



2026:DHC:2731



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: 23.03.2026
Judgment pronounced on: 02.04.2026

+ CRL.A. 748/2002
DINESH GARG

.....Appellant

Through: Mr. Sameer Chandra, Ms. Vivya Nagpal, Mr. Ekansh Bansal and Mr. Aryan Tomar, Advocates.

Versus

C.B.I.

.....Respondent

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

+ CRL.A. 763/2002
V.K. DATTA

.....Appellant

Through: Mr. Sunil Dalal, Senior Advocate with Mr. Raghav Bhalla, Mr. Ankit Rana, Ms. Shipra Bali, Ms. Zeba Khan, Advocates.

Versus

NCT OF DELHI

.....Respondent

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

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.



2026:DHC:2731



1. These appeals under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) read with Section 27 of the Prevention of Corruption Act, 1988 (“the PC Act”) has been filed by accused nos. 1 and 2 (A1 and A2) in C.C.No.109/1994 on the file of the Court of Special Judge, Delhi, challenging the conviction entered and sentence passed against them for the offences punishable under Section 7 and 13(1) (d) read with 13(2) of the PC Act.

2. The prosecution case is that on 20.09.1991, A1, Assistant Engineer, Flood Control Department, and A2, Junior Engineer, Flood Control Department, both being public servants, demanded and accepted ₹900/- each from PW1 as illegal gratification for facilitating the release of the PW1’s running and final bills.

3. On 20.09.1991, PW1 lodged a complaint, that is, Ext. PW1/E, with the Anti-Corruption Branch, New Delhi, based on which, RC No. 57(A)/91-DLI, Ext. PW7/A FIR was registered



2026:DHC:2731



alleging commission of the offence punishable under Section 7 of the PC Act.

4. PW8, Inspector, Anti-Corruption Branch, 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 Section 7 read with 13(2) read with 13(1)(d) of the PC Act.

5. Ext. PW2/A and Ext. PW2/B Sanction Orders for prosecuting both A1 and A2 was accorded by PW2, Chief Secretary, Delhi Administration.

6. When the accused persons on receipt of summons appeared before the trial court, the Court after complying with the formality contemplated under Section 207 Cr.P.C, and after hearing them, on 15.07.1992, framed a Charge under Section 7 and 13(1)(d) r/w 13(2) of the PC Act against both the accused persons, which was read over and explained to them to which they pleaded not guilty.



2026:DHC:2731



7. On behalf of the prosecution, PW1 to PW8 were examined and Ext. PW1/A - Q, Ext. PW2/A-B, Ext. PW4/A, Ext. PW5/A - C, Ext. PW6/A, Ext. PW7/A and Ext. PW8/DA were marked in support of the prosecution case.

8. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence. Both A1 and A2 submitted that PW1 came to the office of A1 and complained about the dragline. A1 called A2 and the moment the latter entered A1's cabin the whole raiding party came inside his cabin and there was a commotion. Subsequently, they were taken to the CBI office. No document was prepared at the spot.

9. DW1 and DW2 were examined on behalf of the accused persons. Ext. D-1 and Ext. D-2 were marked in support of the defence.



2026:DHC:2731



10. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 03.09.2002, held both the accused persons, that is, A1 and A2, guilty of the offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act. Accordingly, both the convicts have been sentenced to undergo rigorous imprisonment for a period of two years each with a fine of ₹5,000/- each under Section 7 of the PC Act and in default of payment of fine to further undergo rigorous imprisonment for six months; and rigorous imprisonment for a period of two years each with a fine of ₹5,000/- each under Section 13(1)(d) read with Section 13(2) of the PC Act and in default of payment of fine to further undergo rigorous imprisonment for six months each. The sentences have been directed to run concurrently. Aggrieved, A1 and A2 have preferred these appeals.

11. The learned counsel appearing for A2 submitted that the latter has been falsely implicated by PW1 in this case as A2 had



2026:DHC:2731



earlier reported *vide* Ext. PW8/DA complaint dated 27.05.1991 regarding the poor quality of work carried out by the contractor, pursuant to which he directed stopping of the work and locked the cement store. However, A2 later found that the contractor, had broken the lock of the store and resumed the work. It was further submitted that the trial court erred in not appreciating the fact that the prosecution had failed to prove that any demand for illegal gratification had been made by A2. To buttress this contention, the learned counsel for A2 pointed out several inconsistencies in the prosecution case, such as the absence of any occasion to demand a bribe since no bills were pending for payment at the relevant time; the fact that earlier bills had been cleared without any such demand, and that A2 was not even present at the spot at the time of the alleged demand but at the site, as demonstrated from Ext. D1 and D2 muster rolls and that even the independent witnesses, namely, PW3 and PW4, had not mentioned anything with regard to the presence of A2 at the time of the raid or with respect to any demand



for illegal gratification having been made by him to PW1, thereby further weakening the prosecution case against A2.

11.1. It was further submitted that PW1 has materially improved his version from what was originally stated in Ext. PW1/E complaint with regard to the alleged demand of bribery, inasmuch as no role was attributed to A2 at the initial stage. Moreover, as per Ext. PW1/E, the alleged demand was for a sum of ₹1,800/- for facilitating the settlement of bills, whereas only ₹900/- was recovered during the raid. This material discrepancy further probabalises the version that A2 was not involved in any such demand from the very inception and has been subsequently implicated by PW1. It was also submitted that the testimony of PW4 is completely silent with respect to any demand for illegal gratification having been made by A2, thereby further weakening the prosecution case against him.

