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

% ***Judgment Reserved on: 02.04.2026***
Judgment pronounced on: 15.04.2026

\+ **CRL.A. 897/2006**

SUMER SINGH .....Appellant

Through: Mrs. Rajdipa Behura, Sr. Advocate with Mr. Philomon Kani, Ms. Neha Dobriyal, Advocates.

versus

STATE NCT 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. 09/2001 on the file of the Court of the Special Judge, Delhi challenging the conviction entered and sentence passed against him for the offences punishable under Sections 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the PC Act).

2. The prosecution case is that on 03.04.2000 at about 4:00 PM, the accused, while employed as Head Constable (HC) at police station Patel Nagar, demanded and accepted ₹300/- from PW2 as illegal gratification, as reward for returning the registration certificate (RC) of his motorcycle, which the accused had taken from PW2 during investigation of crime no. 296/1999 regarding the theft of the said motorcycle, and thereby committed the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act.

3. On 03.04.2000, PW2 lodged a complaint, that is, Ext. PW2/A, with the Anti-Corruption Branch, CBI, New Delhi, based on which pre raid proceedings were drawn and the raid was conducted after which Crime no. 18/2000 was registered alleging commission of the offences punishable under Sections 7 and 13 of the PC Act.

4. PW5, Inspector, Anti-Corruption Branch (ACB), CBI, New Delhi, 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 Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

5. Ext. PW1/A Sanction Order for prosecuting the accused was accorded by PW1, Deputy Commissioner of Police, West District, New Delhi.

6. When the accused appeared before the trial court, the court after complying with the formality contemplated under Section 207 Cr.P.C, on 05.10.2002, framed a charge against the accused for the offences punishable under Section 7 and Section 13(1)(d) read with Section 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.PW1/A, Ext.PW2/A-G, PW2/E-1, PW2/DA, PW2/X, PW3/A, PW4/A, PW8/A, PW11/A-B, Mark XI and Mark Y were marked in support of the prosecution case.

8. After the close 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. The accused submitted that he has been falsely implicated in the case and that PW2 is an accomplice. According to him, PW8 is a tutored witness and has deposed against him only out of fear of departmental action at the behest of the ACB.

9. On behalf of the accused, DW1 was examined.

10. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 03.10.2006, held the accused guilty of the offences punishable Sections 7 and Section 13(1)(d) read with Section 13(2) of the PC Act. *Vide* order on sentence dated 04.10.2006, the accused has been sentenced to rigorous imprisonment for six months along with fine of ₹1,000/-, and in

default of payment of fine to undergo simple imprisonment for one month and to rigorous imprisonment for one year along with fine of ₹2,000/- for the aforesaid offences. The substantive sentence of imprisonment have been directed to run concurrently. Aggrieved, the accused has preferred the present appeal.

11. The learned senior counsel for the appellant/accused submitted that the latter has falsely been implicated in the present case. There is no evidence of any demand for illegal gratification by the accused. Ext. PW2/A complaint has been tampered with as PW2 himself does not support the case stated therein. On the other hand, PW2 in the box deposed that one Paltu Ram had demanded the bribe and told him that the same has to be paid to the accused. It was further submitted that the complaint was made after almost one year from the date of the alleged demand. There are several contradictions and inconsistencies in the testimony of the prosecution witnesses. There was no express demand made by the accused, which is *sine qua non* to prove the guilt of the accused

under Section 7 of the PC Act. There are also inconsistencies in the testimony of PW8, the panch witness. The testimony of PW8 raises doubts as to whether he was actually present when the bribe is alleged to have been given.

11.1 It was further pointed out that the version of PW8 that the right-hand wash of the accused had been taken cannot be believed as the right hand of the accused had been plastered at the relevant time. It was submitted that PW9, who had lodged the complaint of PW2 was also part of the raiding team, which is a procedure contrary to law. There is also delay in lodging the FIR, which was lodged after the completion of trap-proceedings at about 07:00 PM on 03.04.2000.

11.2 It was further pointed out that according to PW2, the hand wash and the pocket wash were taken at the ACB and not in the local police station. The hand wash and pocket wash samples were stated to have been deposited in the *malkhana* on 03.04.2000. But there is no evidence of the same being sent to the FSL.

Reference was made to the dictums in **Mir Mustafa Ali Hasm v. State of A.P., (2024) 10 SCC 489** and **Mukhtiar Singh (since deceased) Through his Legal Representative v. State of Punjab, (2017) 8 SCC 136**.

