



2026:CGHC:25610

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
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25.04.2026	23.06.2026.	--	23.06.2026

CRA No. 1423 of 2017

1 - Anil Markende S/o Shri Sadaram Markande, aged about 33 years, Occupation Assistant Director, Education, District Bemetara and additional charge of Block Education Officer, Nawagarh, District Durg (C.G.).

2 - Ramesh Kumar Chouhan, Clerk (Original Post Shikshakarmi), Office of Block Education Officer, Nawagarh, District Durg (C.G.)

... Appellants

Versus

State of Chhattisgarh, through Police Station Anti Corruption Bureau, Raipur, District Raipur (C.G.)

... Respondent

For Appellants : Ms. Sharmila Singhai, Sr. Advocate along with Mr. Shashwat Rai, Advocate.

For Respondent/State : Mr. Jitendra Shrivastava, G.A.

Hon'ble Smt. Justice Rajani Dubey

C.A.V. Judgement



1. This appeal has arisen out of the impugned judgment of conviction and order of sentence dated 08.09.2017 passed by the learned Special Judge (Prevention of Corruption Act) Bemetara, District-Bemetara (C.G.) in Special Case No. 09/2013. The trial court has convicted and sentenced the appellants as under :-

Conviction	Sentence
Under Section 7 of the Prevention of Corruption Act, 1988.	R.I. for 03 years and fine amount of Rs. 1,000/- and in default of payment of fine, to undergo additional R.I. for 03 months to each appellants.
Under Section 13(1) (D) read with Section 13(2) of Prevention of Corruption Act, 1988.	R.I. for 03 years and fine amount of Rs. 1,000/- and in default of payment of fine to undergo additional R.I. for 03 months to each of the appellants.

(All the substantive sentences are directed to run concurrently.)

2. The prosecution case as unfolded from the impugned judgment and records is that the complainant, Shyam Kumar Tiwari, approached the Superintendent of Police, Anti-Corruption Bureau (ACB), alleging that his wife, employed as a Shiksha Karmi (Class-III) "Education Worker" at Government Primary School, Amlideeha, Block Nawagarh, District Durg, had her salary withheld for six months by the Block Education Officer (BEO). To resolve the matter, the complainant contacted appellant No. 2-Ramesh Kumar Chouhan, who allegedly demanded an illegal gratification of Rs. 5,000 for facilitating the release of the withheld salary. The demand was purportedly made on behalf of appellant No.1-Anil Markende, the Block Education Officer. Acting on the complaint, the ACB Inspector, Lochan Pandey (PW-12), instructed the complainant to record the conversation with the appellants using a tape recorder.



The complainant recorded the conversation and informed the ACB that the appellants had called him on 12.10.2010 to collect the bribe amount. On 12.10.2010, the ACB team conducted a trap at the office of the BEO. After the complainant handed over Rs. 5,000, Appellant No. 1 was asked to wash his hands in a Sodium Carbonate solution, which changed color, indicating the presence of the tainted currency.

3. During the subsequent course of investigation, relevant evidence, including the bribe money was recovered from the left pocket of the appellant No. 1's pant. The trap team prepared a Panchnama (Ex. P/13) documenting the recovery. The complainant's written complaints were marked as Ex. P/03 and Ex. P/05, and the transcriptions of the recorded conversations were marked as Ex. P/06 and Ex. P/11.
4. After completion of the usual investigation, on the basis of the material contained in the charge sheet, learned trial Court framed charges against the accused/appellants for the offence punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, establishing that the accused, in his official capacity, demanded and accepted a bribe.
5. To substantiate its case, the prosecution has examined as many as 12 witnesses. Statement of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied all the charges leveled against them and pleaded their innocence and false implication in the case. However, in their defence, the appellants have adduced no witness.



6. Learned trial Court after appreciating the oral and documentary on record, convicted the appellants and sentenced him as mentioned in the opening paragraph of this judgment. Hence, the present appeal filed by the appellants.

7. Assailing the correctness and validity of the impugned judgment, learned counsel for the appellants submits that the impugned judgment dated 08.09.2017 is perverse, contrary to law, facts and circumstances of the case, therefore, liable to be set aside. Learned trial Court completely failed to appreciate that the first complaint was made by the complainant on 04.10.2010 whereas the second complaint was submitted on 11.10.2010 wherein he has not mentioned that he has earlier made one complaint on 04.10.2010 and there is no allegation made against the appellants for demand of illegal gratification. Learned trial Court further completely failed to appreciate that on 08.10.2010 the wife of the complainant Smt. Alka Tiwari made a complaint in which also it was not mentioned that earlier her husband made a complaint on 04.10.2010. In such circumstances, the prosecution has completely failed to prove its case beyond reasonable doubt. Learned trial Court did not appreciate this fact that the evidence of Shyam Kumar Tiwari (PW-03) in which in examination-in-chief he has specifically stated that he had given letter to the appellant No. 1 who told him to meet with the appellant No. 2, thereafter he met with the appellant No. 2, but this fact has neither narrated in the complaint dated 04.10.2010 nor statement under Section 161 of the CrPC. He has further stated in his examination-in-chief that he has received the cheque of Rs. 39,158/- on 05.10.2010, therefore, no question for demand of illegal gratification