11.2. It was also submitted that the recovery proceeding was not proved duly as PW3 did not identify A2 and PW3 was not



2026:DHC:2731



sure of the amount of money recovered from A2. The learned counsel for A2 further pointed out the inconsistencies in the testimony of PW3 and PW4 with regard to the place of incident, as the former deposed that the trap took place at the office of A2, whereas the latter stated that it occurred at the office of A1. It was further submitted that as many as 11 charge witnesses were dropped during trial without being examined, including officers, namely, CW6, CW7, CW8 and CW9, who had allegedly apprehended the accused by catching hold of his wrists. It was further submitted that CW14, namely, the contractor on whose behalf PW1 was acting as a power of attorney holder, was a material witness, inasmuch as PW1 was merely a supervisor, and it was CW14 who was actually aware of the financial transactions and dealings pertaining to the contracts and the related bills. Therefore, such withholding of material witnesses on the part of the prosecution entitles the accused to invoke the presumption under Section 114 illustration (g) of the



2026:DHC:2731



Indian Evidence Act, 1872 (IEA) by drawing an adverse inference against the prosecution.

12. The learned senior counsel appearing for A1 submitted that the prosecution has failed to establish any cause for the alleged demand of bribe by the accused persons. It was contended that this aspect stands established by the testimony of PW5, who has deposed that none of the three works had been completed and, as shown from Ext. PW5/A, the work had not only been halted but the contractor had also submitted a request letter undertaking that no claim for damages would be raised against the Department. It was further submitted that after the foreclosure order, the bill stood at minus ₹300/-, thereby indicating that the contractor, in fact, owed money to the Department. It was also pointed out that PW1, in his testimony, admitted that he was unaware of the exact amount, if any, payable by the Department. These circumstances, according to the learned senior counsel, clearly negate the existence of any occasion or motive for the alleged demand of illegal gratification.



2026:DHC:2731



12.1. It was further contended that PW1 was merely acting as an employee of CW14, the contractor, who, as admitted by PW1 in his testimony, was the person operating the accounts and not PW1 himself. Therefore, if any dues were pending, or if any illegal demand was allegedly made for clearing such dues, the material evidence to substantiate the same ought to have come from CW14 and not from PW1. Rather, it was a false proceeding initiated by PW1 against A1 and A2 due to Ext. PW8/DA complaint given against his act of pilfering cement from the cement store. It was also submitted that the prosecution's timeline regarding the registration of the FIR is also practically not possible as the demand was made at 10:15 AM at the Shastri Nagar office, after which PW1 is alleged to have travelled approximately 15 kilometers to the CBI Office at Lodhi Road, inquired about the complaint procedure, drafted a handwritten complaint, reached the reception area, met PW7 IO, obtained an audience with the S.P., received a direction to register the FIR, and successfully had Ext. PW-7/A FIR registered by 11:15



2026:DHC:2731



AM. Furthermore, Exts. D1 and D2 muster rolls conclusively establish that the accused persons were engaged in official inspection duties during the relevant time and had no occasion to meet PW1. By placing such material on record, the accused have effectively rebutted the presumption and shifted the burden back upon the prosecution. In such circumstances, it was incumbent upon the prosecution to discredit or challenge the authenticity of Exts. D1 and D2 muster rolls, which it has failed to do, and the same stand duly proved by the defence.

12.2. The learned senior counsel appearing for A1 further contended that both PW3 and PW4 are stock witnesses, whose presence in the proceedings is doubtful, as no requisition for their participation has been placed on record, despite such procedure being mandatory. It was further pointed out that, as per their own testimony, both the witnesses were already present in the CBI office prior to PW1's arrival, thereby casting serious doubt on the fairness and credibility of their involvement in the trap



proceedings. Reliance was placed on the dictum in **Ved Prakash Maurya v. State of Delhi**, Crl. Appeal No. 45/2010 (Delhi High Court), **Har Swarup Verma v. State of Delhi**, Crl. Appeal No. 228/2003 (Delhi High Court), **Jagan v. State of Maharashtra**, Crl. Appeal No. 187 of 2012 (Bombay High Court, Nagpur Bench), **Rajinder Kumar v. CBI**, Crl. Appeal No. 733/2003 (Delhi High Court)

13. *Per Contra*, it was submitted by the Special Public Prosecutor appearing for the CBI 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.

13.1. It was submitted that both A1 and A2 did not cross examine PW2, the Sanctioning Authority, and PW6, the Scientific Officer, with regard to the phenolphthalein test, and therefore the aspect of the solution turning pink has remained



2026:DHC:2731



unchallenged. In such circumstances, it was contended that the prosecution case on this aspect stands duly proved, and the non-examination of the witnesses who apprehended the accused persons during the trap proceedings does not materially affect the prosecution case. It was also contended that the mere mention or non-mention of the name of A2 at the stage of registration of Ext. PW7/A FIR is not of material significance, inasmuch as Ext. PW7/A FIR is only intended to set the criminal law in motion. It was further submitted that the demand and acceptance of the bribe amount by A2 have been duly established through the testimony of PW4, which is sufficient to sustain the prosecution case against him. It was also submitted that PW5 has deposed in detail with regard to the bills raised by PW1 in his capacity as power of attorney holder, and that the said bills were to be processed and dealt with by A1 and A2, who were responsible for executing the same.

