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CRA-9866-2018

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

CRIMINAL APPEAL No. 9866 of 2018

CNR No.: MPHC020336962018

*BHARAT BAIRAGI**Versus**THE STATE OF MADHYA PRADESH*

Appearance:*Shri Alamgeer Khan, learned counsel for the appellant.**Shri Prasanna Prasad, learned counsel for the respondent.*

WITHMISC. CRIMINAL CASE No. 17021 of 2019

CNR No.: MPHC020111922019

*SPECIAL POLICE ESTABLISHMENT LOKAYUKT THROUGH O.I.C.**SHIV SINGH YADAV**Versus**BHARAT BAIRAGI*

Appearance:*Shri Prasanna Prasad, learned counsel for the appellant.**Shri Alamgeer Khan, learned counsel for the respondent.*

HEARD ON : 15.10.2026PRONOUNCED ON : 23.10.2026

JUDGMENT

1] The present criminal appeal has been preferred by the appellant under Section 374 of the Code of Criminal Procedure, 1973 /Section 415(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS, 2023")



being aggrieved by the judgement dated 10.12.2018 passed in Special Sessions Case No. 01/2017 by the Special Judge (Prevention of Corruption Act), District Alirajpur (M.P.), whereby the appellant has been convicted for the offence under Section 7 of the Prevention of Corruption Act, 1988 (for brevity "PC Act") and sentenced to undergo Rigorous Imprisonment for 02 years' with default stipulation and acquitted him for the offence under Section 13(1)(d) read with Section 13(2) of PC Act.

2] Here, a Miscellaneous Criminal Case No. 17021/2019 has also been filed by the Special Police Establishment, Lokayukt under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") seeking grant of leave to appeal against the same judgement dated 10.12.2018 passed in Special Sessions Case No. 01/2017 by the Special Judge (Prevention of Corruption Act), District Alirajpur, whereby the learned Judge has acquitted the respondent-Bharat Bairagi from the charges punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988

3] This order shall govern the disposal of these matters as they have arisen out of same judgment and common set of facts and evidence, hence, they are heard analogously and are being decided by common judgement.

4] The prosecution story in nutshell is that the complainant Dalsingh Baghel submitted an application (Ex.P/1) before the Lokayukt Office, Indore stating that on 16.02.2016 a social gathering (Ujwan Nukta program) was taking place in his village. At about 3:30 AM, a verbal altercation occurred between the complainant's side and one Ritesh S/o Remsingh Bhilala, for



which, Ritesh Bhilala lodged a complaint at Police Station Ambua, District Alirajpur. On 24.02.2016, the appellant A.S.I. Bharat Bairagi summoned the complainant- Dalsingh Baghel to the police station. The complainant, accompanied by his wife went there on 24.02.2016, where the appellant told him that a criminal case would be registered against him and if he want to avoid legal case, he should have pay Rs. 20,000/-. At that time, by making pressure, the appellant allegedly took Rs. 5,000/- and instructed him to bring remaining amount the following day.

5] Thereafter, on 25.02.2016 at about 9:00 am, the complainant visited Police Station and met the appellant. During the interaction, the appellant again had taken Rs. 2,000/- instructing him to arrange for amount of Rs. 10,000/- to settle the complaint. The appellant had given his mobile numbers to the complainant and said to call when money was arranged. Further, on 27.02.2016, the complainant called the appellant from his mobile number and made a request with regard to reduction of the bribe amount, but the appellant refused for the same and said to arrange an amount of Rs.10,000/- on Monday i.e. 29.02.2016. The complainant allegedly recorded this telephonic conversation on his mobile phone's memory card.

6] Being unwilling to pay the bribe, the complainant approached the Superintendent of Police, Special Police Establishment, Lokayukta, Indore and submitted a written complaint along with the memory card. A trap team was constituted, independent panch witnesses were requisitioned from Indore, and preliminary pre-trap formalities were completed on 29.02.2016.

7] Later on, the trap team reached Police Station Ambua on



29.02.2016. The complainant was sent inside to hand over the tainted currency notes of Rs. 10,000/-, while trap members positioned themselves nearby. Upon receiving a pre-determined signal from the complainant, the trap party rushed in and apprehended the appellant. Upon inquiry, the appellant stated that the money was kept under a register on his table. The tainted notes were recovered from underneath the table register. The hand-wash of the appellant in sodium carbonate solution yielded positive results, though the recovery was from an open table and not from his physical person.

