



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

% **Reserved on : 27.11.2024**
Pronounced on : 28.02.2025

+ **CRL.A. 697/2009**
YOGESHAppellant
Through: Ms. Rajdipa Behura, Mr. Philomon
Kani, Mr. Ashray Behura, Ms. Neha
Dobriyal, Ms. Simrat Kaur Sareen,
Ms. Aishwarya Gupta and Mr.
Shaswat Kabi, Advocates

versus

STATE OF DELHIRespondent
Through: Mr. Laksh Khanna, APP for State
with Inspector Radhe Sham

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the judgement of conviction dated 11.09.2009 and order on sentence dated 14.09.2009 passed by Special Judge, Delhi in Criminal Case No. 39/2002 arising out of FIR No. 08/2001 registered under Sections 7/13 of Prevention of Corruption Act, 1988 (hereinafter, referred to as 'PC Act') at P.S. Anti-Corruption Branch, Delhi.

Vide the impugned judgement, the appellant was convicted for the offences under Sections 7 and 13(1)(d) of PC Act and vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of two years along with fine of Rs. 10,000/- on each count, in default whereof, to undergo further simple imprisonment for a period of three months. The



sentences were directed to run concurrently. The appellant was given the benefit of Section 428 Cr.P.C.

2. In the chargesheet, the prosecution alleged that the complainant *Chattar Singh*, being in garment business, applied for sales tax registration. One Insp. *Sandeep Yadav* who was verifying his application, on 10.01.2001, demanded a bribe of Rs. 5,000/- from the complainant but later during their meeting on 01.02.2001, the demand was reduced to Rs. 3,000/-. *Sandeep Yadav* asked complainant to come to his office with the bribe amount on 02.02.2001. Aggrieved with the demand, the complainant approached Anti-Corruption Branch on the same day and gave a complaint to Insp. *Sudesh Kumari* (the Raiding officer) in presence of the *panch* witness *Om Prakash Gupta*. The complainant arranged Rs.3,000/- in cash in the form of five GC notes in the denomination of Rs.500/- and Rs.100/- each. In pre-trap proceedings, the serial numbers of GC notes were noted in presence of the *panch* witness and complainant, and the notes were also treated with Phenolphthalein powder. A trap was organised. The Raid officer alongwith complainant, *panch* witness and other members of the raiding team reached the Sales Tax Office, ITO at 2.50 P.M. One another person namely Mr. *Sanjeev Miglani*, who was complainant's Chartered Accountant also accompanied the raiding party. Though *Sandeep Yadav* was not there, the appellant, a Sales Tax Officer, met the complainant and bribe of Rs. 1500/- was recovered from him. The Raid officer also recovered Rs. 200/- from one *Reena Sapra*, the stenographer. The wash of both the hands of the appellant and wash of left pocket of his shirt were taken separately in the solution of sodium carbonate which turned pink. The appellant and co-accused *Reena*



Sapra were thereafter apprehended.

3. In the trial, a total of 13 witnesses were examined by the prosecution to prove its case. The complainant was examined as PW7, *Om Prakash Gupta* the *panch* witness as PW10A and the Trap Laying/Raid Officer *Sudesh Kumari* was examined as PW12. *Sanjeev Miglani*, the CA was examined as PW2. Besides above, the other witnesses were formal in nature relating to various aspects of investigation.

On the other hand, the appellant, in his statement recorded under Section 313 Cr.P.C. claimed that he was innocent and that he had been falsely implicated in the case. Vide the impugned judgement, while the appellant was convicted, the co-accused *Reena Sapra* was acquitted of all charges.

4. On behalf of the appellant, the impugned judgment has been assailed on the ground that the testimonies of the material witnesses do not support the prosecution case. Besides, the depositions also do not inspire confidence being full of material improvements and that the impugned judgement has been passed on the basis of surmises and conjectures. The alleged demand was ascribed to Insp. *Sandeep Yadav* only and not to the appellant. The complaint does not even mention the appellant's name.