14. Heard both sides and perused the records.



15. 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.

16. 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 20.09.1991 and the trap laid on the same day. PW1 submitted a written complaint, that is, Ext. PW1/E in the office of the Anti-Corruption Branch in which he has stated thus:- “...I am a power of attorney holder on behalf of Contractor's M/s Gupta Const. Co. E-1625/4, Najafgarh, N. Delhi. Two works relating to Construction of boundary wall cum barbed wire fences at RD - 22471 to 23000 M at Supplementary drain (left side and Construction of boundary wall cum barbed wire fencing at RD - 22200 to 21350 M at Supplementary drain (Right side) and left side also were awarded to M/s Gupta Construction Co. The said work were started but could not be completed due to encroachment on the land and the alternative site was not made available by the



2026:DHC:2731



deptt. (FCD, D.A). The payments for the work so far executed after Ist and IInd running bills respectively of the above said works have not been made to me so far, though I had repeatedly visited the SDO III, FCD deptt. On 20/9/91, I visited the office of the Flood Control dept and met Sh. V.K. Dutta, A.E and requested him for expediting my payments. Sh. Dutta told me that if I want an early payment of the works done, I will have to pay a bribe of ₹1800/- which will be equally distributed between him and the J.E Sh. Dinesh Garg. Mr Dutta told me to pay the bribe money today i.e. 20/9/1991 in the afternoon in their office at L.M. Bund, Shastri Nagar. I do not want to give bribe, so necessary action may please be taken against these officer's”

17. PW1, in his examination-in-chief, deposed that in the year 1991 he was working as a civil contractor associated with M/s Gupta Construction Co. on the basis of Ext. PW1/A Power of Attorney as per which, he was authorised to supervise work and obtain payments from Government Departments. During the year



2026:DHC:2731



1991, he was supervising the construction work relating to boundary wall cum barbed wire fencing at Nangloi Drain, which had been allotted to M/s Gupta Construction Co. by the Flood Control Department. Due to encroachment, the work could not be completed and so he moved Ext. PW1/C and Ext. PW1/D applications for foreclosing the work and for release of payment. At the relevant time, payments were pending with the department and the officials concerned included A1, Assistant Engineer, and A2, Junior Engineer, both of whom he identified before the trial court. According to PW1, A2 was maintaining the measurement book and preparing the bills, while A1 was inspecting the work and passing the bills for payment. During August 1991, three of his bills were pending and he was pursuing the same. On 20.09.1991, he met both the accused persons in their office and requested for release of payment. On that day, A1, in the presence of A2, demanded a bribe of ₹1,800/- for release of the payment and that the amount would be shared between them. PW1 expressed his inability to arrange the



2026:DHC:2731



money immediately, however, he was asked to make the payment on the same day after lunch. As he did not want to pay the bribe, he went to the office of the CBI for lodging a complaint. He reached the office of the CBI at about 11.00-11.15 am, made inquiries, and thereafter wrote Ex. PW1/E complaint addressed to the SP. He met PW7 Inspector, who took him to the SP, and thereafter he was introduced to the panch witnesses, namely, PW3 and PW4, to whom he narrated the facts. Another CBI officer informed him that a trap would be laid after confirming that he had brought the bribe amount. He produced 18 currency notes of ₹100/- each, which were treated with phenolphthalein powder. PW1 further deposed about the pre-trap proceedings conducted by the CBI team and Ext. PW1/E handing over memo was prepared and the numbers of the currency notes were recorded in Ext. PW1/F memo. PW4 was directed to remain with him, observe the transaction and give a signal by scratching his head on acceptance of bribe.



2026:DHC:2731



17.1. According to PW1, the raiding party left the office of the CBI at about 03.00 to 03.15 pm and reached the office of the accused at about 03.45 pm. He along with PW4 entered the office room of A1 where both the accused persons were present. On inquiry, he introduced PW4 as his friend. A1 asked him whether he had brought the demanded money, to which he replied in the affirmative. Thereafter, on demand, he handed over ₹900/- to A1, who accepted the same with his right hand, counted it and kept it in the right-side drawer of his table. Thereafter, A2 demanded his share and so he handed over ₹900/- to A2, which he accepted with his left hand, counted the same and kept it in the left pocket of his shirt. PW1 further deposed that upon his request for early release of payment, both accused assured him that the work would be done. In the meantime, PW4 went out on the pretext of attending the nature's call and thereafter the raiding party entered the room and apprehended both the accused persons. The accused persons were challenged regarding acceptance of bribe but they remained silent.



2026:DHC:2731



On being informed by the panch witness, the tainted currency notes were recovered from the drawer of the table of A1 and from the shirt pocket of A2. The number of the currency notes tallied with those mentioned in the handing over memo.

