



2026:DHC:2833



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

% *Judgment Reserved on: 01.04.2026*
Judgment pronounced on: 06.04.2026

+ **CRL.A. 625/2004**

DINESH DUTT

.....Appellant

Through: Mr. M.L. Yadav, Mr. Rambeer Sing
Kundu, Mr. Prashant and Mr. Piyush
Saini, Advocates

versus

STATE OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the sole accused in C.C. No. 85/1998 on the file of the Court of Special Judge, Delhi challenging the conviction entered and sentence passed against him for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (the PC act).



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2. The prosecution case is that on 28.10.1997 at 02.15 p.m., the accused, while serving as Company Commander, Delhi Home Guard, in discharge of his official duties, demanded and accepted an amount of ₹100/- from PW3 as illegal gratification for assigning him traffic duty in Patel Nagar Zone.

3. On 28.10.1997, PW3 lodged a complaint, that is, Ext. PW3/A, with the Anti-Corruption Branch, New Delhi, based on which, Crime No. 44/1997, Ext. PW11/B FIR was registered by PW11, the Assistant Sub-Inspector (ASI) alleging commission of the offences punishable under Section 7 and 13 of the PC Act.

4. PW7, Inspector, Anti-Corruption Branch, conducted investigation into the crime and on completion of the same, submitted the charge-sheet/ final report alleging commission of the offences punishable under the abovementioned sections.

5. Ext. PW7/A Sanction Order for prosecuting the accused was accorded by A.K. Singh, IPS, Director General, Home Guard & Civil Defence, Delhi.



6. When the accused appeared on receipt of summons before the trial court, the court after complying with the formality contemplated under Section 207 Cr.P.C, on 21.09.1999, framed a Charge under Section 7 and 13(1)(a) read with 13(2) of the PC Act, which was read over and explained to the accused, to which he pleaded not guilty.

7. On behalf of the prosecution, PW1 to PW11 were examined and Ext. PW2A-C, Ext. PW3/A-F, PW3/DA, Ext. PW4/A, Ext. PW6/A, Ext. PW7/A, Ext. PW7/DA, Ext. PW9/A-B, Ext. PW9/B1-B7, Ext. PW11/A-B were marked in support of the case.

8. After the closure of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. It was submitted that he has been falsely implicated by PW3 in collusion with a



raiding party member. It was also submitted that at the time of the trap, PW3 was not present at the spot and was instead on duty at Natraj Cinema during the second shift from 3 PM to 9 PM, as reflected in Ext. PW3/DA and Ext. PW7/DA. It was further submitted that the accused was not in a position to extend any favour to PW3 as alleged and that PW3 had duly attended his duties from 25.10.1997 to 28.10.1997 and had received payment for the said period. The accused also asserted that PW3 had taken a loan from him and, in order to avoid repayment, has falsely implicated him in the present case.

9. No oral or documentary evidence was adduced by the accused.

10. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 11.08.2004, held the accused guilty of the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. Accordingly, the accused has



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been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,500/- on each count, and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months on each count. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred the present appeal.

11. The learned counsel appearing for the appellant/accused submitted that the amount of ₹100/- recovered from the accused was not towards any illegal gratification, but only part repayment of a loan. PW3 had taken a loan of ₹200/- from the accused, which was to be repaid on 28.10.1987. In support of this contention, reference was made to the testimony of PW4, the panch/independent witness, who deposed that immediately upon being apprehended, the accused stated that he had merely received the amount repaid by PW3 towards the loan advanced by him. Therefore, the prosecution has failed to establish the essential ingredient of demand for illegal gratification. It was



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further pointed out that PW3 himself admitted in his testimony that the accused never made any direct demand for money but merely stated, “*jo kaam maine bola tha wo kaam ho gaya.*” Moreover, when PW3 initially offered him ₹50/-, the accused told him to return home and bring the full amount of ₹100/-, which, according to the learned counsel for the accused, supports the version of repayment of a pre-existing loan rather than any demand for bribe.