5. Learned APP on the other hand vehemently opposed the present appeal and submitted that the Trial Court rightly convicted the appellant on basis of sufficient material gathered against him.

6. I have heard learned counsel for the parties and gone through the record.

7. 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 Pradesh¹, where the Supreme Court has categorically observed that :-

“ 8..... Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.”

The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta v. State (Government of NCT of Delhi)² 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

¹ B. Jayaraj v. State of Andhra Pradesh reported as (2014) 13 SCC 55

² Neeraj Dutta v. State (Government of NCT of Delhi), reported as (2023) 4 SCC 731



receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

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

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act.”

8. 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.

9. As per the complaint, it was Inspector *Sandeep Yadav* who had demanded bribe of Rs.3,000/- for processing the complainant's application for sales tax registration and asked the complainant to come with the bribe amount after lunch on 02.02.2001. The trap was laid accordingly. The complainant in his testimony stated that he did not meet *Sandeep Yadav* on that day. He rather stated that his CA, *Sanjeev Miglani* informed him that *Sandeep* had asked them to meet the appellant. This part of testimony was not corroborated by *Miglani*. The panch witness, *Om Prakash* also did not support this aspect and rather, in his cross examination, stated that in his presence, no such talk took place between the complainant and *Miglani*. Most pertinently, neither the complainant nor the panch witness informed



the raiding party about the non-availability of *Sandeep Yadav* and meeting arranged with the appellant.

10. On the aspect of demand and acceptance of bribe amount, the complainant in his examination-in-chief stated that he, alongwith *Miglani* and the panch witness-*Om Prakash* went to appellant's office, who after processing his file, said that "*Kaam ho gaya*". He further deposed that *Miglani* had asked him to give money to the appellant, whereafter he handed over the three GC notes of Rs. 500/- each to the appellant. However, in the cross examination, conducted by the APP for the State, he deviated from his own statement, stating that the appellant asked him to do whatever was asked by Inspector *Sandeep Yadav*. But *Miglani* in his testimony has taken the stand that nothing apart from the usual sales tax proceedings occurred in the meeting with the appellant. He has categorically denied that the appellant told the complainant to comply with the directions of *Sandeep Yadav* whereafter the complainant had handed over the GC notes to the appellant. The testimony of *panch* witness *Om Prakash* is also of no help to the prosecution. In his examination-in-chief, he stated that the complainant after satisfying all queries and objections raised by the appellant, handed over the money and there is no mention of any demand on behalf of the appellant. In fact, in his cross examination, he went on to say that the appellant had no talks with him, the complainant, or the CA about any money. Despite not supporting the prosecution case on the aspect of demand, the *panch* witness was not declared hostile nor recalled for cross examination by the prosecution.

11. If the evidence and testimonies of witnesses put forth are considered



in their totality, it is seen that there are lacunae in the prosecution case which have not been duly explained. As per the complaint, the demand was for Rs.3000/- but the money recovered from the appellant was Rs.1500/-. This discrepancy in the bribe amount has not been addressed in any of the testimonies. The complainant's stand regarding the alleged demand has been wavering, and has not found support from the testimonies of either *Miglani* or the *panch* witness. The prosecution has failed to prove the factum of demand of illegal gratification by the appellant. Moreover, no other independent witnesses were examined and in fact, the Raid Officer *Sudesh Kumari* (PW12) herself acted as a recovery witness.

12. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that even in terms of the testimony of complainant which remains uncorroborated on the material aspects, does not inspire confidence to conclusively prove the allegations against the appellant under Sections 7, 13(1)(d) of PC Act. Consequently, the appeal succeeds and the appellant's conviction under the aforesaid sections is set aside. The bail bonds are cancelled and sureties stand discharged.

13. The appeal is disposed of in the above terms.

14. A copy of this judgment be communicated to the concerned Trial court alongwith the records and to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 28, 2025/ry