17.2. PW1 further deposed that after recovery of the tainted currency notes, fresh solutions of sodium carbonate were prepared and the hand washes of A1 and A2 were taken separately, which turned pink. The hand washes were preserved in separate bottles. The inner portion of the left pocket of the shirt of A2 was also washed in sodium carbonate solution, which also turned pink and the wash was preserved. PW1 further deposed that the contract for construction of boundary wall and fencing at Nangloi Drain had been awarded to M/s Gupta Construction Co. on 22.02.1991. And that earlier payments had been received by way of cheques from the department. He further deposed that due to encroachment and damage caused to the construction, he had lodged an FIR at PS Mangolpuri and had made requests for alternative site and for



2026:DHC:2731



release of payments, but no action was taken by the officials concerned, including the accused persons.

17.3. PW1, in his cross examination, further deposed that the work allotted to M/s Gupta Construction Co. pertained to Nangloi Drain covering specified R.D. points on both left and right banks. He further deposed that due to encroachment, work on both sides had been affected and applications had been moved for foreclosure or alternative assignment. He deposed that no order for foreclosure had been formally ordered and he could not recall the exact amount due at the relevant time, though he denied the suggestion that no amount was payable. He further deposed that one cheque was received after the raid and denied that no payment was due. A third work relating to another stretch of the drain had not commenced and that he had moved Ex. PW1/DA application dated 13.09.1991 in that regard. He further deposed regarding the procedure of execution of work, stating that cement was issued by the department on the basis of indent and was stored at site, the keys



of which were shared between the contractor and the Junior Engineer. He admitted that the Junior Engineer would generally come at 8 a.m. in the morning to open the store and issue cement. He could not recall on what dates cement was issued. In further cross examination, he deposed that at the time of the raid, only one work was in progress, while two works had been stopped due to encroachment. He further deposed that he had applied for foreclosure of those works but was not aware of their status and that bills in respect thereof had not been prepared at that time. PW1 admitted that after the incident, he was removed from service by the proprietor and he was not aware of the final payments received. PW1 further deposed that he had been requiring payment of the running bill of the ongoing work and final bills of the other works and estimated that approximately ₹50,000/- was pending. He denied that no payment was due in respect of the three works. He further deposed that bills were prepared by the Junior Engineer and passed by the Assistant Engineer and Executive Engineer. He also deposed



2026:DHC:2731



that the work had temporarily stopped due to rains and was restarted shortly before the trap, and denied that work was continuously in progress except for cement work. He further deposed that where work is stopped and not completed, it is foreclosed, and that payment is made after completion of curing period in cement work as there was a curing period of seven days for the cement work.

17.4. PW1 further deposed that he could not recollect the reason for obtaining the signatures of Kailash Chand Gupta on the Ex. PW1/DB indent for issuance of cement which was prepared on 13.09.1991 and denied knowledge of any complaint made by A2 regarding pilferage from the cement store. He deposed that payments were made by cheque in favour of Gupta Construction Company and that the bank account of the Company was operated by Kailash Chand Gupta and not by him. He admitted that in Ext. PW1/E complaint, he had not mentioned that he had met A2 on the morning of 20.09.1991, nor had he mentioned the time of 10.15 AM, or that the demand of ₹1,800/- was made by A1 in the



2026:DHC:2731



presence of A2. PW1 denied that he had any prior acquaintance with PW7 or that the complaint was false or drafted at the instance of the latter. He further denied being a witness in any other corruption case involving PW7. PW1 described the office layout of A1 and A2, stating that it consisted of a large room partitioned into two portions, one for the Junior Engineers and clerical staff and the other for the Assistant Engineer, and that Junior Engineers would enter the Assistant Engineer's portion when required. PW1 denied that on 20.09.1991 he had visited the office of the A1 on the pretext of complaint on dragline or that the A1 had called A2 in that context.

18. PW4, shadow witness, deposed that on 20.09.1991 he had gone to the office of the CBI on the directions of the Administrative Officer of his department along with PW3, where they met PW7 who introduced him to PW1 and he was appraised of the contents of Ext.PW1/E complaint, which pertained to a demand of ₹ 1,800 by A1 for passing the payment. He further deposed about



2026:DHC:2731



the pre-trap proceedings conducted in the office of the CBI. He further deposed that PW1 was instructed to hand over the money only on specific demand and that he along with the other witnesses was directed to remain close, observe the transaction and overhear the conversation. He was instructed to give a prearranged signal by scratching his head after the money had been passed, and that he was satisfied that the money was to be given as a bribe. After the pre-trap proceeding was completed, the raiding party proceeded to the office of the accused persons at Flood Control Department, Shastri Nagar. He along with PW1 entered the office while other members of the raiding party remained outside. Both the accused present in the room offered them seats. When A1 enquired about his identity, PW1 introduced him as a friend. PW1 offered money to A1, who accepted the same and kept it in the drawer of his table. PW1 gave ₹900/- each to A1 and A2. A2 kept his share in the front pocket of his shirt. Thereafter, PW4 went out of the room and gave the pre-arranged signal. Upon receipt of the signal, the raiding party



2026:DHC:2731



entered and apprehended the accused persons. A1 and A2 initially did not disclose where the money was kept, whereupon he informed the officials about the location. Thereafter, PW3 recovered the tainted currency notes from the drawer of A1 and from the shirt pocket of A2. PW4 further deposed that the number of the recovered currency notes tallied with the number noted in Ex. PW1/F. The hand wash of both the accused persons were taken in sodium carbonate solution, which turned pink, and the solutions were transferred into separate bottles and sealed. PW4 identified the bottles as Ex. P1 to P5. He further deposed that the post trap proceedings were conducted at the spot. At this juncture, the prosecutor is seen to have sought the permission of the trial court to “cross-examine” PW4 on the ground that he was suppressing material facts.