arises. The prosecution sanction is also against the settled principles of law. Learned trial Court has completely overlooked the fact that the prosecution has neither produced any FSL report nor examined any witness to prove the voice of the appellants which was recorded by the prosecution for proving the demand of illegal gratification. From perusal of Ex. P/02, it is clear that while making a report for demand of illegal gratification against the appellants, the wife of the complainant has not made any allegation against the present appellants that who has demanded the illegal gratification from her for releasing the salary. Learned trial Court has gravely erred in punishing the appellant No. 2 because Shyam Kumar Tiwari (PW-03) has specifically stated that the cheque of Rs. 39,158/- was given to him on 05.10.2010 by the appellant No. 2 without taking any money, therefore, it is palpably false that the appellant No. 1 demanded illegal gratification through appellant No. 2. It is clear from the second complaint dated 11.10.10 that the complainant has not mentioned that on 05.10.2010 he met with the appellant No. 2 for receiving the cheque. Therefore, it is clear that the complainant has not filed the complaint with clean hands. The prosecution has completely failed to prove its case beyond reasonable doubt as no independent witness has been examined to prove the demand which is *sine qua non* for punishing the accused under the Prevention of Corruption Act, 1988. The complainant Shyam Kumar Tiwari (PW-03) in his cross-examination has specifically stated that till receiving the cheque of Rs. 39,158/- there was no demand of illegal gratification. Therefore, the conviction is illegal and deserves to be set aside. PW-03 Shyam Kumar Tiwari has specifically stated that the prosecution has recorded his statement under Section 161 CrPC on



11.10.2010, whereas the trap proceeding was conducted on 12.10.2010. In such circumstances, the prosecution case itself creates suspicion and becomes doubtful. There is a major contradiction between the court statement and the police statement of the Panch witnesses who have not supported the case of the prosecution and declared hostile. PW-11 U.K. Chandranvanshi Investigating Officer has clearly stated that he has not obtained any expert's opinion regarding the voice of the appellants recorded in the tape recorder for demand of illegal gratification. Therefore, the impugned judgment of conviction and order of sentence is liable to be set aside, and the appellants deserves to be acquitted of all charges.

8. Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **P. Somaraju v. State of Andhra Pradesh** reported in **2025 SCC OnLine SC 2291**, **State of Lokayuktha Police, Davanagere [State By Lokayuktha Police] v. C B Nagaraj** reported in **2025 SCC OnLine SC 1175**, on the decision of Hon'ble High Court of Delhi in the matter of **Romesh Sharma v. The State** delivered on 29.01.2026 reported in **CrL. Rev.P. 646/2004**, on the decision of Hon'ble High Court of Delhi in the matter of **Ashish Kumar Dubey v. State Thr. C.B.I.** delivered on 04.04.2014 and in this Court's decision in the matter of **Arun Kumar Vishwakarma v. State of Chhattisgarh** reported in **CRA No. 89 of 2008**.
9. *Per contra*, learned State counsel strongly opposed the arguments of the learned counsel for the appellants and by supporting the impugned judgment submits that learned trial Court minutely



appreciated the oral and documentary evidence. So, learned trial Court rightly convicted the appellants. Hence, this appeal is well merited and no interference is called for.

10. Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **A. Karunanithi v. The State Represented by Inspector of Police** delivered on **12.08.2025** delivered in **Criminal Appeal arising out of SLP (Cri.) No. 9964 of 2019** and in this Court's decision in the matter of **State of Chhattisgarh v. Tobius Xaxa** reported in **ACQA No. 260 of 2019** delivered on **16.02.2026**.
11. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment with utmost circumspection.
12. It is clear from record of learned trial Court that it framed charges against the accused/appellants under Sections 7, 13(1)(d) read with Section 13 (2) of Prevention of Corruption Act, 1988 and after appreciation of oral and documentary evidence the learned trial Court convicted the accused/appellants for the said offence.
13. It is not disputed that at relevant time, the appellant No. 1 Anil Markande was posted as an Assistant Director, Education, District Bemetara whereas the appellant No. 2 was posted as a Clerk (Original Post Shikshakarmi), Office of Block Education Officer, Nawagarh, then District Durg (C.G.) i.e., both the accused were public servants.
14. PW-03 Shyam Kumar Tiwari, the complainant, has deposed that his



wife, Smt. Alka Tiwari, who is serving as Shikshakarmi Grade-III, was deprived of her salary for the period from 26.08.2009 to February 2010, as the same was withheld during the said period. He further deposed that, in connection with the release of his wife's withheld salary, he visited the office of the Block Education Officer, Navagarh, and met the accused persons. The complainant further deposed that, upon meeting the accused, Ramesh Chauhan, he was informed that an amount of Rs. 39,158/- had been sanctioned towards his wife's salary and that payment would be required for securing its release. He stated that he expressed his inability to pay on account of his poor financial condition. He further testified that, as the other accused Anil Markande was not present in the office on that day, he requested Ramesh Chauhan to provide Anil Markande's contact number so that he could speak with him directly. Thereafter, Ramesh Chauhan demanded a sum of Rs. 5,000/- as illegal gratification and represented that the said amount was required to be paid to Anil Markande for release of the salary amount. In paragraph 4 of his deposition, the complainant stated that he spoke with the accused, Ramesh Chauhan, on 05.10.2010, who informed him that a cheque had already been prepared in the name of his wife, Smt. Alka Tiwari. He further stated that he had met the accused on earlier occasions as well, during which the accused, Ramesh Chauhan, had demanded illegal gratification from him. The complainant further testified that when he informed his wife about the said demand, she refused to pay any amount, stating that it was her hard-earned money. He further deposed that, prior to receiving the cheque, he had lodged a written complaint before the Anti-Corruption Bureau on 04.10.2010 vide Ex. P/03 in which he admitted his signatures on A to A part. In



