relevant to the allotment of the subject flat was



examined as PW-4. The Trap Laying Officer/*S.K. Peshin* was examined as PW-6 while Insp. *D.M. Sharma* was examined as PW-7. The prosecution examined the sanctioning authority as PW-1.

5. While challenging the competency of the sanctioning authority, the appellant examined Mr Ranbir, Deputy Director, DDA as DW-1.

6. In the present appeal, learned counsel for the appellant contended that the complainant was a biased and interested witness whose testimony would require corroboration, which is lacking in the present case inasmuch as the *Panch* witness *Anesh Kumar* has neither identified the appellant nor deposed about any demand being made. Further, though the complainant's wife (allottee) had statedly accompanied him at the time of trap, she has not been cited as a witness. It is next contended that the testimony of the complainant is also unbelievable as no other witness has stated about antedating of possession slip which was prepared on 27.07.1994 however, was shown as signed on 20.07.1994. The prosecution has failed to establish as to when the allottee of the flat had already received communication dated 20.07.1994 (Ex. PW3/E-9) asking the allottee to visit the office of the DDA on 27.07.1994 for taking possession of the flat, the alleged objective of early possession was met and there was no purpose left for demand of bribe on 27.07.1994. Learned counsel further submitted that though during the trial, a challenge to competency of the sanctioning authority was raised, however, the same is not pressed in the present appeal.

7. The above contentions of the learned counsel for the appellant are refuted by the learned SPP, CBI, who submitted that the complainant has been consistent on the demand of bribe. Though shadow witness has not completely supported the case of the prosecution, however, reading of the



testimony shows that on certain occasions, he did mention about the demand raised by one JE. It is submitted that the prosecution has been able to prove the demand being raised as well as the acceptance and recovery of the money. Reliance is placed on the decision in Neeraj Dutta v. State (Government of NCT of Delhi)¹ and Paramjeet Singh v. State of Uttarakhand² to contend that portions of testimonies of hostile witnesses can still be relied upon when corroborated by other evidence. M. Narsinga Rao v State of A.P.³, T. Shankar Prasad v. State of A.P.⁴ and State of A.P. v. V. Vasudev Rao⁵ are relied upon to submit that once the accused has accepted or agreed to accept any gratification, the legal presumption under Section 20 (1) of PC Act is attracted and it is not essential for the proof of such acceptance to be direct.

8. Before dealing with the contentions, I would first analyse the evidence that has come on record. Concededly, sanction is not an issue of contest in these proceedings.

9. The complainant, who is the husband of the allottee of the subject flat deposed that his wife was allotted the subject flat sometime in 1994. He produced the letter of allotment (PW2/B), requisition slip (PW2/C) which bore his wife's signatures. On 27.07.1994, he approached the DDA office where he met the present appellant who told him that the possession of the flat would be handed over to his wife within a month or so. The complainant requested for earlier possession as his wife was physically challenged. At that stage, the appellant had demanded a bribe of Rs.2,000/-.

¹ 2023 4 SCC 731

² AIR 2011 SC 200

³ 2001 (1) SCC 691

⁴ 2004 (3) SCC 753

⁵ 2004 (3) SCC 753



The complainant deposed that as he had no money, he approached the CBI office on the same day and on his written complaint (Ex. PW2/D) , Trap proceedings were initiated. Both the independent witnesses, i.e., *Anesh Kumar* and *Anil Kumar* met the complainant and the raiding team and pre-trap proceedings were carried out.

10. The complainant reached the office of the appellant along with his wife/allottee and Mr *Anesh Kumar* and met the appellant. He handed over the requisition slip to the appellant, who made entry in the register at Sl. No. 30 (Ex.P2/F1), which also bore signatures of the complainant's wife. The entry was statedly dated 20.07.1994 in place of 27.07.1994. The appellant also prepared papers/documents including possession slip (Ex.PW2/G) and inventory report (Ex.PW2/G1), also bearing the allottee's signatures. The complainant had carried Rs.1,000/- for the Trap. The appellant had claimed that Rs.3,000/- was normally charged and he had already given him concession by charging only Rs.2,000/-. The complainant promised to send rest of Rs.1,000/- through his cousin *Anesh*. The appellant accepted the bribe of Rs.1,000/- with his right hand and kept the same into the top right hand table drawer. Thereafter, the shadow witness went outside and gave signal. The handwash of the appellant was taken on which the solution turned pink. The tainted money was taken out of drawer by PW-3. Recovery Memo was prepared at the spot and was signed by the appellant and other witnesses (Ex.PW2/H). Tainted currency was exhibited as EX.P1 to P10.