11.1. The learned counsel for the accused further highlighted material inconsistencies in the prosecution evidence concerning the recovery of the alleged bribe amount. It was pointed out that there exist significant contradictions as to the person who actually effected the recovery during the raid. While PW3 and PW4 deposed in their testimony that PW5, the Trap Laying Officer (TLO) had recovered the amount from the accused, whereas PW5 deposed that the recovery was effected by PW4, the independent/panch witness. Such contradicting versions on a



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crucial aspect of the trap proceedings cast serious doubt on the credibility and reliability of the prosecution case. It was further submitted that PW3 was not actually present for the entirety of the raid as is evident from Ext. PW3D/A letter written by PW3 stating he was on traffic duty at Natraj Cinema from 3:00 PM to 9:00 PM on 28.10.1997, the day of the trap. It was further submitted that the accused did not possess the authority or power to mark or regulate the attendance of PW3 and in the absence of such authority, the case of the prosecution regarding motive stands vitiated, thereby rendering the allegation of demand improbable. Reliance was placed on the dictum laid down in **B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55** and **Surjeet Singh Choudhary Vs. State (CRL.A. 788/2002)**.

12. *Per Contra*, it was submitted by the Additional Public Prosecutor appearing for the State that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered



each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits.

12.1. It was submitted that the defence taken by the accused is self-contradictory and lacks consistency. On the one hand, the accused has admitted to the acceptance of money at the spot by contending that the amount was a repayment of a loan. On the other hand, the accused has attempted to dispute the very presence of PW3 at the spot. The accused has submitted in his Section 313 Cr.P.C., examination, that PW3 was not present at the spot at all. But this assertion is in direct contradiction to the testimony of PW3, which records the admission of the accused regarding receipt of money towards repayment of a loan. The learned APP has also relied upon the testimony of PW3, wherein it has been specifically deposed that the raiding party along with the accused left the spot at approximately 02:45 p.m., thereby



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leaving sufficient time for PW3 to report for his duty scheduled at 03:00 p.m.

12.2. The learned APP further submitted that, as contemplated under Section 20 of the PC Act, once the acceptance of money by the accused is admitted, which constitutes gratification other than legal remuneration, a statutory presumption arises that the same was accepted as illegal gratification and in such circumstances, the burden shifts upon the accused to rebut the said presumption by leading credible evidence to the contrary. It was further contended that the accused has failed to discharge this burden as the defence has not produced any cogent or reliable evidence to substantiate the plea that the amount of ₹100/- formed part of repayment of a loan of ₹200/-allegedly advanced earlier. No defence witnesses have been examined to corroborate the existence of such loan, nor has any documentary evidence, such as receipts or records, been placed on record.



13. Heard both sides and perused the materials on record.

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 briefly refer to the evidence on record relied on by the prosecution in support of the case. The initial demand in this case is alleged to have taken place on 25.10.1997 and the trap laid on 28.10.1997. PW3 submitted a written complaint, that is, Ext. PW3/A on 28.10.1997 in the office of the Anti-Corruption Branch in which he has stated thus:-“*...I am employed as a constable in the Delhi Home Guards, and currently, my duty is in the Patel Nagar circle. Our Company Commander is Mr. Dinesh Kumar Sharma. He demands ₹100/- per month from me as bribe and threatens that if I do not give the money, I will not be taken on duty. When I reported for duty on 25/10/97, Company Commander Dinesh Kumar Sharma started*



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saying that I must first give him ₹100/-, and only then would I be taken on duty. I pleaded with him a lot, explaining that I am a poor man and it is very difficult for me to make a living, and asked from where I could give him that much money. However, he did not agree. Yesterday, on 27/10/97, Dinesh Kumar Sharma met me on duty in the evening and asked whether I would give the money or if he should mark me absent. I made many requests, but he still did not agree. Out of helplessness, I said yes, telling him that I did not have the money right then but would give it later. Upon hearing this, he said that if I wanted to be on duty the next day, I must bring ₹100/- with me as bribe. My duty today is from 3:00 p.m. to 9:00 p.m. in the evening. He has asked me to come by 2:00 p.m. today, stating that he, Mr. Dinesh Kumar Sharma, would also be there at 2:00 p.m. I have no enmity with Company Commander Dinesh Kumar Sharma. I am strictly against taking and giving bribes, but I have agreed to his demand out of compulsion. Legal action should be taken against Mr. Dinesh



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Kumar Sharma. I have brought the bribe amount of ₹100/- with me...”