18.1. On further examination by the prosecutor, PW4 deposed that he could not recollect the exact words of the conversation between A1 and PW1, but there was discussion



2026:DHC:2731



regarding money between them. He could not recollect whether A1 had specifically enquired from PW1 as to whether he had brought the money, or whether PW1 had replied in the affirmative. PW4 admitted that A1 had demanded money by stating “*Lao paise de do*” and had also given some assurance that the work of PW1 would be done, though he did not remember the exact words. He further deposed that thereafter A1 accepted the money. A2 had also spoken regarding his share, though he did not recollect the exact words used. A2 indicated that he was in a hurry and assured that the PW1’s work would be done after inspecting the site, where after PW1 handed over the money to him. In his cross examination, PW4 denied the suggestion that any enquiry regarding disproportionate assets was pending against him at the time he became a witness and that he had become a witness to oblige the CBI.

19. PW3, recovery witness, fully supported the version of the prosecution case in his examination in chief before the trial court. In his cross examination, PW3 deposed that the vehicles of



2026:DHC:2731



the raiding party were parked across the road opposite the office at Shastri Nagar and the interior of the office was not visible from the said location. He deposed that there were two rooms in the office premises, one where A2 was present, from where recovery was effected, and another room situated behind it from where A1 was brought after about 3-4 minutes of his arrival. He further deposed that the recovery memo was prepared and signed at the spot, while some further report was prepared at the CBI office, though he did not recollect the details.

20. PW-5, the then Executive Engineer, Irrigation and Flood Control Department, Government of NCT of Delhi deposed that he had taken charge of Supplementary Drainage Division III in August 1991. Three fencing works had been awarded to M/s Gupta Construction Company prior to his taking charge, but none had been completed despite expiry of the stipulated period. One work was sought to be foreclosed by the contractor due to encroachment, which request had initially been declined by his predecessor-in-



2026:DHC:2731



office but was later approved by him on 06.08.1991 after site inspection, which is Ext. PW5/A-1. Administrative orders in that regard were issued on 19.08.1991, which is Ext. PW5/B-1. He further deposed that two running bills had already been paid prior to his joining, and after the trap proceedings, a final bill was prepared which reflected a minus amount of approximately ₹300/-, meaning the contractor was liable to pay that amount to the department. With respect to the second work, he deposed that it was lying suspended and a request dated 13.09.1991 was received from the contractor seeking issuance of cement to resume work. The cement was accordingly issued and the work recommenced. PW5 further deposed that the work was supervised by the Junior Engineer and Assistant Engineer, measurements were recorded by the Junior Engineer and checked by the Assistant Engineer, and occasionally test checked by the Executive Engineer. A2 was the Junior Engineer and A1 was the Assistant Engineer for all three works. PW5 proved Ex. PW 1/DB indent for issuance of cement, which was approved



2026:DHC:2731



and signed by him on 13.09.1991. He further proved Ext. PW 5/C cement register, deposing that it was initially issued by his predecessor-in-office to A1 and thereafter handed over to A2. Entries regarding issuance of cement were made by the Junior Engineer and signed by the contractor, and were also checked by the Assistant Engineer.

20.1. PW5 in his cross examination deposed that in respect of one work, the final bill showed a minus amount of approximately ₹300/- payable by the contractor to the department and no further amount was due to the contractor. In respect of the second work, where only fencing poles had been erected, running payments had already been made and no further amount was due. He further deposed that in respect of the third work; payment could be made only after completion of curing period of seven days from the date of cement work. The amount payable to the contractor after curing was approximately ₹14,000/- after deductions. PW5 deposed that the contractor had not submitted any bill for the work executed



2026:DHC:2731



after issuance of cement till the trap was laid, and that during the curing period, as per normal practice, contractors do not submit bills. PW5 admitted that no payment was due to the contractor when the trap was laid as the curing period had not been completed.

21. Now a brief reference to the defence witness also. DW1, Cashier, Office of the Executive Engineer, Irrigation and Flood Control Department produced Ext. D-1 muster roll, which was initially issued to A1 and thereafter to A2. He also deposed that Ex. D-2 muster roll was issued to A1, who in turn issued the same to Ajit Kumar, Junior Engineer.