12. *Per Contra,* the learned Additional Public Prosecutor submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court. Even if PW2 is partially hostile to the prosecution case, the testimony of the other prosecution witnesses was rightly relied on by the trial court to conclude regarding the guilt of the accused. It was also pointed out that Ext. PW11/B, the FSL Report also remains unchallenged. Reference was made to the dictums in **State of U.P. v Zakaullah AIR1998 SC 1474** and **M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691,** in support of the arguments.

13. Heard both sides and perused the records.

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 gist of Ext. PW2/A complaint of PW2 dated 03.04.2000, based on which the crime was registered is:- That his motorcycle, DL-4S-S 6556 Yamaha, registered in his name, was stolen in April 1999, regarding which FIR No. 296/99 was registered at Patel Nagar Police Station. His motorcycle was later recovered by the police from Mathura. The investigation of the case was conducted by Head Constable (HC) Sumer Singh of Patel Nagar police station. He had received his motorcycle as per orders of the court. However, HC Sumer Singh took the motorcycle's Registration Certificate (RC) from him, stating that it had to be incorporated in the case file. He approached HC Sumer Singh several times to get back the RC. Sumer Singh demanded a bribe of ₹3000/- for

returning the RC. Two days back, he again approached Sumer Singh and requested the latter to return the RC. This time, Sumer Singh agreed to return the RC on payment of a bribe of ₹300/-. Sumer Singh told him that on 03.04.2000, the former would be on duty at Patel Nagar police station until 08:00 PM and so he could go to the station with ₹300/- and take back his RC. PW2 has further stated that he is against taking and giving bribes and hence necessary action may be taken.

16. PW2, when examined before the trial court, deposed that after the police had recovered his stolen motorcycle, he had taken the same on *superdari* from the Court at which time one HC Ved Prakash and Constable Paltu Ram of Patel Nagar police station asked for the RC of his motorcycle on the pretext that some file/document had to be made. Hence, he gave the RC to the said police officials. After a few days, when he met Paltu Ram and asked for his RC, the latter told him that the RC was with the accused and that he could take it from the accused by giving

₹300/-. Pursuant to the same, he went to the ACB and lodged a complaint against Paltu Ram and the accused, whom he identified during the trial. PW2 further deposed regarding the pre-trap proceedings taken at the ACB office after which, he along with the *panch* witness were taken by the officials of the ACB to the Patel Nagar police station. According to PW2, he along with the *panch* witness and the raiding party left the office of the ACB at about 02:00 - 02:30 PM and reached the Patel Nagar police station at about 03:00 PM. He along with the *panch* witness went inside the police station where he met the accused who handed over the RC to him. He then gave the money to the accused which the latter accepted. PW2 further deposed that the *panch* witness perhaps must have signaled the raiding team, who came and apprehended the accused and recovered the currency notes given by him from the shirt pocket of the accused. PW2 further deposed that he could not recall with which hand the accused had accepted the notes, but at that time one of the hands of the accused was in plaster. PW2

was unable to say whether the currency notes marked as Exts. X, Y and Z were the currency notes that had been given by him to the accused on the said day. As PW2 was resiling from his earlier statement, the prosecution sought the permission of the court to "cross-examine" the witness, which request was granted by the trial court. On further examination by the prosecutor, PW2 deposed that he had not signed Exhibit PW2/A complaint after reading the same and that the complaint was not lodged in the presence of the *panch* witness. PW2 claimed that he had in fact mentioned the name of Paltu Ram in his complaint. PW2 also claimed that the police had obtained his signature on blank papers.

16.1 PW2, in his cross-examination, denied the suggestion that the accused had not taken any money from him. According to PW2, it was the raid officer who had recovered the money from the shirt pocket of the accused. PW2 denied the suggestion that no post-trap proceedings had been conducted in his presence and that his signature had been obtained on documents, at a later stage.

17. PW8, the *panch* witness when examined before the trial court, deposed that on 03.04.2000, he was on duty as *panch* witness in the ACB. At about 02:10 PM, PW9 called him and recorded the complaint of PW2 in his presence, in which he had also affixed his signature. PW8 identified his signature at point B in Ext. PW2/A. PW8 further deposed that PW2 had handed over three currency notes of the denomination ₹100/- to PW9, who noted the serial numbers in Ext. PW2/B pre-raid report and applied some powder to the currency notes. PW9 made him touch the currency notes. His hand wash taken turned pink. The currency notes were then returned to PW2. PW2 was instructed to give the bribe on a specific demand being made by the accused. PW2 was also instructed to remain close to PW8, who in turn was directed by PW9 to give a signal on acceptance of the money by the accused. PW8 further deposed that he along with PW2 and the raiding party reached Patel Nagar police station at about 03:30 PM. He along with PW2 went to the room of the accused. PW8