16. PW3, when examined before the trial court stood by his case in Ext.PW3/A Complaint.PW3 further deposed about the pre-trap proceedings. According to PW3,he was instructed to hand over the money to the accused only on specific demand and that PW4 was directed to overhear the conversation and give a prearranged signal on acceptance of the bribe by the accused. PW3 further deposed that the raiding party, consisting of about 12-14 members including himself, left the ACB office at about 01:00 pm and reached Police Station Patel Nagar. He along with PW4 proceeded to the Traffic Office situated on the first floor, while other members of the raiding party took their respective positions. PW3 deposed that upon entering the room of accused, the latter greeted him and enquired whether the work asked by him had been done (*Jo kam maine bola tha kya wo kaam ho gaya*). PW3 expressed his inability to arrange the amount and



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requested the accused to accept ₹50/-, but the accused refused and asked him to return only when he had ₹100/-. Thereafter he took out ₹100/- and extended it to the accused, who accepted the same with his left hand and kept it in the left side front pocket of his shirt, whereupon PW4 gave the prearranged signal and upon receipt of the same, members of the raiding party along with PW5 entered the room and apprehended the accused. The tainted currency note was recovered by PW5 from the left side pocket of the shirt of the accused. PW3 deposed that the left hand of the accused was washed in a solution which turned pink and the wash of the left side pocket of the shirt of the accused was also taken in a separate solution which similarly turned pink. Both the hand wash and pocket wash were transferred into bottles and were sealed. PW3 further deposed that the personal search of the accused was conducted *vide* Ext. PW3/D memo and that pre raid and post raid proceedings were reduced into writing as Ext. PW3/E and Ext. PW3/F.



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16.1. PW3 in his cross examination deposed that his attendance for the dates 25.10.1997 to 27.10.1997 had been marked by the accused prior to the trap and that his attendance for 28.10.1997 was also marked after lodging Ext. PW3/A complaint. PW3 admitted his signatures in Ext. PW3/DA wherein it is stated that he was on duty at Natraj Cinema on 28.10.1997 from 03:00 p.m. to 09:00 p.m. PW3 also deposed that he could not recollect whether PW4 was already present in Anti-Corruption branch prior to his arrival or he came thereafter. He further deposed that he had known the accused for about 3 to 4 years prior to the date of the trap and had not taken any loan or credit from the accused. PW3 denied the suggestion that he had taken a sum of ₹200/- from the accused and that the said amount was to be repaid on 28.10.1997. He further deposed that in his presence the accused had not stated to PW5 that the amount in question was being returned as repayment of any such loan. He deposed that they remained at the place of trap for about half an hour and



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thereafter returned to the Anti-Corruption Branch. They left the spot at about 02.45 pm along with the accused and members of the raiding party. PW3 further deposed that the distance between Police station Patel Nagar and Natraj Cinema is about 3 km and it takes approximately half an hour to reach there and that on the date of the trap, he had not performed any duty. PW3 expressed inability to recollect how the duty timing from 03:00 pm to 09:00 pm on 28.10.1997 was reflected in Ex. PW3/DA. He denied the suggestion that he was not present at the spot after the raid or that he had left the spot at about 2.30 pm. According to him, he remained part of the raiding party till the end and returned to the Anti-Corruption Branch at about 04:00 pm and remained there till about 05:30 pm.

17. PW4, an independent witness, when examined, supported the prosecution case in all material particulars. He also deposed that when the accused was challenged by the Inspector and asked as to whether he had accepted the bribe from PW3, the



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former answered that the latter had returned ₹100/- which had earlier been taken as loan. During his examination-in-chief, the prosecutor is seen to have sought the permission of the Court to 'cross examine' PW4. The request is seen allowed by the trial court. On being further examined by the prosecutor, PW4 deposed that he was unable to recollect whether he had stated to the police that upon being challenged, the accused had told PW5 that he had received ₹ 100/- from PW3, which had earlier been given as a loan to PW3.

17.1. PW4 in his cross examination deposed that Ext. PW3/A complaint was written in his presence and that he had signed the same after going through its contents. PW4 initially deposed that PW5 had recovered the tainted note from the pocket of the accused, but thereafter deposed that he was unable to recall the name of the person who had recovered the money. PW4 denied the suggestion that PW3 was not present at the time of the raid proceedings or that he had left the spot to join duty. PW4



denied the suggestion that the accused had neither demanded nor accepted any bribe or that he was deposing falsely at the instance of the police or out of fear of any departmental action.

18. PW5, the TLO, fully supported the prosecution case. In his cross examination, PW5 corrected his version in his examination-in-chief that it was he who had recovered the money from the pocket of the accused. According to him, it was PW4 who had recovered the note from the pocket of the accused.

19. PW9, Inspector, Anti-Corruption branch, who conducted the initial investigation and PW7, the Officer who thereafter took over the investigation, deposed regarding the various steps taken during the investigation.