22. DW2, Junior Engineer, Irrigation and Flood Control Department, posted in Supplementary Drainage Division No. 3 at Nangloi deposed that he knows A2, who was in charge of supervising the work of the supplementary drainage, and that A1 was the Assistant Engineer. A1 used to check up to 50 percent of the work supervised by him and A2, and that at the time of such checking, the Junior Engineer concerned and the contractor used to



be present. Entries in Ext. D1 muster roll up to 20.09.1991 are in the handwriting of A2, and the remaining entries up to 30.09.1991, in his own handwriting. DW2 deposed that point 'A' in Ex. D1 bears the initials of A1 in token of having checked the work. He further deposed that point 'B' in Ex. D-2 at three places also bears the initials of A1 in token of checking. DW2 in his cross examination identified the initials of A1 in Ex. D2 as the same were made in his presence. He similarly identified the initials and handwriting of A2 as the entries were made by the latter at the spot in his presence.

23. The testimony of the aforesaid witnesses is mainly relied on by the prosecution to prove the demand and acceptance of the bribe by A1 and A2/ the appellants herein. As can be seen from the materials on record, the prosecution case is that both the accused persons, namely, A1 and A2, while discharging their official duties as Assistant Engineer and Junior Engineer respectively in the Flood Control Department, Delhi Administration, demanded illegal



2026:DHC:2731



gratification of ₹1,800/- (₹900/- each) from PW1, who was acting as the power of attorney holder of CW14, the contractor, to whom the work of construction along the Supplementary Drain had been awarded in 1991, for the purpose of expediting the payment of alleged pending dues. The primary question that arises for consideration is whether the prosecution has succeeded in establishing beyond reasonable doubt that A1 and A2 had in fact demanded and accepted illegal gratification as a motive or reward for performing a specific official act, thereby attracting the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. It is well settled law 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, in the absence of proof of demand, would not be sufficient to bring home the guilt under Sections 7 and 13(1)(d)(i) and (ii) of the Act, as held by the Hon'ble Apex Court in



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

24. In the case on hand, on behalf of A1 and A2 a series of arguments have been advanced to contend that the essential ingredient of demand by A1 and A2, being public servants, was never established. At the outset, it was argued that the presence of A1 and A2 at the office premises at the relevant time is doubtful, by placing reliance on Ext. D1 and Ext. D2 muster rolls to suggest that both were not present at the office when the demand is alleged to have been made but were instead engaged at the inspection site.

25. Exhibits DW1 and DW2 were marked through DW1. DW1 was never cross examined. According to DW2 in September, 1991, he was working in the Civil Irrigation Flood Control Department and his duty was at Supplementary Drainage, Division No.3, Nangloi. According to him, A1 the then, Assistant Engineer used to check up to 50% of the work which had been supervised by him and by Dinesh Garg, A2. He further deposed that the junior



2026:DHC:2731



engineer concerned as well as the contractor concerned would be present at the time when the works were being checked. He also deposed that entries in Ext. D1 up to the date 20.09.1991 are in the handwriting of A2 Dinesh Garg and that the remaining entries are in his handwriting. He also identified the signatures of A1 V.K. Dutta in Ext. D1 and Ext. D2 muster rolls. Neither DW1 nor DW2 were cross examined regarding the entries made in Ext. D1 and Ext. D2 muster rolls. Ext. D1 and Ext. D2 muster rolls show that on 20.09.1991 both A1 and A2 were at the work site. During the course of arguments, it was submitted that the work site was about 30 kilometres away from the office of A1 and A2 situated at L.M. Bund, Shastri Nagar, FCD Complex, New Delhi. Therefore, it was argued that it was impossible for A1 and A2 to have been present in their office at 10:15 a.m. as deposed by PW1 in the box.

26. It is true that that no evidence has been brought in through the examination of the prosecution witnesses or the defence witnesses regarding the distance from the work site till the office of



2026:DHC:2731



A1 and A2. However, this argument advanced on behalf of the A1 and A2 was not disputed by the learned prosecutor. As long as Exts. D1 and D2 are not disputed it can only be concluded that A1 and A2 were in fact at the site on the said day. It is true that A1 and A2, while questioned under Section 313(1)(b) Cr.P.C., admitted that at the time of trap, which was at about 03.45-04.00 p.m., they were present in the office. But the exact time or atleast the approximate time when A1 and A2 returned from the site to the office is not available from the materials on record. However, as long as, the entries in Ext. D1 and Ext. D2 Muster rolls are not discredited or challenged or disputed, there is no reason for this Court to disbelieve the entries in the same, which would show that A1 and A2 were at the site on the said day. This aspect raises doubts as to whether A1 and A2 were in fact in their office when PW1 is alleged to have met them in the morning at about 10.15 a.m., when the demand is alleged to have been made.



2026:DHC:2731



27. There is yet another aspect which raises doubts in the mind of the Court regarding the prosecution case. At the risk of repetition, I once again refer to certain portions in the testimony of PW1. PW1 in his examination-in-chief deposed that from the month of August, 1991, three bills were pending and that he was pursuing the same for payments of the bills. One of the three bills was required to be foreclosed because the work could not be done due to encroachment. Though he was following up the bills, the payment of the bill was not being processed, therefore, he met the accused persons on 20.09.1991 in their office at about 10:15 a.m. According to him, the office of the accused is situated at L.M. Bund, Shastri Nagar, FCD Complex, New Delhi. On 20.09.1991, he spoke to A1 V.K. Dutta regarding payment of bill in the presence of A2 Dinesh Garg in their office and requested them to make the payment of the bills. A1 V.K. Dutta in the presence of A2 Dinesh Garg demanded ₹1,800/- as bribe for release of payment. A1 also told him that the amount would be shared equally with A2. He then