identified the accused in the box. PW2 asked for the RC of his motorcycle from the accused who stated that the RC had been taken out from the file the previous day and handed over the same to the latter, all of which took place inside the room. Thereafter, he and PW2 came out of the room. The accused approached them from behind, placed his hand on the shoulder of PW2 and said- "*what has happened to what was settled between us*". PW2 replied that he had brought the money and took out the money from his purse and gave it to the accused who received it with his left hand. On seeing the amount, the accused responded that he was accepting the amount though it was less and walked back to his room. The handing over of the money took place in the corridor outside the room of the accused. PW8 further deposed that he then came out to the gate of the police station and gave the pre-determined signal, where upon the raiding team came along with him inside the police station and apprehended the accused. The raid officer challenged the accused. On the directions of the raid

officer, he recovered the currency notes from the shirt pocket of the accused. The number in the currency notes seized from the shirt pocket of the accused tallied with the number mentioned in Ext. PW2/B memo. The left hand and pocket wash of the accused also turned pink. PW8 identified the seized currency notes shown to him. According to PW8, Exts. P1 to P4 are the bottles containing the samples of the hand and pocket watch of the accused.

17.1 PW8, in his cross-examination, denied the suggestion that there was no demand of any money by the accused and that no money was offered by PW2 when the RC was given by the accused. He also denied the suggestion that no pre-trap proceedings were conducted in the office of the ACB. He also denied the suggestion that the pre-trap report had been prepared at a later stage. PW8 admitted that he is aware that department action would be initiated against a government employee if he does not depose as per the statement recorded by the raid officer.

18. PW9, Inspector, ACB, Delhi, deposed that on 03.04.2000 he had recorded Ext. PW2/A complaint of PW2 in the presence of the *panch* witness. The complaint was regarding the demand of bribe of ₹300/- by the accused HC Sumer Singh of Patel Nagar police station for returning the RC of the stolen motorcycle of PW2. PW2 brought the bribe amount of ₹300/-, that is, three currency notes of the denomination of ₹100/- each. He noted the serial number of the notes in Ext. PW2/B pre-raid report and smeared them with phenolphthalein powder. The panch witness was directed to touch the notes after which his hand wash taken turned pink. PW9 further deposed that the characteristics of the powder and solution had been explained to the panch witness and PW2 through the said demonstration. The treated currency notes were given to PW2, who was instructed to remain close to PW8, the *panch* witness, and to carry out the transaction in a manner which would be visible and the conversation audible to the latter. PW8 was also instructed to remain close to PW2 and to

signal the raiding team once the transaction was complete. The raiding team along with PW2 and PW8 reached the police station. PW2 and PW8 were sent inside the police station while he along with the other members of the raiding team took suitable positions inside the police station. PW11 however, remained in the vehicle parked some distance away from the police station. At about 04:00 PM, he saw PW2, PW8 and one person having a plaster on his right hand coming outside from a room and talking for a while in the corridor. The person with plaster went inside the room at which time PW8 gave the pre-determined signal. Then he along with the members of the raiding party rushed to the spot. PW8 informed them that the accused had demanded and accepted the bribe from PW2 and had kept the same in his left-side shirt pocket. He went inside the room, disclosed his identity to the accused and challenged the accused as to whether he had accepted the bribe. On his directions, PW8 recovered the treated currency notes from the shirt pocket of the accused. The serial numbers of the said notes

tallied with the number recorded in the pre-raid report. PW9 further deposed that he took the left hand and shirt pocket of the accused, which turned pink. The solution was transferred into four small empty clean bottles which were sealed and marked as LHWI, LHWII, LSSPWI and LSSPWII. The shirt of the accused, the bottles of the RC were seized and he prepared Ext. PW-8/A, the post-raid report and also prepared PW-9/A *rukka* and sent the same to the ACB for registration of the case. PW11 was then called to the spot, to whom the custody of the accused and the material objects of the case were handed over.

19. PW6, who was also then posted at the ACB, Delhi, deposed that on 03.04.2000, PW11 Inspector Suresh Chand handed over to him two sealed bottles marked as LHWI and LSSWI duly sealed with the seal of NS along with the sample seal pasted with the slips bearing particulars of the case. He kept the bottles in safe custody in his *almirah* which was duly locked and the keys were kept by him. On 06.04.2000, he handed over the

bottles to PW11 for sending the same to the FSL for analysis. According to PW6, during the period the material objects remained in his custody, the same had not been tampered with by anyone.

19.1 In the cross-examination, PW6 deposed that that the ACB is not a notified *malkhana* and that no register about the deposit or return of exhibits had been maintained in his office at the relevant time. He denied the suggestion that any tampering had been done during the period the exhibits remained in his custody. He also denied the suggestion that the exhibits had never been deposited with him by PW11.