20. The testimony of the aforesaid witnesses is mainly relied on by the prosecution to prove the demand and acceptance of the bribe by the accused/ appellant herein. The prosecution case is that the accused demanded the bribe for assigning traffic duty to PW3. *Vide* order dated 21.09.1999, the



trial court framed a charge against the accused for the offences punishable under Section 7 and 13(1)(a) read with 13(2) of the PC Act. However, the trial court in para 25 of the impugned judgment concluded thus- *“In the result, I hold accused Dinesh Dutt Sharma guilty of the commission of offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and he is convicted accordingly”*. No argument was advanced on this aspect. Going by the prosecution case, the offences committed would come under Section 7(a) and Section 13(1)(d) read with 13(2) of the PC Act. In order to bring home the guilt of the accused under the aforesaid provisions of the PC Act, the prosecution is required to establish, beyond reasonable doubt, the twin requirements of demand and acceptance of illegal gratification. Mere recovery of tainted money is not sufficient unless it is preceded by a proven demand. According to PW3, the accused, his Company Commander, told him that the latter would not permit him to



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mark his attendance until he gave him ₹100/- every month. He has further deposed that on the day of trap, the accused reiterated the demand by enquiring whether the work, as earlier directed, had been done (*“jo kaam maine bola tha wo kaam ho gaya”*). The testimony of PW3 further demonstrated that when he offered ₹50/-the accused refused to accept the same and insisted upon the full amount of ₹100/-. This part of the testimony of PW3 clearly establishes a specific and conscious demand made by the accused. The version of PW3 gets material corroboration from the testimony of PW4, the independent/panch witness who has deposed that the accused questioned PW3 regarding the earlier demand and expressed disappointment when a lesser amount was offered. The presence of PW4 at the time of transaction and his reiteration of the conversation that took place between PW3 and the accused affirms the version of PW3 and the prosecution case on the aspect of demand. As regards acceptance, both PW3 and PW4 have consistently deposed that



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former handed over the tainted currency note of ₹100/- to the accused, who accepted the same with his left hand and kept it in the left side pocket of his shirt. There are no material inconsistencies on this aspect. The conduct of the accused in accepting and retaining the tainted note clearly establishes voluntary acceptance. The recovery of the tainted currency note from the possession of the accused immediately after the signal given by PW4 further corroborates the prosecution case. The testimony of PW5, the TLO, though showing a minor inconsistency as to who actually recovered the currency note, does not vitiate the core prosecution case, as the factum of recovery from the accused remains intact. Further, the phenolphthalein test conducted on the left hand and the left pocket of the accused yielded positive results, as both solutions turned pink. This scientific evidence further corroborates the prosecution version that the accused had handled the tainted currency note and had kept the same in his pocket.



21. It is true that from the evidence on record, one Surinder appears to have been the person attending to the marking of attendance of the constable personnel pertaining to the Delhi Home Guard. However, it is equally borne out from the record that the said Surinder was functioning as a Munshi in the office of the accused and was, thus, a subordinate to him. Therefore, even if the immediate act of marking attendance was being carried out by Surinder, the same does not absolve the accused of his authority and control over the said function, and it cannot be said that the accused had no role or influence in the matter for which the illegal gratification was demanded.

22. As regards the documentary evidence i.e. Ext. PW9/B1 to Ext. PW9/B7 which shows the duty record of PW3 for the relevant dates, a perusal of the same shows that PW3 had marked his attendance on the day of the trap also, that is, 28.11.1997 from 03:00 p.m. to 09:00 p.m. In the case on hand, the prosecution has led consistent oral evidence through PW3 and



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PW4 to establish that PW3 was present at the spot and participated in the trap proceedings. On the other hand, the defence has not brought any cogent or credible material to show that PW3 was physically incapable of being present at the spot at the relevant time. There is no material contradiction of such nature so as to discredit the otherwise reliable testimony of the prosecution witnesses.

23. In view of the above, this Court is of the considered opinion that the prosecution has successfully established the foundational facts necessary for invoking the presumption under Section 20 of the PC Act. Consequently, it is to be presumed that the gratification received by the accused was as a motive or reward for doing an official act. At this stage, the burden shifts to the accused to rebut the said presumption. The question that now arises for consideration is whether the accused has been able to rebut the statutory presumption cast upon him by raising a probable defence.