paragraph 05 of his examination-in-chief, he stated that on 04.10.2010 itself, he was provided with a digital voice recorder fitted with a new battery, and the method of operating and switching it on and off was explained to him. As per the preliminary proceedings, Ex. P/04, he recorded the entire conversation held between himself and the accused, Ramesh Chauhan, on 05.10.2010. Thereafter, the complainant deposed that on the evening of 06.10.2010, he visited the office of the Anti-Corruption Bureau, where the officials directed him to record the conversation of the main accused, Anil Markande, as well. In compliance thereof, he proceeded to Temri on 07.10.2010, where a public grievance redressal camp "*Jan Samasya Nivaran Shivir*" was being held, and recorded his conversation with the said accused, in which, according to him, the accused demanded an illegal gratification of Rs. 5,000/-. On 11.10.2010, the complainant filed second complaint vide Ex. P/05 against the accused with consent of his wife Smt. Alka Tiwari in which he admitted his signatures on A to A part. On the same day, he produced five currency notes of Rs. 1,000/- denomination each, totalling Rs. 5,000/-, before the Anti-Corruption Bureau, stated to be the alleged bribe amount. The tape recorder produced by the complainant was received by the ACB officials, and upon playback of the recorded conversation, a transcript thereof was prepared vide Ex. P/06 consisting of four pages. The said tape recorder was thereafter seized vide seizure memo Ex. P/07, and a compact disc (CD) was also prepared. The preliminary proceedings in this regard are exhibited as Ex. P/08 consisting of 03 pages. The complainant was called to the Simga Rest House on 12.10.2010, and he reached there at about 07:00 a.m. on the same day. The Anti-Corruption Bureau officials also



reached the said place shortly thereafter. The complainant was reintroduced to the panch witness and the members of the trap team, and thereafter his personal search was conducted by the ACB officials. The personal search memo (Jama Talashi) has been marked as Ex. P/09. Thereafter, the ACB officers applied phenolphthalein powder to the tainted currency notes and handed over the said notes to the complainant, instructing him as to the manner in which the same were to be handed over to the accused. Subsequently, on the same day, i.e., 12.10.2010, the complainant proceeded to Nawagarh along with the trap team and upon reaching there, he entered the Block Education Office, where the B.E.O was not present at that time. After some time, the said officer arrived at the office. Thereafter, the complainant stated that he had brought Rs. 5,000/- to be given to the accused, Anil Markande. The accused, Anil Markande, then took him to the office hall, where the complainant handed over the said bribe amount to him. The accused, Anil Markande, kept the said amount in the left pocket of his pant. The complainant thereafter came outside and gave the pre-arranged signal to the trap team by scratching his head, whereupon the trap team entered the office and initiated the trap proceedings and recovered the said tainted currency notes and thereafter the hands of the complainant and accused Anil Markande were washed and the colour of the solution turned pink. He further deposed that the accused, Ramesh Chauhan, was also summoned to the spot by the trap team. However, he stated that he does not recollect whether the hands of the accused, Ramesh Chauhan, were subjected to a hand-wash test by the trap team. He further deposed that the tainted currency notes were seized by the trap team and the requisite seizure proceedings were



carried out. During the course of the proceedings, the currency notes were subjected to a chemical test, whereupon the solution in contact with the notes turned pink in colour. He further stated that the voice recording produced by the complainant and handed over to the ACB officials was played on a laptop; however, owing to excessive background noise and disturbance, the conversation recorded therein was not clearly audible. The transcription memorandum is Ex. P/11, seizure memo of C.D. is Ex. P/12 and the proceeding memo is Ex. P/13. In paragraph 14 of his cross-examination, he admitted that he had not lodged any complaint regarding the non-payment of his wife's salary for the period from January to May. In paragraph 15 of his cross-examination, he admitted that he had no knowledge of the news report shown to him, published in the "Dainik Bhaskar", Balod-Bemetara edition dated 22.02.2014, wherein it was stated that arrears had not been released owing to non-allocation of funds, that the Shikshakarmis had expressed dissatisfaction over the delay, and that nearly 800 teachers were awaiting disbursement of their salaries. The original copy of the said newspaper was presented by the defence vide Ex. D/01. He further admitted in paragraph 20 of his cross-examination that, prior to lodging the complaint before the Anti-Corruption Bureau, he had never interacted with nor held any conversation with the accused, Anil Markande. He also admitted that the application submitted to the Block Education Officer, Navgarh, was in his handwriting. In para 31 of his cross-examination, he admitted that the trap team entered the office hall only after he gave the pre-arranged signal, and that witness Konher recovered the tainted currency notes from the left pocket of accused Anil Markande. He further stated that he is unable to recollect the pant



colour of the accused as he did not note the same thing in his diary. He denied by saying that the witness Konher after recovering the said tainted currency notes put them back into the accused's pocket. He further denied the suggestion that, when the Block Education Officer noticed him while he was placing the currency notes, he had caught hold of the Officer's hand from behind the wrist. In para 34 of his cross-examination, he admitted that apart from his wife, Smt. Alka Tiwari, a cheque for Rs. 2,797/- had also been issued in respect of co- teacher Dushyant Sahu. It is further admitted that the salary of Dushyant Sahu was being drawn through the Temri Branch of the Bank.