8] The Trial Court framed charges under Sections 7 and 13(1)(d) read with Section 13(2) of PC Act. The appellant abjured guilt and claimed to be tried. The prosecution examined as many as 09 witnesses viz. Dalsingh, the complainant (PW-1), Rajendra Kumar Mandloi, Project Officer (PW-2), Shivprakash Parasar, Constable (PW-3), Saidutt Ghohre, Nodal Officer (PW-4), Pradeep Barve, Head Constable (PW-5), Dilipsingh Ahirwar, Assistant Grade-III, MP Home Department (PW-6), Deepak Bhabhar, Sub-Inspector (PW-7), S.P.S. Raghav, Inspector (PW-8), Mahesh Sunnaiya, Inspector (PW-9) and exhibited several documents to bring home the guilt of the appellant. The appellant examined one witness namely Bahadur Singh, Constable (DW-1) in his defence and exhibited (DW-1 to DW-2) to establish that the money was forced upon him and to demonstrate his innocence.

9] The learned trial Court vide the impugned judgement, convicted the appellant under Section 7 of PC Act but acquitted him under Section



13(1)(d) read with Section 13(2) of PC Act. Hence, the criminal appeal preferred by the appellant and M.Cr.C. for leave to appeal preferred by the State/Special Police Establishment.

10] It is contended by learned counsel for the appellant that the appellant is innocent and has falsely been implicated in the crime. The prosecution has miserably failed to prove its case beyond reasonable doubt as neither the demand nor acceptance of bribe has been proved by the prosecution, which is a *sine qua non* for the conviction of an accused under the PC Act. It is also submitted that the appellant has not been found in physical possession or personal search of the currency notes and the alleged recovery was made from an open table underneath a register, accessible to any visitor or staff member.

11] He has also argued that so far as the demand is concerned, the prosecution relies heavily on Caller transcriptions and audio recordings (Exhibit P-7). However, a plain reading of Exhibit P-7 reveals no mention whatsoever of any explicit or unequivocal demand for a bribe by the appellant. The complainant himself indicated through the tenor of the conversation that discussions centered around mutual village disputes, adjustments, and the status of police papers rather than illegal gratification. Furthermore, Investigating Officer S.P.S. Raghav (PW-8) categorically admitted in para 58 of his cross-examination that the transcription of Exhibit P-7 does not reflect that the appellant is demanding bribe for an amount of Rs.20,000/- to hush up the case nor does it state that Rs. 5,000/- or Rs. 2,000/- were previously taken.



12] It is further submitted by the learned counsel for the appellant that the electronic and audio evidence is thoroughly vitiated and inadmissible in law. The Lokayukta Inspector never seized the original mobile phone from which the audio was allegedly recorded, failed to extract hash values or subject the memory card to scientific authentication, and failed to obtain a mandatory certificate under Section 65-B of the Evidence Act, 1872 from the complainant who created the file. Moreover, the independent voice recorder given to the complainant during the trap itself failed to record any conversation due to the complainant's panic and confusion (Exhibit P-6). Without primary electronic device seizure, scientific voice spectrography or independent voice identification, Exhibit P-7 remains entirely inadmissible and uncorroborated.

13] Besides, he has further argued that the initial demands which as per prosecution case, made on 24.02.2016 and 25.02.2016 have not been supported by daily diary (Roznamcha) entries (Exhibits D-1 and D-2) and defense testimony itself proving that the appellant was away from the station serving warrants. Furthermore, the absence of an independent shadow witness to overhear or observe the trap transaction leaves the prosecution's case entirely dependent on the uncorroborated and interested testimony of the complainant.

14] On the other hand, the appeal is vehemently opposed by the learned counsel for the respondent/State/Lokayukt and supported the impugned judgment passed by the trial Court. By filing M.Cr.C. No. 17021/2019, the State/Special Police Establishment has sought leave to



appeal against the partial acquittal under Section 13(1)(d) read with Section 13(2) of PC Act contending that the acquittal under Section 13(1)(d) was erroneous.