20. PW7, the then Inspector, ACB, Delhi, deposed that on 07.08.2000 he had gone to FSL Malviya Nagar to collect the FSL report and the bottles containing the remnants of Exts. LHWI and LSSPWI, which were handed over to PW11. PW7 also deposed that as long as the said articles were in his custody, the same remained intact and no tampering had taken place.

20.1 PW7 was never cross-examined.

21. PW11, Inspector ACB, Delhi deposed that on 03.04.2000, he was one of the members of the raiding party which was led by PW 9. At about 02:30 pm, he along with the raiding party left the ACB in a government vehicle for Patel Nagar police station and reached the station by about 03:30 pm. The vehicle was parked near the depot, DTC Patel Nagar and he remained in the vehicle. At about 06:10 PM, he was called inside the police station by PW9, who handed over to him the custody of the accused along with the material objects of the case, that is, 3 currency notes of the denomination of ₹100/- each, Exts. LHWI, LHWII, LSPPWI, LSPPWII, *pulanda* of the shirt sealed with the seal of NS as well as Ext. PW2/C seizure memo of the currency notes, Ext. PW2/D seizure memo of the bottles containing the wash and Ext. PW2/F seizure memo relating to the RC of the motorcycle. He then prepared Ext. PW11/A site plan at the site in the presence of PW2 and PW8. He also recorded their statements and interrogated the accused. He thereafter arrested the accused. He then collected a

copy of Ext. PW3/A, copy of FIR no. 296/1999 from Moharrir Head Constable (Record) [MHC(R)] Patel Nagar police station. Thereafter, he took the accused and the material objects to the Civil Lines police station, where the accused was put in lock up. He deposited the seized currency notes, Ext. LHWII and LSSPWII, the articles of personal search of the accused with the Moharrir Head Constable (*Malkhana*) [MHC(M)], Civil Lines police station. Thereafter, he went to the ACB and deposited Ext.LHW1 and LSSPW1 with PW6 ACP R.K. Joshi, who kept the same in his almirah and locked the same. On 06.04.2000, he collected exhibits LHWI and LSSPWI along with the sample seal from PW6 for depositing the same in the FSL Malviya Nagar. Later, he collected Ext. PW11/B FSL report along with the remnants of the samples. Thereafter, he was transferred and hence he handed over the file to the DCP.

21.1 PW11 in his cross-examination deposed that when the accused had been taken into custody, the latter's right hand had

been plastered. He denied the suggestion that he had not conducted a proper or fair investigation in the case.

22. I also make a brief reference to the defence evidence. DW1, the then Moharrir Head Constable (Record), Patel Nagar police station, produced FIR no. 296/1999 registered for the commission of the offence punishable under Section 379 of the Indian Penal Code, 1860, pertaining to theft of motorcycle of PW2. According to DW1, the charge-sheet/final report in the said case was submitted before the trial court on 09.06.1999.

23. The question that arises is whether the prosecution has established the foundational facts of demand and acceptance of the bribe by the accused while discharging his official duty and thereby attracting the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. It is well-settled that both the offer by the bribe giver and the demand by the public servant constitute foundational facts which must be proved by the prosecution. Mere acceptance of illegal gratification without proof

of offer by the bribe giver and demand by the public servant would not constitute an offence under Sections 7 and 13(1)(d) of the PC Act, as held by the Hon'ble Supreme Court in **Neeraj Dutta v. State (Government of NCT of Delhi) (2023) 4 SCC 731**.

24. According to the learned Senior Counsel for the appellant/accused, the essential ingredient of demand by the accused, being a public servant, has not been established. PW2 in Ext. PW2/A complaint stated that the accused had demanded bribe from him for returning the RC of his motorcycle. However, when examined before the trial court, PW2 resiled from this version and attributed the initial demand to one Paltu Ram. The said Paltu Ram is alleged to have told PW2 to pay the money to the accused for the return of the RC. Referring to this part of the testimony of PW2, it was contended that no demand had been proved against the accused. It is indeed true that PW2 turned partially hostile regarding the initial demand. However, he did not deny the crucial fact that he had paid ₹300/- to the accused. He admitted that he

handed over the money to the accused and that the same was recovered from the accused's pocket. Though PW2 claimed that he was unable to recall wash of which hand of the accused had been taken, he admitted that the wash turned pink. Thus, his testimony supports the prosecution case on several important aspects of the transaction. It is well settled that evidence of a hostile witness is not to be discarded in toto and the Court may rely upon those portions of the testimony which appears credible and inspires confidence in the mind of the Court. (**Mohan Lal v. State of Punjab; AIR 2013 SC 2408**, **Ramesh Harijan v. State of U.P.; AIR 2012 SC 1979**, **Prithi v. State of Haryana; (2010) 8 SCC 536**, **Lella Srinivasa Rao v. State of A.P.; AIR 2004 SC 1720**, **Koli Lakhmanbhai Chanabhai v. State of Gujarat; AIR 2000 SC 210**). Therefore, despite some inconsistency regarding the initial demand, the testimony of PW2 when read with the remaining evidence on record remains consistent and does inspire confidence.