He further admitted in paras 37 and 38 of his cross-examination which are reproduced herein for ready reference as under:-

" 37. 39,158/-रु. का चेक मुझे दिनांक 05.10.10 को प्राप्त हुआ था वह मेरे पत्नी का नाम का था। दिनांक 05.10.10 को मेरी पत्नी अलका तिवारी वेतन संबंधित चेक लेने के लिये नहीं गई थी। उक्त चेक दिनांक 04.10.10 को बन गया था जिसकी सूचना मुझे नहीं था रमेश चौहान ने चेक बन गया है कहकर सूचना नहीं दिया था। रमेश चौहान से वेतन संबंधित बात करने के लिये किस दिनांक को गया था वह दिनांक आज मुझे याद नहीं है। रमेश चौहान ने दिनांक 05.10.10 के पूर्व मुझे बताया था कि साहब को पैसा देना पड़ेगा लेकिन वह दिनांक मुझे याद नहीं है। मैं उस दिनांक का उल्लेख प्रपी-03 में नहीं किया। वाईस रिकार्डर एसीबी कार्यालय से दिनांक 04-10-10 को शाम को ही मिल गया था। यह सही है कि उक्त वाईस रिकार्डर खाली था।

38.यह कहना सही है कि रमेश चौहान के अलावा कार्यालय में और लोग भी थे। दिनांक 05.10.10 से वाईस रिकार्डर दिनांक 10.10.10 तक वाईस रिकार्डर मेरे पास था। उक्त वाईस रिकार्डर को अपने घर में रखा था। यह कहना सही है कि रमेश चौहान को मैंने कोई रकम नहीं दिया था। यह कहना सही है कि रमेश चौहान ने अपने लिए पैसे की कोई मांग नहीं की थी। "



15. PW-02 Smt. Alka Tiwari wife of the complainant has stated in para 2 of her examination-in-chief which is reproduced for ready reference as under:-

“ 02. मेरे पति कई बार आरोपीगण के कार्यालय में गए और उन्होने आवेदन लगाया तो मेरे पति को आरोपी चौहान ने तनख्वाह निकालने के लिए कुछ पैसे लगेंगे बोले, कितना पैसा पूछने पर 5000/- रूपए लगेगा बोले। इस बात को मेरे पति ने मुझे बताया था। मैंने अपने पति को एसीबी रायपुर मे शिकायत करने के लिए सहमति अधिकार पत्र लिखकर दी थी। उस समय मेरी डिलवरी हो चुकी थी, इसी कारण मैं एसीबी रायपुर मे शिकायत करने नहीं जा पाई और अपने पति को शिकायत करने के लिए कही थी। मैंने अपनी रुकी हुई वेतन को प्राप्त करने हेतु विकास खण्ड शिक्षा अधिकारी नवागढ़ को वेतन प्राप्त करने एवं नियमित करने हेतु पत्र लिखी थी और उसकी एक प्रति अपने पति को दी थी। उक्त पत्र की छायाप्रति एवं मेरे बैंक पास बुक की छायाप्रति प्रकरण में संलग्न है।”

In para 04 of her cross-examination, she admitted that she signed Ex. P/02 at the instance of her husband, the complainant Shyam Kumar Tiwari and she also admitted that no demand for a bribe amount of Rs. 5,000/- was made in her presence. In para 05 of her cross-examination, she admitted that Ex. P/02 does not bear any date beneath her signature. In para 07 of her cross-examination, she stated that she was not aware whether her salary cheque for Rs. 39,158/-, drawn on the Temri Branch of the State Bank, had been signed on 04.10.2010 and delivered to her husband on 05.10.2010. She further stated that she could not say when the said cheque was encashed or withdrawn.

In para 09 of her cross-examination she admitted as under:-

“9.यह कहना सही है कि चेक प्राप्त होते तक दिनांक 05-10-10 तक कोई रिश्त की रकम नहीं दी गई थी। साक्षी ने स्वतः कहा कि मुझे इस



संबंध में जानकारी नहीं है इस बारे में मेरे पति बता सकते हैं।"

16. PW-04 Ashutosh Konher is panch witness. He admitted his signatures on all the documents and stated that he had accompanied the trap team, which was standing near the office premises. Upon receiving a pre-arranged signal from the complainant, they proceeded to the room of accused Anil Markande, where he was apprehended, his hand was held, a search was conducted, and five currency notes of Rs. 1,000/- each were recovered from his pocket. The personal search memo (Jama Talashi) is Ex. P/16, seizure memo of bribe money is Ex. P/17, proceeding of phenolphthalein test is Ex. P/18.