11. In cross-examination, a suggestion was given that during the first visit on the date of trap, the witness had met one *Malkhan Singh* during both his visits to the office, which he did not remember. He denied the suggestion that he offered money to the said *Malkhan Singh*. It was denied that no talk



of bribe amount had taken place with the appellant. The witness stated that after the money was handed over, the same was recovered by PW-3 from the drawer of the table.

12. Mr *Anesh Kumar*, *panch* witness in his testimony deposed that he was posted in Central Translation Bureau and was deputed at the CBI office on 27.07.1994. The complainant was introduced to him by Mr *S K Peshin*, a CBI officer and he had stated about a demand of bribe. After pre-trap proceedings, he along with others had gone to Vasant Kunj and met JE named *Mohd. Abbas*. He, however, failed to recognize the appellant in court. He stated that one JE had demanded money, which was handed over by the complainant to him. The said JE also informed the complainant, *apka kaam ho gaya hai*. When the complainant handed over the money, he gave the signal and the money was recovered from the table drawer. He also stated about post-trap proceedings and recovery of papers related to allotment, seized vide memo Ex. PW-3/B.

13. The witness was cross-examined by the SPP for CBI, in which he reiterated that he could not identify the accused person in the court and could not say whether the appellant was the JE. He admitted it to be correct that the complainant had told the JE that he had arranged only Rs.1000/- and balance amount of Rs.1000/- would be paid later by his cousin i.e., the shadow witness.

Curiously, in cross-examination by counsel for the accused, question was put if JE had made any demand of money in his presence, to which he replied that he did not remember. Instead, he said that he only remembered that the JE had said that his work had been done and that he had not taken care to hear as to what was said by the complainant to JE at the time of



handing over the money. The witness was re-examined as to the contradiction in his deposition on the aspect of demand by the appellant. The extract of the same is as under:

“Ques. When the prosecutor was asking you to state the fact you had mentioned that J.E. had demanded the money while during cross-examination by defence counsel you stated you do not remember nor had heard J.E. demanding money, which version is correct?”

Ans: My second version is correct. I had not properly under the question put by the prosecutor. I had not heard J.E demanding money.”

14. The recovery witness, *Anil Kumar* deposed that the shadow witness had gone along with the complainant and his wife to the office of the accused and on receipt of the signal, they went inside and recovered currency from the drawer of the table of the accused. He was also cross-examined by the learned SPP for CBI in which suggestion was given about post-trap proceedings including hand wash of the accused, which was admitted to be correct. Strangely, this witness was not asked to identify the appellant in court or even during the cross-examination by SPP, no such suggestion was given.

15. *Pritam Singh*, who at the relevant time, was posted as Assistant Director, Housing Department, DDA deposed that he was not aware as to who was the JE at Vasant Kunj locality. He had handed over the file (Ex.PW4/A) regarding allotment to CBI vide memo Ex.PW4/B and issued a letter (Ex.PW2/B), No Objection Certificate (Ex.PW4/C), which were supposed to be taken by the allottee to the JE at the site office for taking over possession.

16. *S K Peshin*, the Trap Laying Officer deposed that on receipt of complaint, he admitted the same and carried out pre- trap proceedings. The



raid party along with PW-3 & PW-5 went to the spot and he also stated about the post- trap proceedings. He denied the suggestion that the trap money was planted upon the appellant.

17. Inspector *D M Sharma* deposed that he had taken possession of one file in the name of one *Madhu Sharma*, who is the allottee and the wife of the complainant vide seizure memo Ex.P4/B.

18. The appellant had taken the defence that the complainant wanted him to get done some extra work like change of floor, arrangement of oil bound distemper and change of shutters in the allotted flat, which work was beyond his power. As he had denied the same, the complainant implicated him in the present case.

19. The essential ingredients of Sections 7 & 13(1)(d) of the PC Act are as under:

Section 7

“The essential ingredients of Section 7 are:

- (i) that the person accepting the gratification should be a public servant;*
- (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.”*

Section 13(1)(d)

- (i) that he should have been a public servant;*
- (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant and*
- (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.”*

20. To establish an offence under Section 7 or 13 of the PC act, the factum of prior demand for illegal gratification by the public servant has to be proved as a fact in issue. 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. Gainful reference can be made to the decision in B. Jayaraj v. State of Andhra Pradesh⁶, 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.”