25. PW8, the *panch* witness, whose testimony I have already referred to in detail, fully supports the prosecution case on both demand and acceptance. PW8 deposed that after PW2, and he had come out of the room of the accused, the accused followed them into the corridor of the police station. In the corridor, the accused placed his hand on the shoulder of PW2 and asked, "*what has happened to what was settled between us*." This statement was made immediately before the transaction and in the presence of PW8. Such words indicate a prior understanding regarding payment and amount to an implied demand for illegal gratification. PW8 further deposed that in response, PW2 stated that he had brought the money and handed over ₹300/- to the accused, which the accused accepted with his left hand. The accused even remarked that he was accepting the amount, though it was less, and thereafter went back to his room. The sequence of events, as narrated by PW8, establishes both the demand and acceptance of bribe by the accused.

26. The learned Senior Counsel for the appellant/accused argued that there are inconsistencies in the testimony of PW8 and that these inconsistencies raise doubts regarding the prosecution case. It was pointed out that if PW8 is to be believed, it was the right hand wash of the accused that was taken, whereas the materials on the record shows that the right hand of the accused was in plaster at the relevant time. The arguments advanced by the learned Senior Counsel against the prosecution case at first blush appeared indeed appealing. But a closer or careful scrutiny of the evidence on the record shows that they are incorrect. PW8 never deposed that it was the right hand wash of the accused that had been taken. On the other hand, the relevant portion of his examination-in-chief on this aspect reads:- *"...thereafter, the left hand wash and left pocket wash of the accused were taken in some water like solution which turned into pink…"* However, further down in his examination, the trial court is seen to have recorded thus:- *"…At this stage, four sealed bottles*

marked RHW-I, RHW-II, LSSPW-I and LSSPW-II out of which two bottles are sealed with the seal of NS and two bottles sealed with the seal of FSL are produced from malkana and shown to the witness who after identifying the signature at point B on the marked paper slips, states that these are the same bottles which were prepared in his presence by the raid officer. Those bottles are Ex. P1 to P4…" This appears to be a mistake committed by the trial court while recording evidence because none of the witnesses including PW2, who is partially hostile, has a case that it was the right hand wash of the accused that had been taken. As referred to earlier, PW2 only feigned lack of memory and deposed that he is unable to recall which hand wash of the accused had been taken. PW8 has categorically deposed in his examination-in-chief that it was the left hand wash of the accused that had been taken. This part of his testimony has not been discredited in cross-examination. PW9, the Trap Laying Officer (TLO), also deposed that he had taken the left hand and shirt pocket wash of the

accused, which had turned pink. According to PW9, the solution had been transferred into four small empty clean bottles which were sealed and marked as LHWI, LHWII, LSSPWI and LSSPWII. PW9 also deposed that immediately after the raid and completion of formalities, he had handed over the custody of the accused as well as the material objects of the case to PW11. PW11 corroborates this testimony when examined and deposed that on 03.04.2000, he had received the aforesaid exhibits from PW9. PW11 also deposed that on 03.04.2000 after receipt of the material objects from PW9, he had handed over two sealed bottles marked as LHWI and LSSWI to PW6, who kept the same in his *almirah* and locked the same. The trial court in the impugned judgment has recorded thus:- *"...It transpires from the evidence of the panch witness (PW8) that left hand wash and left pocket wash of shirt of the accused was taken in some water solution which turned into pink. However, while exhibiting the case property in the evidence of the panch witness, the sealed bottles containing the hand wash*

of the accused have been inadvertently referred to as a right hand wash instead of left hand wash. To my mind, this would not in any way adversely affect the prosecution case because admittedly, no right hand wash of the accused was taken as his right hand was under plaster…..” Therefore, the materials on record make it clear that it was only a mistake that was committed by the trial court in referring to the exhibits and that there was no right hand wash of the accused taken at any point of time.

27. Further, PW8’s presence at the scene cannot be doubted. He was part of the pre-trap proceedings, accompanied PW2 to the police station, witnessed the transaction, and gave the signal to the raiding team. He further described how the raiding party came and recovered the tainted money from the accused. Minor inconsistencies, such as whether the exact transaction took place inside the room or just outside in the corridor, do not affect the core of the prosecution case. What matters is whether the witness is consistent on the important aspects of the case. PW8 has

remained clear and consistent on the crucial points. His testimony is also supported by the evidence of PW9, the TLO as well as PW11, the IO.