15] It is also submitted that the tainted currency was recovered directly from the beneath the register on the accused's office table in Badi Chowki (Seizure Memo Ex.P/14). In para 18 to 20 & 31 to 33 of the impugned judgment, complainant (PW-1) supported the foundational demand and the delivery of the bribe money at Badi Chowki (para 31). Independent Panch Witness Rajendra Mandloi (PW-2) has fully corroborated hearing the recorded conversation, verifying the complaint and witnessing the recovery from the table. On such grounds, the appeal filed by the appellant deserves to be dismissed and M.Cr.C. preferred by the State may be allowed.

16] Heard the learned counsel for the parties at length and perused the record.

17] Based upon the material on record, the question arises for determination of this appeal is whether the impugned judgment passed by learned trial Court acquitting the appellant for the offences under Section 13(1)(d) read with Section 13(2) of Act and holding that the prosecution failed to prove beyond reasonable doubt that the appellant actually accepted, obtained, or received the bribe money, is sustainable in law ?

18] At this juncture, it is necessary to refer to the landmark decision of Hon'ble Apex Court in the case of *Neeraj Dutta Vs. State (Government of NCT of Delhi)* reported in (2023) 4 SCC 731, relevant paragraphs regarding



strict standards of proof required in corruption cases when dealing with demand and acceptance, is worth to be mentioned as under :-

"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. 88.5. (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..."

19] A bare perusal of the said decision and coordinate rulings like *P. Satyanarayana Murthy Vs. State of A.P.* reported in (2015) 10 SCC 152 and *B. Jayaraj Vs. State of A.P.* reported in (2014) 13 SCC 55 reveals that proof of demand is a mandatory *sine qua non* and mere recovery of currency notes divorced from unimpeachable proof of voluntary demand and acceptance cannot sustain a conviction.

20] In the impugned judgment, the Special Judge made a distinction between demand of bribe and actual acceptance / recovery of the bribe



amount. The trial Court has held that the prosecution successfully proved beyond reasonable doubt that the accused demanded money of Rs.10,000/- as illegal gratification from the complainant. However, the prosecution failed to prove beyond reasonable doubt that the accused actually received/accepted money of Rs.10,000/- from the complainant. The Trial Court has found that the evidence regarding acceptance and recovery is insufficient to establish the charge.

21] The entire prosecution case rests upon the testimony of the complainant. No independent witness has supported the alleged initial demand and the prosecution also failed to associate any shadow witness at the time of alleged demand.

22] The evidence available on record demonstrates that the proceedings under Section 107/116 of Cr.P.C. has already been initiated against the complainant. That means, an official action had already been taken against him prior to the trap. Hence, the complainant was an interested witness with a motive to implicate the appellant falsely. This is clear from the record available that no official work concerning the complainant remained pending within the appellant. How the appellant could influence the proceedings which had already been initiated ? Why would the complainant pay a bribe after the official action had already been completed ?

23] According to the para 7 of the impugned judgment, the appellant and complainant did not provide a sample of their voice, so the presumption will be held against the complainant. Besides, the complainant has prior



experience in making recordings. Nevertheless, he did not use the voice recorder provided by the Lokayukta Office for the recording, as he intended to conceal the facts of the actual important conversation. Therefore, an adverse inference will be drawn against him under Section 114(g) of the Evidence Act. The complainant has acknowledged that a compromise was reached with Ritesh and has filed the complaint out of resentment that the police facilitated a payment of Rs.10,000/- by him to Ritesh. Under these circumstances, the demand is not substantiated. It is also clear from the transcript wherein the accused stated that *“I don't want anything, we will pay him the money and put an end to the matter.”* As the then Additional Secretary did not appear in person as witness before the trial Court, it remains unclear whether he had actually applied her own mind when granting sanction for prosecution. It is evident from the para 16 of the trial Court's judgment that the complaint application itself was typed by the Lokayukta Office.

24] The aforementioned complaint letter was typed on 28.02.2016, however, a letter had already been issued by the Superintendent of Police (Lokayukta) on 27.02.2016 to summon the “Panch”. It indicates that everything was not in a comprehensive and satisfactory manner.