2026:DHC:2731



requested A1 and A2 that he would make arrangements for the money within one or two days. But, A1 V.K. Dutta told him that the payment should be made on that very date sometime after lunch in the office. As he did not want to pay the bribe, on the very same day, he proceeded to the office of the CBI where he reached at about 11-11:15 a.m. He contacted the reception and enquired about the procedure of action to be taken regard to demand of bribe. He was asked to give a complaint in writing. He then drafted a complaint addressed to the Superintendent, CBI and again went back to the reception. The person at the reception asked him to wait. After some time PW7 came and introduced himself. He was then taken to the office of the SP who went through his complaint and made necessary endorsements thereof. Thereafter, PW7 Inspector Ramesh Kumar, took him to another room where he was asked to again wait for some time. After some time, he was called to another room where he met the panch witnesses, namely, PW4 Vijay Kumar Arora and PW3 Purshotam Lal Oberoi. The witnesses spoke to him



2026:DHC:2731



regarding his complaint and he told them that as bribe was being asked, he had filed the complaint. Another CBI inspector namely, Varma asked him whether he had brought the money to which he replied in the affirmative. Thereafter, he speaks about the pre-trap proceedings that were taken. The FIR, therefore could have been lodged only after PW1 gave his complaint and the officials of the CBI being convinced of the genuineness of the complaint. But Ext. PW7/A FIR is seen registered on 20.09.1991 at 11:15 a.m. If PW1 is to be believed, he reached the office of the CBI only at 11:15am. No clarification was sought by the prosecutor on this aspect. If that be so, the question arises as to whether the Superintendent of Police, CBI, ACB, New Delhi, had registered the crime even before PW1 reached the office and gave his complaint? This is yet another aspect which raises doubts in the mind of the Court.

28. Now, coming to the testimony of PW1 and the panch witnesses regarding the recovery. According to PW1, the raiding party left the office of the CBI by about 03.00-03:15 p.m. and they



2026:DHC:2731



reached the spot at about 03:45 p.m. He along with PW4, the shadow witness, went inside the room of A1 V.K. Dutta while the other members of the raiding party remained outside and took up their respective positions. When he entered the office room, both A1 V.K. Dutta and A2 Dinesh Garg were present. They offered seats and so he as well as PW4 took their seats. He introduced PW4 as his friend. Thereafter, A1 V.K. Dutta asked him whether he had brought the money which was demanded in the morning to which he answered in the affirmative. A1 asked him to hand over the money and so he took out the tainted currency notes from his pocket and handed over 9 currency notes of ₹100/- to A1 V.K. Dutta which the latter accepted with his right hand and kept them inside the right-side drawer of his office table. A2 Dinesh Garg also demanded his share and so he gave ₹900/- which A2 accepted with his left hand and kept it inside the left pocket of his shirt. PW4, the shadow witness, supports this version of PW1. However, PW3, the recovery witness, in his chief examination deposed thus:-



“...The raiding party then went to Shastri Nagar in the Flood Control Office. Complainant and Mr. Roda went inside the office while I remained with the CBI officials outside. We reached that office around 4 p.m. After some time, CBI staff rushed inside the office. I also went with them. Mr. Roda informed the Inspector that the money had been accepted by Jr. Engineer Mr. Garg. The CBI staff caught hold of both the hands of Mr. Garg. The Inspector disclosed his identity to Mr. Garg. In the meantime Mr. VK Dutta was also brought to that room from the adjoining room. The accused were challenged by the Inspector.

I was asked to recover the money from left side upper pocket shirt of Mr. Garg. I took out the money. I do not remember exactly how much money was recovered from the pocket of Mr. Garg. Then I was asked to recover the money from the table drawer of Mr. Dutta. That table of Mr. Dutta was in the same room where Mr. Garg had been caught. I recovered the money lying in the drawer of the table of Mr. Dutta. The total amount recovered from pocket of Mr. Garg and from Mr. Dutta was Rs. 1800/-. The numbers of the currency notes were tallied by me with the handing over memo and were found to be the same...

(Emphasis supplied)”

28.1. In the cross examination, PW3 reiterated his case



and deposed thus:-

"...The inside of the office of the accused was not visible from that place. There were two rooms, one in which Mr. Garg was found and in which the table from which money was recovered was also lying. There was second room behind the first room from where Mr. Dutta was brought. Mr. Dutta was brought from the other room 3/4 minutes after I had reached the spot. After completing the work, we had gone back to the CBI office. We had left the Flood Control Office around 6 p.m...

(Emphasis supplied)"

29. The testimony of PW3 is apparently inconsistent with the testimony of PW1 and PW4. This is yet another aspect which raises doubts in the mind of the Court regarding the recovery.