28. PW9, the TLO, proved the recording of Ext. PW2/A complaint, the pre-trap proceedings, the application of phenolphthalein powder, and the conduct of the trap, including the recovery of the marked currency notes from the accused. PW11, the IO, supported the prosecution by deposing about the subsequent steps taken in the investigation, including taking custody of the accused and the material objects in the case. Thus, the evidence of PW8, PW9, and PW11 consistently support the prosecution case and corroborates the version of PW2.

29. It was also argued that Ext. PW2/A complaint of PW2 has been tampered with. According to the learned Senior Counsel for the appellant/accused, the testimony of PW2 shows that that the latter is unaware of the contents of Ext. PW2/A complaint because while examined he deposed that he had not signed Ext.

PW2/A complaint after reading the same and that the complaint had not been lodged in the presence of PW8. PW2 claimed that he had in fact mentioned the name of Paltu Ram in his complaint. PW2 also claimed that the police had obtained his signature on blank papers. Therefore, referring to this part of the testimony of PW2, the argument advanced is that that it is a clear case of tampering of Ext. PW2/A complaint, which aspect alone is sufficient to throw out the entire prosecution case. This argument also at first blush appeared quite appealing. But a closer scrutiny of the materials on record show that the argument is also not correct. PW8, the independent *panch* witness, deposed that the complaint of PW2, that is, Ext. PW2/A had been recorded by PW9 in his presence, at which time PW2 was also present. PW8 also deposed that he had affixed his signature in Ext. PW2/A complaint and PW8, while in the box, identified his signature at point 'B' in Ext. PW2/A complaint. This aspect of the testimony is corroborated by the testimony of PW9, the TLO, deposed that on 03.04.2000, he

had recorded Ext.PW2/A complaint of PW2 in the presence of PW8. PW9 also deposed that the complaint was regarding the demand of bribe of ₹300/- by HC Sumer Singh (the accused) of Patel Nagar police station for returning the RC of the stolen motorcycle of PW2. The testimony of PW8 and PW9 on these aspects has not been discredited in any manner and, therefore, I find no reasons to disbelieve them. Their testimony will also show that PW2 was clearly resiling from his version in Ext. PW2/A complaint and therefore, the trial court was quite justified in initiating proceedings under Section 344 Cr.P.C against him.

30. Here it would be apposite to refer to the dictum in **M. Narsinga Rao** (*supra*) relied on by the learned prosecutor to substantiate the argument that despite PW2 partially turning hostile, the Court can rely on the remaining evidence on record and conclude regarding the guilt of the accused. In **M. Narsinga Rao** (*supra*) the appellant, therein, Manager of a Milk Chilling Centre attached to Andhra Pradesh Dairy Development Corporation

Federation was alleged to have received bribe from a milk transporting contractor for recommending the payment of an amount due to the latter. Pursuant to a complaint being made, the trap was laid and the appellant was caught red-handed and the tainted currency notes were recovered from his pocket. The trial commenced after four long years. During the trial, the main prosecution witnesses turned hostile and did not support the prosecution case. The appellant took up a defence that one "K" had orchestrated a false trap against him by employing PW1 and PW2 therein and that the tainted currency notes had been forcibly stuffed into his pocket. The trial court convicted the appellant under Sections 7 and 13(2) read with section 13(1)(d) of the PC Act, which was upheld by the High Court. The High Court held that even in the absence of direct evidence, the rest of the evidence and circumstances were sufficient to establish that the accused had accepted the amount and that it gave rise to a presumption under Section 20 of the PC Act that he had accepted the same as illegal

gratification. When the matter came up before the Hon'ble Supreme Court, the appellant contended that the presumption under Section 20 of the PC Act could be drawn only when acceptance or obtaining of gratification was established by direct evidence and not on the basis of an inference to that effect. It was contended that unless the prosecution proved that what was paid amounted to gratification, the mere handing over of some currency notes to the public servant would not be sufficient to make the same as an acceptance of gratification.