25] According to para 16 of the judgment, the complainant had recorded a telephonic conversation with the accused on a memory card. As per para 18 of the judgment, this recording was played and heard on the complainant own mobile phone, however, that mobile phone was not seized. A matter that is noteworthy, as per para 22 of the impugned judgment, when



an attempt was made to play the contents of the memory card before the Court, an error occurred and the Court was unable to hear the contents of the recording. Later on, the Court played a CD and listened to the conversation recorded on it, however, the complainant had not made any recording on the CD. It is apparent from para 21, 23, 29, 32 & 42 of the impugned judgment that the entire conversation pertained to the payment of the relevant amount to Ritesh, an attempt was made to call him to receive the sum and he was contacted by phone, but he was out of station.

26] It is evident from the para 35, 39, 40, 41 & 42 of the impugned judgment that crucial chemical evidence, marked as Article 'D1', 'D2', 'D3' was destroyed before it could reach the Court and the prosecution has failed to provide any explanation for its destruction. The destruction of this vital evidence casts doubt upon the prosecution case.

27] The prosecution's account does not clarify whether the memory card used for recording was already inserted in the mobile phone or was inserted subsequently. If it was already present in the mobile phone, the memory card should have contained other unrelated recordings as well, but the absence of such data suggests that the content has been edited, rendering it unreliable. Alternatively, if the memory card was not originally inserted in the phone and the recordings were transferred from the phone's internal memory to the memory card, then a certificate under Section 65B of the Indian Evidence Act is mandatory. However, no such certificate as required in accordance with law has been obtained in the case.

28] On this aspect, the law rendered in the case of *Anvar P.V. Vs.*



P.K. Basheer & Others reported in *AIR 2015 SC 180* wherein Hon'ble Apex Court has held that "*Secondary electronic evidence is strictly inadmissible in court without a mandatory certificate under Section 65B(4) of the Indian Evidence Act.*". Likewise, in the case of *Sudeep Vs. State of M.P.* passed by Co-ordinate Bench of this Court in *Cr.A. No.1013/2016 on 08.07.2024* by relying the on the judgment *Anvar (Supra)*.

29] In the case at hand, it is also significant that neither any voice examination of accused was conducted nor anyone was familiar with the accused's voice.

30] At this stage, this Court finds that the oral and documentary testimony adduced by the prosecution suffers from material contradictions and severe omissions.

31] That apart, the core analysis of the material witnesses highlights the following:

32] The testimony of Complainant Dalsingh Baghel (PW-1) is required to be ruminated. A meticulous evaluation of his deposition reveals that his statements fail to establish a consistent, unblemished account of an explicit, unlawful demand made by the appellant. The discussions and interactions deposed to by him inherently point toward village-level disputes, cross-petitions, and negotiations rather than an uncompromised demand for a bribe.

33] Likewise, as per statement of S.P.S. Raghav, Investigating Officer, the credibility of the prosecution's case on "demand" is dealt a fatal blow by the categorical admissions made by the Investigating Officer



himself during cross-examination. In paragraph 58 of his deposition, the I.O. explicitly admitted:

“58-यह कहना सही है कि प्रदर्श पी-07 के लिप्यांकन में ऐसा नहीं है कि आरोपी ने फरियादी से कहा हो "तुम्हारा केस दबाने या शिकायत को रफादफा करने के लिए 20,000/- देना पड़ेगा।" यह कहना सही है कि प्रदर्श पी-07 के लिप्यांकन में यह भी नहीं है कि फरियादी की पत्नी व पटेल ने आरोपी को 5,000/- दिये थे और यह भी नहीं है कि आरोपी ने 10,000/- मागे उक्त बातें शब्दशः नहीं हैं।”

34] Subsequently, the prosecution placed reliance on the audio transcription is further vitiated by glaring procedural lapses. The Investigating Officer himself admitted that the original mobile phone of the complainant was never seized during the investigation, no scientific hash values were extracted and the memory card was not subjected to forensic authentication. Furthermore, as documented in Exhibit P-6, the independent voice recorder given to the complainant during the trap itself failed to record any conversation due to the complainant's panic. In the absence of primary device seizure, strict compliance with Section 65-B of the Evidence Act and independent voice identification (as mandated in *Anvar P.V. Vs. P.K. Basheer*, (2014) 10 SCC 473, *Ram Singh Vs. Col. Ram Singh*, (1985) Supp SCC 611 and *Sudeep Vs. State of M.P.*, (2025) 1 MPLJ (Cri.) 134), the transcript Exhibit P-7 cannot be safely read into evidence to establish a criminal demand.