In para 16 of his cross-examination, he has stated as under:-

"16. ...यह बात सही है कि लिप्यांतरण प्रपी-06 प्रार्थी श्याम तिवारी के द्वारा वाईस रिकार्डर में आवाज को सुनकर उसके आधार पर किया गया था। आज मैं ख्याल से नहीं बता सकता प्रपी 06 में प्रार्थी श्याम तिवारी एवं आरोपी के अतिरिक्त किसी अन्य व्यक्ति की आवाज थी या नहीं। आज मुझे यह भी ख्याल नहीं है कि प्रपी-06 के लिप्यांतरण के समय प्रार्थी श्याम तिवारी ने अभियुक्तगणों के अतिरिक्त किसी अन्य के नाम भी उस वाईस रिकार्डर में आवाज रहा है या नहीं संबंध से बताया था या नहीं। "

In para 30 of his cross-examination he has stated as thus:-

"30.इस बात की जानकारी नहीं है कि वाईस रिकार्ड कितने दिन तक प्रार्थी के पास था। वाईस रिकार्ड कार्यालय का था या नहीं इसके संबंध में मुझे जानकारी नहीं है। वाईस रिकार्ड में बहुत सी बातें अस्पष्ट थीं कई लोगों की आवाजें आ रही थीं। रमेश चौहान से कुछ दस्तावेज जप्त हुए थे जो शिक्षा विभाग के कार्यालय से संबंधित थे, वह दस्तावेज किसके अधिकार में थे इसके संबंध में मुझे जानकारी नहीं है।

17. The other panch witness, PW-07 Jagdish Prasad Vaishy, supported the



trap proceedings and admitted his signatures on all the documents.

However, he was declared hostile on certain points by the prosecution.

Thereafter, he accepted the suggestions put forth by the prosecution and admitted his signatures on Ex. P/15.

18. PW-08 Pawan Kumar Pathak, Head Constable, stated that he prepared the transcript, Ex. P/06, from the voice recorder with the assistance of the complainant. He further stated that he was a member of the trap team and deposed regarding the entire proceedings. In his cross-examination, he admitted that he did not witness the manner in which the complainant allegedly handed over the money to the accused. In paragraph 20 of his cross-examination, he stated that he was unable to specify the company to which the CD belonged. He further admitted that the voice recorded in the voice recorder was not subjected to comparison with the voices of the complainant and the accused.

19. PW-11 U.K. Chandravanshi, Investigating Officer stated that complainant Shyam Kumar Tiwari gave complaint on 04.10.2010 and he gave tape recorder to the complainant vide Ex. P/04. He further stated that the complainant Shyam Kumar Tiwari on 11.10.2010 has filed second complaint vide Ex. P/05 and also consent letter vide Ex. P/02 of his wife Smt. Alka Tiwari dated 08.10.2010. He further stated that vide Ex. P/21, he called two panch witnesses and he stated about preliminary proceeding and admitted his signatures on preliminary proceeding memo Ex. P/08, search memo Ex. P/09, proceeding memo Ex. P/10, seizure memo Ex. P/15 and also admitted his signature on seizure memo Ex. P/19, arrest memo Ex. P/20.



In para 27 of his cross-examination, he stated as under:-

“ 27...यह बात सही है कि लिप्यांतरण में क्षत्रीय नामक व्यक्ति के संबंध में बातें आयी होने के बाद भी उसके विरुद्ध कार्यवाही नहीं की क्योंकि मैंने ऐसा करना आवश्यक नहीं समझा ..”

In paras 30, 31, 33 and 35 he admitted as under:-

“ 30.... यह बात सही है कि नवागढ़ जाने के बाद हमें प्रार्थी के द्वारा यह बताया गया कि अभियुक्त अनिल मारकण्डेय कार्यालय में नहीं है। मुझे इस बात की जानकारी नहीं है कि प्रार्थी ने किससे फोन कर अभियुक्त कार्यालय में या नहीं है पूछा।”

31. यह कहना सही है कि रिश्त देने के पूर्व प्रार्थी श्याम तिवारी अभियुक्त के कार्यालय में लगभग 20 मिनट से आधा घंटा का समय लग गया उसके बाद इशारा किया। प्रार्थी ने हमें यह नहीं बताया कि जब वह अभियुक्त के पास रिश्त देने गया तो उस समय उनके कार्यालय के सुबोध हरी श्रीवास्तव एवं हरदयाल श्रीवास वगैरह थे। अब कहा कि प्रार्थी जब वहा पहुंचा तो आरोपी के कार्यालय के तीन-छः व्यक्ति यहा मौजूद होना बताया तो था परंतु उनमें से किसी का भी नाम नहीं बताया था।...”