30.1 Rejecting the above said contention, it was held by the Apex Court that when Section 20(1) of the PC Act deals with legal presumption, it is to be understood as in terrorem, i.e. in the tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the Section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during the trial, it

should be proved that the accused had accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. The word "proof", needs to be understood in the sense in which it is defined in the Evidence Act. What is required by the definition of the word "proof" is the production of such materials on which the Court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

30.2 After referring to the law on the point, the Apex Court observed that from the materials on record, it was clear that when the appellant was caught red handed with the currency notes, he never demurred to the trap laying officer that those notes had not been received by him. The story that the currency notes were stuffed into his pocket was found to have been concocted by the appellant only after lapse of about 4 years and that too when the

appellant faced trial in the Court. Though the silence of the accused/appellant by itself may not or need not necessarily lead to the presumption that he accepted the amount from somebody else, the other circumstances which were proved in the case and those preceding and succeeding the searching out of the tainted currency notes were found to be relevant and useful to help the Court to draw a factual presumption that the appellant therein had willingly received the currency notes. From the proved facts of the said case, it was held that the Court could legitimately draw a presumption that the appellant received or accepted the said currency notes on his own volition. It was also held that the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence.

31. In the case on hand, the recovery of tainted currency notes from the accused is a strong and important circumstance against him. The materials on record clearly show that the

currency notes, whose numbers were already recorded during the pre-raid proceedings, were recovered from the shirt pocket of the accused immediately after the trap. Further, the phenolphthalein test conducted on the hand and pocket wash of the accused turned pink, which confirms that he had handled the tainted notes. Once the prosecution has proved that the accused accepted the tainted money, the presumption under Section 20 of the PC Act arises. As laid down in **M. Narsinga Rao** (*supra*), the presumption under Section 20 is a mandatory legal presumption, and once the foundational fact of acceptance of illegal gratification is established, the Court is bound to presume that such acceptance was as a motive or reward for an official act. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. The word "proof", needs to be understood in the sense in which it is defined

in the Evidence Act. What is required by the definition of the word "proof" is the production of such materials on which the Court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

31.1 Here, even if certain aspects of direct evidence, such as PW2 partially turning hostile, are not fully consistent, the circumstantial evidence clearly establishes acceptance of money. The recovery of tainted currency notes from the accused, the positive phenolphthalein test, the presence of the accused at the spot, and the sequence of events immediately before and after the transaction together form a complete chain of circumstances. These circumstances lead to a clear and reasonable inference that the accused had voluntarily accepted the money. As further explained in **M. Narsinga Rao** (*supra*), the Court is entitled to draw factual presumptions from proved circumstances, and once

such an inference of acceptance is drawn, it becomes the basis for invoking the legal presumption under Section 20. The accused herein has failed to rebut the presumption by offering any convincing or plausible explanation. He has simply denied the allegations without explaining how the marked currency notes came into his possession. Further, no enmity or plausible motive has been shown by the defence as to why PW2 or PW8 would falsely implicate the accused.

32. Further, the materials on record show that when the accused was apprehended immediately after the trap, he did not raise any protest or claim that he was innocent. He did not offer any explanation at that time as to how the tainted money came into his possession. When tainted money is recovered from the accused, and he fails to give any explanation, a presumption arises that the money was accepted as illegal gratification [See **M. Narsinga Rao v. State of A.P., 2001 SCC (Cri) 258**].

33. It was further contended that PW9, who recorded the complaint of PW2, was also a member of the raiding team, and that the same is contrary to law. This argument, however, is without any legal basis. At the outset, it must be noted that no provision of law has been pointed out that prohibits the officer who records the complaint from being part of the trap or raiding team. The mere fact that PW9 recorded the complaint and participated in the raid does not make the proceedings illegal. Further, it is important to distinguish between a detecting officer and an investigating officer. In the present case, PW9 acted primarily as the officer who organised and conducted the trap. The investigation was not carried out by him. The evidence shows that PW11 took over the investigation immediately after the trap, including custody of the accused and material objects, preparation of the site plan, and further procedural steps. Thereafter, the charge sheet was ultimately filed by PW5 after completion of the investigation. There is no absolute rule that the officer who lays

the trap cannot be involved in the investigation at all. What is required is that no prejudice should be caused to the accused and that the investigation should remain fair. No material has been produced to show any bias, *mala fide* intention, or unfair investigation on the part of PW9.

34. Now, coming to the argument that there is no evidence to show that the samples had been sent to the FSL. This argument is also not correct because PW9, the TLO, deposed that after completing the post-raid formalities, he had handed over the material objects which included the bottles containing the hand wash and pocket wash of the accused to PW11. PW11 admitted that he had received the sealed bottles marked as LHWI, LHWII, LSSPWI and LSSPWII along with the seized currency notes. Thereafter, he took the accused as well the material objects to the Civil Lines, police station. He deposited the seized currency notes, Ext. LHWII and LSSPWII and the articles seized from the personal search of the accused with MHC(M) of the said station.