21. The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta (Supra) 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.

⁶ B. Jayaraj v. State of Andhra Pradesh reported as (2014) 13 SCC 55



(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."

22. The Court may, when the foundational facts have been proved by relevant oral and documentary evidence, raise a presumption of fact while considering whether demand of illegal gratification has been proved by the prosecution or not. Needless to state that this presumption of fact is subject to rebuttal by the accused. This presumption is different from the one provided for in Section 20 of the Act. While the former presumption is discretionary in nature, the latter is a mandatory presumption. The Constitutional Bench of the Supreme Court in Neeraj Datta (Supra) holds:-

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands."

23. In order to attract Section 7 of the PC Act, the production has a bounden duty to prove beyond reasonable doubt that there was a demand for gratification and not a simple demand of money. The presumption under Section 20 is invoked only when the demand and acceptance of bribe is



proved. In the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d) cannot be held to be established [Ref. A Subair vs. State of Kerala⁷].

24. Further, the word ‘obtained’ used in Section 13(1)(d) of the PC Act has been interpreted to secure or gain (something) as the result of request or effort. In case of ‘obtainment’, the initiative vests in the person, who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) [now Section 13(1)(d)] of the Act [Ref. C.K. Damodaran Nair vs. Govt. of India⁸].

25. The prosecution has claimed that the demand and its acceptance had taken place in presence of complainant, his wife (the allottee) as well as the shadow witness *Anesh Kumar*. Admittedly, for unbeknownst reasons, the prosecution did not examine the wife of the appellant, who is the allottee of the subject flat and was present at the spot. The shadow witness is also of no help to the prosecution as he did not identify the appellant, and furthermore, had a topsy-turvy deposition. Though he initially stated that the JE had demanded money, however, in cross-examination, he stated that he did not remember if he had heard the JE demand any money. In re-examination, he stated that his second version was correct and reiterated that he did not hear any demand of money made by the JE. Even the recovery witness, PW3, has not been made to identify the appellant in Court, nor any suggestion to this effect has been put by the PP for CBI in his cross examination. Thus, the fact of demand by the appellant only had come in the testimony of the

⁷ (2009) 6 SCC 587

⁸ (1997) 9 SCC 477



complainant.

26. Notably, the genesis of the trap case lies in the offer of allotment made to *Madhu Sharma*, wife of the complainant. The allotment letter is dated 24.06.1994. Subsequent to the allotment, the allottee *Madhu Sharma* received a communication dated 20.07.1994 issued under the signatures of the Executive Engineer, DDA for taking over possession of the flat. As per the complainant, he along with his wife (allottee) had approached the office of the JE on 27.07.1994 for early possession, who said that the possession of the flat would be given after a month. He, however, requested for an earlier possession in which context, a demand of bribe was statedly made by the appellant. Curiously, the investigating agency had seized from the drawer of the table a possession slip dated 17.07.1994 (Ex. PW3/E-10) and inventory check list, which was countersigned by Ms *Madhu Sharma*, the allottee. The prosecution has alleged that the appellant had made an antedating at Sl. No.13 of 20.07.1994 in place of 27.07.1994.

27. From the above allegation, it appears that some documents were shown to be antedated from 27.07.1994 to 20.07.1994. However, the prosecution has failed to explain that if there was already a possession slip of 17.07.1994 as well as the inventory check list countersigned by the allottee *Madhu Sharma* on the said date, what was the need for approaching the appellant for early possession on 27.07.1994. There is no explanation by the prosecution in this regard. Further, even in the present appeal, despite being put, CBI offered no explanation.

28. The overall factual matrix, as discussed above as well as the defence taken by the appellant, makes corroboration of complainant's deposition essential. However, neither the unexamined wife, nor the non-supportive



panch witness, are able to provide the requisite support to the prosecution case. There is a shadow of doubt cast on the factum of demand by the appellant, and benefit of the doubt must be extended to him.

29. An overall view of the facts and circumstances reveal that the prosecution has failed to prove its case beyond reasonable doubt. As a necessary sequitur, he is held to be acquitted of all charges.

30. The appeal is allowed.

31. The appellant's bail bonds are cancelled and sureties discharged.

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

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 10th, 2025

pmc