30. Further, going by the testimony of PW1, it appears that PW3 and PW4 were already present in the office of the CBI. If PW1 is to be believed, he reached the office of the CBI at 11:00-11:15 a.m, went to the reception, enquired about the formalities, wrote down the complaint. Thereafter, he went back to the reception, where he was taken to the room of PW7 who asked him



2026:DHC:2731



to wait for some time. Thereafter, he was called to another room where he met PW3 and PW4 panch witnesses. This has to be read along with PW7/A FIR, which according to the prosecution was registered on the very same day at 11:15 a.m. The aforesaid evidence has also to be read in the background of Ext.8/DA complaint that was given by A2 dated 27.05.1991, which reads thus:-

"...Please refer to my earlier letter No. 14, dated 17.5.91 on the above cited subject. It is stated that the contractor has restarted the work from 24/5/91. When I reached the site on dated 25.5.91 then I found & pointed out to the contractor that quality of work was very poor. He was using dry bricks in brick work. The contractor did not lay the C.C. 1:4:8 as per the drawing and designing of the work, moreover he was casting the post & was using 40 mm nominal size against 20 mm nominal size in Cement concrete work. So I stopped the work & locked the cement store. Today when I went to site then I found that the lock has been removed by the contractor from cement store & he was executing the work. So it is therefore informed you that I will not measure the works which are not executed as per the drawing & design of the



2026:DHC:2731



work..."

31. Further, it has also come out in evidence that there was no amount due at the time when the demand was alleged to have been made. It was submitted on behalf of A1 and A2 that there was no occasion for the accused persons to demand any bribe as no bills were pending for payment at the relevant time and in any event, the earlier bills have been cleared without any such demand. A reading of the testimony of PW5, the executive engineer substantiates this contention. PW5 deposed that three fencing works had been awarded to the contractor. However, none of the works had been completed within the stipulated period. One of the works had to be foreclosed and the final bill prepared thereafter reflected a minus amount of approximately ₹300/-, indicating that the contractor was in fact liable to pay the said amount to the Department. In respect of another work, running payments had already been released and no further amount was due. As regards the third work, PW5 deposed that payment could be made only after completion of the curing



2026:DHC:2731



period and that no bill had been submitted by the contractor till the date of the trap. PW5 admitted in his cross-examination that no payment was due to the contractor at the time when the trap proceedings were conducted. In the light of the testimony of PW5, a loyal prosecution witness, it becomes evident that there was no subsisting due or liability on the part of the department towards the contractor at the relevant time. This also raises doubts regarding the existence of any motive or occasion for the alleged demand of illegal gratification by A1 and A2.

32. It was further submitted that as many as 14 charge witnesses (CWs) were dropped by the prosecution without being examined, including material witnesses such as the officers who were part of the trap proceedings and were involved in the apprehension of A1 and A2, such as CW6, CW7, CW8 and CW9 and most significantly CW14, namely, Kailash Chand Gupta, on whose behalf PW1 was acting as power attorney holder. PW1 while examined deposed regarding the role of CW14. His testimony



2026:DHC:2731



makes it clear that he was merely acting on behalf of M/s Gupta Construction Company and that the bank account of the said Firm was operated by CW14, the proprietor. PW1 while cross-examined admitted that he was unaware of the exact amount due at the relevant time and that payments were made directly to the contractor. PW1 also expressed lack of clarity regarding the status of the foreclosure of works, preparation of bills and filing payments and even admitted that he had been removed from service after the incident and was not aware of the final settlement of accounts. In such circumstances, CW14, being the proprietor and the person actually dealing with the financial transactions and contractual obligations was the most competent witness to speak about the existence of any pending dues. It is no doubt true that evidence has to be weighed and not counted. It is also true that it is the prerogative of the prosecutor to decide which of the witnesses in the witness list needs to be examined. But there must be some reason as to why crucial or material witnesses are not examined or given up



2026:DHC:2731



by the prosecution. The failure of the prosecution to examine the aforesaid crucial witnesses coupled with the aforesaid inconsistencies brought out in the materials raise further doubts in the mind of the Court. It is well settled that a party is bound to lead the best evidence in its possession, which would throw light on the issue in controversy and if such material evidence is withheld, the court may draw an adverse inference under illustration (g) of section 114 of IEA, notwithstanding that the burden of proof may not lie on such party as held by the Apex Court in **Mussaiddin Ahmed v. State of Assam, (2009) 14 SCC 541**.

33. It is no doubt true that Section 20 of the PC Act mandates a statutory presumption in favour of the prosecution; however, such presumption is not automatic and can only be invoked when the prosecution first establishes the foundational facts, namely, the demand for and acceptance of illegal gratification by the accused. It is only upon such proof that the burden shifts upon the accused to rebut the presumption by adducing cogent and



credible evidence and only on the touchstone of preponderance of probabilities.

34. The aforesaid aspects raise doubts in the mind of the Court regarding the prosecution case and hence it cannot be held that the materials on record are sufficient to find the guilt of the accused persons beyond reasonable doubt. Suspicion, however, strong cannot take the place of proof. Therefore, I find that the appellants/ A1 and A2 are entitled to the benefit of doubt. In such circumstances, it can only be held that the trial court went wrong in relying on the aforesaid unsatisfactory evidence to conclude regarding the guilt of the accused persons.

35. In the result, the appeals are allowed. The impugned judgment is set aside and the appellants/A1 and A2 are acquitted under Section 248(1) Cr.P.C. for the offences charged against them. They shall be set at liberty and their bail bonds shall stand cancelled.



2026:DHC:2731



36. Applications, if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

APRIL 02, 2026

p'ma