He proceeded to the office of the ACB and deposited Ext. LHWI and LSSPWI with PW6, who kept the same in the latter's *almirah* under lock and key. On 06.04.2000, he collected Ext. LHWI and LSSPWI from PW6 for the purpose of sending it for the FSL examination. The version of PW11 is corroborated by PW7, who deposed that on 03.04.2000 he had received the bottles from PW11 and had kept them in his safe custody. On 06.04.2000, the bottles were handed over to PW11 for sending the same for FSL examination. Further, PW7 deposed that on 07.08.2000, he had gone to the FSL, Malviya Nagar to collect the FSL report and the bottles containing the remnants of Exts. LHWI and LSSPWI, which he then handed over to PW11. Ext. PW11/B is the FSL report which supports the prosecution case. PW7 was never cross-examined. Ext. PW11/B was never challenged by the accused. Therefore, the argument that the samples had not been sent to the FSL for examination is apparently incorrect.

35. As regards the contention of delay in lodging the

complaint, the evidence on record shows that the demand for money was not a one-time demand but continued over a period of time. PW2 stated that the accused had initially demanded ₹3000/-. He had approached the accused several times and that the latter finally agreed to accept ₹300/-. It was only when the accused finally asked him to come on 03.04.2000 with ₹300/- to get back his RC that PW2 approached the ACB. The complaint was therefore made immediately after this final demand, and the trap was arranged on the same day without any delay. This shows that there was no unexplained or unreasonable delay in lodging the complaint. It is also necessary to bear in mind, as observed by the Apex Court in **State of UP v. GK Ghosh (1984) 1 SCC 254**, that a citizen is ordinarily reluctant to approach the Vigilance authorities and undergo such a burdensome process of laying a trap and facing trial. Such action is taken only when one feels genuinely aggrieved.

36. Yet another argument was advanced that there was

delay in registering the FIR, which was registered only at 07:00 PM, apparently after the trap and completion of post-trap formalities. It is true that though the complaint was given in the morning, the FIR is seen registered only in the evening. But all delay is not fatal. Here, nothing has been brought on record to doubt the prosecution case because of the delay in registering the FIR.

37. The defence has strongly relied on the testimony of DW1 HC Dharambir Singh to argue that since the challan in the theft case was filed in court on 09.06.1999, the RC of the motorcycle would have remained on the judicial file. Therefore, the accused could not have taken the RC from the file on 03.04.2000 and given it to PW2. This argument also does not appear to be correct. PW2 deposed that the motorcycle along with its RC had earlier been released to him on *superdari*. Thereafter the police officials of Patel Nagar police station took the RC from him on the pretext of preparing some document/file. This part of

his testimony has not been challenged or discredited during his cross-examination. Further, merely because the chargesheet/final report is submitted before the trial court, that does not mean that no paper or file connected with the crime would remain in the police station. The case diary of the crime would always be with the police. Therefore, there is nothing to disbelieve the prosecution case that the RC was returned from the file.

38. Reliance has been placed by the defence on the dictum in **Mir Mustafa** (*supra*) wherein the Hon'ble Supreme Court set aside the conviction in a trap case on the ground that the prosecution failed to prove the foundational facts of demand and acceptance of illegal gratification. The Court found serious inconsistencies in the prosecution case, including lack of corroboration between the complainant and the *panch* witness, contradictions in the trap proceedings, and the absence of reliable scientific evidence to show that the accused had actually handled the tainted currency notes. It was also noted that there was a

possibility of the complainant planting the money, as he had access to the bag of the accused. In such circumstances, the Apex Court held that when the foundational facts are doubtful, the presumption under Section 20 of the PC Act cannot be raised. However, the said dictum has no application to the facts of the present case. In the case on hand, the prosecution has clearly established the demand and acceptance of illegal gratification through the consistent testimony of PW8 and the admission of payment by PW2. The recovery of tainted currency notes from the accused, along with the positive phenolphthalein test, further strengthens the prosecution case. There is no material(s) to suggest any possibility of planting of money or any serious inconsistency affecting the core of the case.

39. In **Mukhtiar Singh** (*supra*), the evidence regarding demand was not clear or properly proved. There were contradictions between witnesses and lack of proper corroboration. Therefore, the Court held that mere recovery of money was not

sufficient, and since demand was not proved, the conviction was set aside. On the other hand, in the present case, the demand is clearly established through the testimony of PW8, whom I find no reason(s) to disbelieve. This is further supported by the conduct of the accused, the acceptance of money as admitted by PW2, and the recovery of tainted currency notes from his possession.

40. In the light of the materials on record, I find no infirmity in the impugned judgement calling for an interference by this court.

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

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

CHANDRASEKHARAN SUDHA
(JUDGE)

APRIL 15, 2026
rs/p'ma/mj/kd