33. ...यह बात सही है कि प्रार्थी के द्वारा दिये गये द्वितीय शिकायत आवेदन पत्र में प्रार्थी ने प्र.पी.05 के स से स भाग पर यह लिखा हुआ है कि मेरे पत्नी अल्का के नाम का 39,158/- रुपये का चेक प्राप्त हो चुका है। प्र.पी 02 अधिकार पत्र/सहमति पत्र में दस्तावेज किसने तैयार किया है इसका उल्लेख नहीं है। यह कहना सही है कि दिनांक 08.10.2010 के पहले प्रार्थी ने दिनांक 04 10.2010 को प्रथम शिकायत पत्र दिया था। यह कहना सही है कि दिनांक 04.10.2010 को प्रार्थी के पास कोई अधिकार पत्र नहीं था। रिकार्ड देखकर नहीं बता सकता कि प्र.पी.30 के आदेश के संबंध से अति. पुलिस महानिर्देशक के कार्यालय से कौन कर्मचारी या अधिकारी विधि एवं विधायी कार्य विभाग मंत्रालय लेकर गया था। उसी तरीके से अभियोजन स्वीकृति प्रदान करने के लिये मुख्यालय एंटी करप्शन ब्यूरो रायपुर से क्या क्या



दस्तावेज विधि एवं विधायी का कार्य विभाग मंत्रालय रायपुर भेजा गया था इसकी जानकारी मुझे नहीं है।"

35. यह बात सही है कि लिपियांतरण प्र.पी.06 में ऐसा कही भी लेख नहीं है कि प्रार्थी दिनांक 12.10.2010 को अभियुक्त को रिश्वत का रकम को देने के लिये बुलाया है। यह बात सही है कि अभियुक्तगणों को आवाज का कोई विशेषज्ञ से जांच नहीं कराया गया है। यह बात सही है कि अभियुक्तगणों को गिरफ्तार करने के बाद भी उनके आवाज का कोई परीक्षण नहीं कराया गया है...।"

20. From a careful scrutiny of the statements of the witnesses, it is evident that the complainant, Shyam Kumar Tiwari, lodged two complaints, namely the first complaint dated 04.10.2010, Ex. P/03, and the second complaint dated 11.10.2010, Ex. P/05. The complainant, PW-03 Shyam Kumar Tiwari, as well as his wife, PW-02 Smt. Alka Tiwari, have admitted that they received the cheque on 05.10.2010. PW-02 Smt. Alka Tiwari stated in para 09 of her cross-examination which reads as thus:-

"9. ...यह कहना सही है कि चेक प्राप्त होते तक दिनांक 05-10-10 तक कोई रिश्वत की रकम नहीं दी गई थी। साक्षी ने स्वतः कहा कि मुझे इस संबंध में जानकारी नहीं है. इस बारे मे मेरे पति बता सकते है। "

The Investigating Officer, PW-11 U.K. Chandravanshi, clearly admitted that he had not obtained the voice samples of either the accused or the complainant. The complainant, PW-03 Shyam Kumar Tiwari, further admitted in paragraph 38 of his cross-examination that the voice recorder remained in his custody at his residence from 05.10.2010 to 10.10.2010.

It is also written in transcription Ex. P/06 which is reproduced for ready reference as under:

" प्रार्थी एवं आरोपीगण के मध्य दिनांक 05 एवं 07.10.2010 को रिश्वत पूर्व



बातचीत का लिप्यतिरण प्रार्थी श्री श्याम कुनार तिवारी के सहयोग से आरोपीगणों की आवाज को अलग-अलग पहचान कर किया गया।”

The transcript, Ex. P/06, was prepared on 11.10.2010. The complainant, Shyam Kumar Tiwari, clearly admitted that the voice recorder remained in his custody from 05.10.2010 to 10.10.2010. PW-08 Pawan Kumar Pathak and PW-11 U.K. Chandravanshi, the Investigating Officer, identified the voice of the accused at the instance of the complainant. They further admitted that the recorded conversation was not clear due to the presence of multiple persons. As per the complainant, the alleged conversation was recorded on 05.10.2010 and 07.10.2010, and the tape recorder was seized on 11.10.2010. In these circumstances, the possibility of tampering with the tape recorder cannot be ruled out. It is further evident that no certificate under Section 65-B of the Indian Evidence Act, 1872 was produced by the prosecution in respect of the electronic record. It is also apparent that the entire proceedings were conducted qua accused Anil Markande. The presence of the other accused, Ramesh Chauhan, has not been established by the prosecution, and no recovery has been effected from him.

21. Hon'ble Apex Court in the matter of State of Lokayuktha Police Davanagere(*supra*) held in paras 25 and 27 as under:-

“25. It is pertinent to note that till 05.02.2007, when the Respondent had conducted the physical/spot inspection, there is not even a whisper of there being any demand of bribe. Moreover, when the Complainant



went back to the Respondent's office at 5:30 PM with the money, the prosecution case itself as per the deposition of its witnesses makes it clear that the Respondent had informed the Complainant that he had already forwarded the concerned file. Thus, if the same is accepted, there was no occasion for the Complainant to go ahead with paying the amount, which he claims to be in the nature of bribe demanded by the Respondent, after the work for which the bribe was purportedly sought, had already been done. The observation of the High Court to this extent is correct that just because money changed hands, in cases like the present, it cannot be ipso facto presumed that the same was pursuant to a demand, for the law requires that for conviction under the Act, an entire chain – beginning from demand, acceptance, and recovery has to be completed. In the case at hand, when the initial demand itself suspicious, even if the two other components – of payment and recovery can be held to have been proved, the chain would not be complete. A penal law has to be strictly construed [Md. Rahim Ali v State of Assam, 2024 SCC OnLine SC 1695 @ Paragraph 45 and Jay Kishan v State of U.P., 2025 SCC OnLine SC 296 @ Paragraph 24]. While we will advert to the presumption under Section 20 of the Act hereinafter, there is no cavil that while a reverse onus under specific statute can be placed on an accused,



even then, there cannot be a presumption which casts an uncalled for onus on the accused. Chandrasha (supra) would not apply as demand has not been proven. In Paritala Sudhakar v State of Telangana, 2025 SCC OnLine SC 1072, it was stated thus:

'21. As far as the submission of the State is that the presumption under Section 20 of the Act, as it then was, would operate against the Appellant is concerned, our analysis supra would indicate that the factum of demand , in the backdrop of an element of animus between the Appellant and complainant, is not proved. In such circumstances, the presumption under Section 20 of the Act would not militate against the Appellant, in terms of the pronouncement in Om Parkash v. State of Haryana, (2006) 2 SCC 250:

22. In view of the aforementioned discrepancies in the prosecution case, we are of the opinion that the defence story set up by the appellant cannot be said to be wholly improbable. Furthermore, it is not a case where the burden of proof was on the accused in terms of Section 20 of the Act. Even otherwise, where demand has not been proved, Section 20 will also have no application. (Union of 13 of 15 India v. Purnandu Biswas [(2005) 12 SCC 576: (2005) 8 Scale 246] and T. Subramanian v. State of T.N. [(2006) 1 SCC 401:



(2006) 1 Scale 116])' (emphasis supplied)' (emphasis in bold is original, underlining is ours)

27. Though it can be commented that the High Court was required to give detailed factual reasoning, which has not been done, as to why it was overturning an order of conviction by that of acquittal, yet since the factum of demand itself has not been proved beyond reasonable doubt, the acquittal of the Respondent by the Impugned Judgment cannot be termed perverse or unwarranted, in the factual matrix of the present lis. In Yadwinder Singh v Lakhi, 2025 SCC OnLine SC 686, this Court opined that 'The Trial Court could have better worded its 14 of 15 order through clearer reasoning.' However, upon examination of all relevant factors, the Court chose to restore the order of the Trial Court therein and set aside the order impugned therein, upon examining all factors of the matter itself. In the instant case, needless to add, we have applied our mind independently to all material aspects and find ourselves ad idem with the conclusion of the High Court."

22. Hon'ble Apex Court in the matter P. Somaraju (*supra*) held in paras 21, 22 and 23 which reads as thus:-

" 21. Needless to say, the above observations are not tenable in law. Moreover, what we find particularly troubling is the complainant's conduct in directing Rajender, the



mediator and accompanying independent witness, to remain outside the appellant's office during the crucial half-hour in which the alleged demand and acceptance occurred. This was contrary to the explicit instructions of the DSP. Rajender could consequently make no positive statement on whether the appellant demanded or accepted any bribe, and this gap is candidly admitted by the prosecution itself.

22. Both, the DSP and the Inspector of ACB, admit they did not question the complainant on this point, and till date no explanation has ever been offered for keeping Rajender out of the room. They also admit that they did not question any of the other office staff or visitors. We note that the other mediator Balaji was not examined by the prosecution at all. These circumstances are nowhere addressed by the High Court. Such omissions cannot be brushed aside lightly, as they strike at the root of the prosecution version and cast serious doubt on whether demand and acceptance were proved beyond reasonable doubt.

23. In contrast, the defence has consistently maintained that the alleged demand and acceptance of bribe never took place. According to the appellant, the complainant entered his office alone and during the appellant's brief absence, placed the tainted amount in the left-drawer of the table. Accordingly, when the trap-party entered, the appellant immediately denied having received any money, and the phenolphthalein test on both hands yielded negative results."

23. Hon'ble Delhi High Court in the matter of Romesh Sharma (*supra*) held in paras 77,78,79,80,81, 82 and 83 which reads as under:-



" 77. The Apex Court again, considered the conditions of admissibility of these Telephonic conversations in [Ram Singh vs. Col Ram Singh, 1986 AIR \(SC\) 3](#) while holding that "...We can see no difference in principle between a tape-recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this Court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, **provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible**, we are satisfied that a tape- recording is admissible in evidence. **Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. ... "** and further proceeded to lay down the following conditions qua the same:

"...Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows:

1. **The voice of the speaker must be duly identified** by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

2. **The accuracy of the tape recorded statement** has to be proved by the maker of the record by satisfactory evidence - direct or circumstantial.



3. Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

4. The statement must be relevant according to the rules of Evidence Act.

5. The recorded cassette must be carefully sealed and kept in safe or official custody.

6. The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances."

78. **The first aspect of recorded cassette is the integrity of the chain of custody of the cassettes** for which it must be carefully sealed and kept in safe or official custody. As per the charge Sheet, the conversations were intercepted by Insp. Ishwar Singh and were heard on parallel Line by HC Dilbagh Singh for the period between 01.10.1998 & 20.10.1998 and were recorded in the four cassettes. One cassette pertained to this case and was handed over by HC Dilbagh Singh to IO, Insp. Ishwar Singh and was signed by Insp. Ishwar Singh and HC Dilbagh Singh, only on 03.11.1998 i.e. 13 days after the alleged period. After putting the cassette into its cover, a parcel was prepared which was sealed with the seal of I.S. and the cassette was seized and seizure memo thereof was prepared.