35] So far as acceptance and recovery are concerned, there is doubt surrounding the recovery itself as well as in absence of independent corroboration. The tainted currency notes were not recovered from the personal search or clothing of the appellant but from underneath an open



register on a table. In the absence of an independent shadow witness to overhear the conversation or observe the transaction leaves the prosecution's case resting on weak, uncorroborated legs, falling squarely within the mischief prohibited by *Mukhtiar Singh Vs. State of Punjab, (2017) 8 SCC 136* and *Suraj Mal Vs. State (Delhi Administration), (1979) 4 SCC 725*.

36] In such circumstances, having evaluated the entire matrix of the evidence, this Court arrives at the considered conclusion that the case of the prosecution suffers from insurmountable structural defects. The foundational cornerstone of an offence under Section 7 of PC Act - viz; proof of a clear, explicit and unambiguous demand remains completely unestablished. The sole reliance of the prosecution was placed upon the pre-trap transcription (Exhibit P-7). However, the evidentiary weight of Exhibit P-7 stands completely nullified by the categorical admission of the Investigating Officer (PW-9) in para 58 of cross-examination, coupled with the cross-examination admissions of the complainant (PW-1) in para 22 to 27. Moreover, the electronic record fails to meet the stringent legal thresholds of admissibility mandated by Hon'ble Apex Court in the case of *Anvar P.V. (Supra)* and *Ram Singh (Supra)*, given the failure to seize the primary mobile device and the total lack of audio recording during the live trap proceedings (Exhibit P-6). Accordingly, the appellant has successfully discharged his burden of rebutting any statutory presumption under Section 20 of PC Act and the prosecution has failed to prove its case beyond reasonable doubt.

37] Having concurred with the findings that proof of prior demand is wholly absent, this Court has also evaluated the State/respondent's prayer



seeking leave to appeal against the partial acquittal. A perusal of the trial court record reveals that the learned Special Judge correctly evaluated the evidence *qua* Section 13(1)(d) read with Section 13(2) of PC Act. The prosecution failed to establish that the accused/appellant physically accepted, obtained or received the illegal gratification for himself or for any other person. The alleged recovery of tainted notes was made from underneath an open table register accessible to anyone in the office, and not from the personal search or physical possession of the appellant. Furthermore, no independent shadow witness observed or overheard the alleged transaction. It is a well settled principle of criminal jurisprudence laid down by Hon'ble Apex Court in the case of *Chandrappa v. State of Karnataka, (2007) 4 SCC 415* and *Murali v. State, (2021) 1 SCC 726* that in an appeal against acquittal, if two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal recorded by the trial court merely because another view might be possible. This Court finds no perversity, illegality, or misreading of evidence in the findings of the learned trial Court in acquitting the respondent/appellant under Section 13(1)(d) read with Section 13(2) of PC Act. Thus, the conclusion reached by the trial Court in respect of Section 13 of PC Act does not warrant any interference and is hereby affirmed.

38] Consequently, Criminal Appeal No. 9866 of 2018 filed by the appellant is allowed and the impugned judgement dated 10.12.2018 passed in Special Sessions Case No. 01/2017 convicting the appellant under Section 7 of the PC Act is hereby set aside. The appellant is acquitted from the charge



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under Section 7 of PC Act. His bail bonds shall stand discharged, and the fine amount, if deposited, be refunded to him as per rules.

39) As a natural corollary, Misc. Criminal Case No. 17021 of 2019 filed by the State/Special Police Establishment/Lokayukt seeking leave to appeal against the partial acquittal under Section 13(1)(d) read with Section 13(2) is devoid of any merit and is hereby dismissed.

40) A copy of this judgment be sent to the concerned trial Court for necessary compliance.

41) Let a copy of this judgement be placed in the record of MCRC No. 17021/2019.

Pending I.A., if any, stands closed.

(ALOK AWASTHI)
JUDGE

Vindesh