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24. In this context, I refer to the dictum of the Apex Court in **State of Maharashtra v. Rashid B. Mulani, (2006) 1 SCC 407**. In the said case, the complainant therein and his brother B had taken a loan from one K and had secured the land owned by them in favour of K by way of mortgage. A mortgage suit was filed by the mortgagee which ended in compromise. The complainant then requested the respondent, who was working as a Talathi, to delete the name of K from the revenue record in view of repayment of the mortgage loan in terms of the compromise. According to the prosecution, the respondent demanded ₹900/- for this work. The complainant paid ₹600/- but the respondent insisted on payment of the balance amount of ₹300/- for doing the work. The complainant then lodged a report with the Anti-Corruption Bureau, which laid a trap. Evidence of the complainant (PW1) showed payment of ₹300/- as illegal gratification by him and acceptance thereof by the respondent in his house. PW2 (panch witness) who accompanied the



complainant corroborated the evidence of the complainant. The defence as put forth in the cross-examination of the prosecution witnesses and the explanation given in the statement under Section 313 CrPC was as follows : some amount was outstanding from the complainant in regard to a Tagai loan taken in the name of his brother B. The Tahsildar sent a communication on 03.09.1986 to the respondent stating that B was due in a sum of ₹ 2575.90/- towards interest in respect of an engine loan taken in the year 1966. The accused was, therefore, instructed to recover the said amount and deposit it in the government treasury. Therefore, the accused sent a notice dated 06.09.1986 to the complainant, demanding payment of the amount due. In pursuance of it, the complainant came to the accused's house on 06.10.1986 and paid him ₹300/- towards the amount outstanding to the Government, and it was received by him as government dues and not as a bribe for showing any official favour to the complainant. The explanation given by the accused was rejected



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by the trial Judge giving reasons for the same and convicted the respondent for the offences punishable under Section 161 IPC and Section 5(2) read with Section 5(l)(d) of the PC Act, 1947. In appeal, the High Court set aside the conviction holding that the explanation given by the respondent for receiving the amount was reasonable and probable, thus giving him the benefit of doubt and acquitted him.

24.1. In the appeal by the State, the Apex Court held that Section 4 of the Act, *inter alia*, provided that where in any trial of an offence punishable under Section 161 IPC or Section 5(1)(a) or (b) punishable under Section 5(2) of the Act, it is proved that an accused person has accepted any gratification (other than legal remuneration), it shall be presumed, unless the contrary is proved, that he accepted that gratification as a motive or reward, such as is mentioned in the said Section 161. This would mean that a mere explanation in the statement under Section 313 that the amount was received towards a loan will not



be sufficient. The contrary position should be established by the accused either from inferences legally drawn from the evidence on record let in by the prosecution, or by letting in direct evidence in regard to the explanation. The statutory presumption raised under Section 4 will not stand rebutted merely by offering an explanation under Section 313 if such explanation does not find support from the evidence let in by the prosecution.

24.2. In **Dhanvantrai Balwantrai Desai v. State of Maharashtra, AIR 1964 SC 575**, it has been held that, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration, the Court has no choice in this matter. Of course, it is open to that person to show that though that money was not due to him as legal remuneration, it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where



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a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Presumption of law cannot be successfully rebutted by merely raising a probability, however reasonable, that the actual fact is the reverse of the fact which is presumed. Something more than raising a reasonable probability is required for rebutting a presumption of law. The



bare word of the appellant is not enough and it was necessary for him to show that upon the established practice his explanation was so probable that a prudent man ought, in the circumstances, to have accepted it.

24.3. Further, in **Chaturdas Bhagwandas Patel v. State of Gujarat, (1976) 3 SCC 46**, it has been held that the burden which rests on an accused to displace this presumption, is not as onerous as that cast on the prosecution to prove its case. Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161.

25. Applying the aforesaid settled principles to the facts of the present case, it is evident that the accused has failed to rebut the statutory presumption arising under Section 20 of the PC Act. As held in the aforesaid decisions, a bare explanation



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which is merely plausible is insufficient to rebut the presumption of law. Further, no enmity or plausible ill motive has been shown by the defence as to why PW3, an officer subordinate to the accused, would falsely implicate the latter and subject himself to such hardship of a trap proceeding. It is also necessary to be borne in mind, as observed by the Apex Court in **State of U.P. v. G.K. Ghosh, (1984) 1 SCC 254**, that a citizen is ordinarily reluctant to approach the Vigilance authorities and undergo such burdensome process of laying a trap and facing trial. Such action is taken only when one feels genuinely aggrieved. In the absence of any materials on record to show that PW3 had any reason(s) to falsely implicate the accused, I find no reason to disbelieve him. His version is supported by the testimony of PW4, whose testimony also, I find no reason(s) to disbelieve. Accordingly, this Court finds that the accused has failed to rebut the statutory presumption arising under Section 20 of the PC Act. Hence in



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these circumstances, I find no infirmity in the impugned judgement calling for an interference by this court.

26. In the result, the appeal, *sans* merit, is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

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