79. While alleging that conversation was recorded between 01.10.1998 & 20.10.1998, i.e. for 20 days, it is only a small snippet of conversation relied by the prosecution, but significantly the particular date of recording that particular conversation is conspicuously missing. A vague assertion of it being recorded on one of the days and not



indicating the specific date on which the conversation was recorded, itself indicates the unreliability and the uncertainty of this alleged conversation.

80. **Secondly**, there is no explanation forthcoming as to why the cassette was retained by HC Dilbagh Singh from 21.10.1998 till 03.11.1998 and why was it not sealed immediately, upon recording of relevant conversation.

81. The non-securing and immediate sealing, assumes significance as it creates a distinct possibility of tampering, erasing or doctoring of the magnetic tape.

82. **Consequently, the integrity of securing the electronic evidence is compromised and the possibility of it being manipulated during the period it was in the possession of HC Dilbagh Singh or IO, Insp. Ishwar Singh, cannot be over ruled and cannot be held reliable even at the stage of framing of a charge.**

83. The next aspect for the admissibility of such a statement, is to identify the voice of the speaker. In the case of [Ram Singh](#), (*supra*) and [Nilesh Dinkar Paradkar vs. State of Maharashtra](#), 2011(3) JCC 1972, it was held that the voice of the speaker must be duly identified, and the accuracy of the recording proved by satisfactory evidence.

24. This Court in the matter of Arun Kumar Vishwakarma (*supra*) held in paras 13 and 16 which reads as under:-

“13. Further in (2014) 13 SCC 55 (B. Jayaraj v. State of Andhra Pradesh), it was held by the Supreme Court as under:

7. Insofar as the offence under Section 7 is concerned, it



is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P., (2010) 15 SCC 1 and C.M. Girish Babu v. CBI, (2009) 3 SCC 779.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand



alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. 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 insofar as the offence under Sections 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.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.



16. Reiterating the judgment of **B. Jayaraj case** (supra) and **P. Satyanarayana Murthy case** (supra), again, in **(2016) 3 SCC 108 (Krishan Chander v. State of Delhi)**, it was held by the Supreme Court thus:

"35. It is well-settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1) (d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in *B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55. *A. Subair v. State of Kerala*, (2009) 6 SCC 587 and *P Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152 upon which reliance is rightly placed by the learned Senior Counsel on behalf of the appellant."

paragraph 39, it was further held by the Supreme Court thus:

"39. In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant Jai Bhagwan (PW2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant Jai Bhagwan (PW2), which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order [*Krishan Chander v. State of Delhi*, 2014 SCC OnLine Del 2312] of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside."



25. In light of the aforesaid judgments, it is evident that, in the present case as well, the prosecution has utterly failed to prove the demand of bribe. The conduct of the complainant, PW-03 Shyam Kumar Tiwari, appears to be highly suspicious. It is also evident that the main complainant is PW-02 Smt. Alka Tiwari, the wife of PW-03 Shyam Kumar Tiwari; however, he lodged the first complaint on 04.10.2010 vide Ex. P/03. Thereafter, Smt. Alka Tiwari gave her consent letter vide Ex. P/02 on 08.10.2010, and subsequently, the second complaint was lodged on 011.10.2010 vide Ex. P/05. It further appears that the complainant was in possession of a voice recorder and allegedly recorded conversations with the accused on 05.10.2010 and 07.10.2010, which was produced before the ACB on 11.10.2010. On the same day, the transcript, Ex. P/06, was prepared. It is also evident that no voice samples were collected by the prosecution, and the voices were identified as those of the accused and the complainant solely on the basis of the complainant's version. The Investigating Officer, PW-11 U.K. Chandravanshi, has also admitted that another person, Kshatriy, was involved in the conversation; however, the prosecution neither cited him as a witness nor examined him before the learned Trial Court. The complainant, PW-03 Shyam Kumar Tiwari, and his wife, PW-02 Smt. Alka Tiwari, have admitted that they received the cheque on 05.10.2010, and thereafter the trap proceedings were conducted, thereby rendering the prosecution story doubtful. In the absence of a certificate under Section 65-B of the Indian Evidence Act, 1872, and in the absence of any voice sample or FSL report, the voice recording cannot be relied upon. However, the learned Trial Court, in my view, failed to properly appreciate these material inconsistencies and has



recorded perverse findings. Accordingly, the conviction and sentence imposed by the learned Trial Court are not sustainable in law, and the appellants are entitled to the benefit of doubt.

26. *Ex consequenti*, the appeal is **allowed** and the impugned judgment dated 08.9.2017 is set aside. The appellants are acquitted of all the charges levelled against them.
27. The appellants are reported to be on bail. However, keeping in view the provisions of section 481 of BNSS 2023, the appellants are directed to furnish a personal bond for a sum of Rs. 25,000/- each in the like amount before the court concerned forthwith, which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.
28. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Rajani Dubey)
JUDGE