



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

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+ **CRL.A. 993/2002**

TEJ NARAIN SHARMA .....Appellant

Through: Ms. Rebecca M. John, Sr. Adv. with  
Mr. Harsh Bora and Mr. Niranjana  
Dey, Advs.

versus

STATE OF DELHI .....Respondent  
Through: Mr. Pradeep Gahalot, APP for State

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The appeal arises out of the judgment of conviction and order of sentence rendered by the Special Judge on 27.11.2002 and 29.11.2002 respectively.

Vide the aforesaid, the appellant was found guilty of commission of offence punishable under Section 7 and 13 (1)(d) read with Section 13 (2) of Prevention of Corruption Act, 1988 ("PC Act") and was sentenced to undergo RI for 2 years and pay a fine of Rs.15,000/-, in default whereof he would undergo SI for 6 months under both Section 7 as well as Section 13(1)(d) read with Section 13(2) of the PC Act. Both the substantive sentences were directed to run concurrently; the default sentences, however,



were directed to run one after the other.

His sentence was suspended by this Court on 18.12.2002.

2. The facts in a nutshell, as noted by the Trial Court, are as under:-

*“The Prosecution case is that on 31-7-92 one Amar Nath Oberoi (PW8) came to anti-corruption branch of Government of NCT of Delhi at 9.30 a.m. and complained about demand of bribe from him by officials of Directorate of Audit, Central revenues including accused T.N. Sharma, who during those days was employed as a Section officer in the office of Director General of Audit, Central Revenues, A.G.C.R. Building, New Delhi. That complaint was reduced into writing (Ex. PW8/A) in the presence of one independent Government Official R.K. Kaushik (PW-9). It was alleged by the complainant that he was working as an Accountant in M/s. Elpar Cables Corporation, 4/19, Gali Bagjchi, Vishwas Nagar, Shahdara, Delhi and that on 29-7-92 an audit team from Excise Audit Department, A.G.C.R. consisting of one Audit Officer R.N. Sharma, N.B. Sharma, Sr. Auditor, Vishwapati, Sr. Auditor and T.N. Sharma (accused), Section Officer came for the audit of the said firm right from its establishment. Amar Nath further alleged that he produced the entire records before that audit team which were checked till 6 p.m. and on 30-07-92 again those four officials came at 10 a.m. and made further checking of accounts concerning the Excise and during the checking they had been getting eatables etc. at the expense of the firm. The complainant further alleged that at about 6 p.m. on 30-07-92 R.N. Arora, Audit Officer in from of his three colleagues said that for giving correct audit report Rs. 3000/- per year will have to be paid as bribe and from 1983 till date amount of Rs. 27,000/- will have to be paid otherwise his factory would be got sealed and also that in further also Rs. 3000/- per year will have to be paid otherwise demand notice for a huge amount will also be issued. He told them that as his employer was not available money would be arranged by the next day and also that amount will have to be reduced to which he (R.N Arora) agreed for Rs. 20,000/- as bribe money which amount was then agreed to be paid on that day i.e. 31-7-92 at 10.30 a.m. in the office of the firm and for collecting the payment R.N Arora had said that Section Officer T.N. Sharma would come and will collect the said amount of Rs. 20,000/- which should be paid to him. It was also alleged by the complainant that T.N. Sharma also said that he would come on 31-7-92 at about 10.30 a.m. and would take Rs. 20,000/- which amount should be kept ready. The complainant alleged in his complaint that he was against giving and taking of bribe but out of helplessness he had given his consent for the payment of bribe and that he had no enmity with R.N. Arora, T.N. Sharma and other audit officers.”*



3. In view of the above, a trap was laid and on 31.07.1992, 40 GC notes of Rs.500/- each, totaling Rs.20,000/-, treated with phenolphthalein powder, were recovered from the right hand of the accused. The washes of both the hands were taken. The Raid officer prepared *Rukka* (Ex. PW-10/A) on which the said FIR under Sections 7/13 PC Act came to be registered in the Anti-Corruption Branch. During the investigation, the wash bottles were sent to CFSL, Chandigarh, and on receipt of CFSL report, chargesheet was filed and charges were framed. The appellant pleaded not guilty and claimed trial.

4. The prosecution, in support of his case, had examined 11 witnesses in all. The complaint/*Amarnath Oberoi* was examined as PW-8; the *panch* witness/*R. K. Kaushik* was examined as PW-9; *Tola Ram*, the raiding officer, and Inspector *B. M. Sharma*, a member of the raiding party, as PW-10 and PW-11 respectively. *B. M. Oza*, the sanctioning authority, was examined as PW-1, Dr. *A. K. Singh*, the then ACP (Investigation) was examined as PW-2. The service records of accused were proved through the testimony of *Ved Prakash Budhiraja*, examined as PW-3. The prosecution also examined two officers from the appellant's office, namely *U. C. Gupta* and *V. K. Verma* as PW-6 and PW-7 respectively. *N. K. Prasad* (PW-4) was examined to prove the CFSL report.

5. In his statement under Section 313 Cr.P.C., the appellant admitted being employed by the Directorate General of Audit during the relevant time. He denied demanding or accepting bribe from the complainant. He said that it was not the complainant but one *Vijay Kumar Aggarwal* who was looking after the excisable record of the firm and its proprietor had



coordinated the audit. He also took the ground that the inspector of the AC branch was not authorized to investigate the case under PC Act, 1988.

6. Ms. Rebecca John, learned Senior counsel for the appellant, assailed the finding of conviction by contending that the prosecution had failed to prove the case as the demand, as though the demand was alleged to have been made by one *R. N. Arora* on 30.07.1992, he was not made an accused. Mr. *R. N. Arora* rather appeared as a defence witness and denied the case of the prosecution. He was not even cross-examined on the aforesaid aspect. It was next contended that the alleged demand made on 31.07.1992 by the appellant remained to be conclusively proved in light of the inconsistencies and contradictions in the statements of witnesses. The complainant has alleged that the audit was carried out for a period of 9 years and the alleged demand by *R. N. Arora* was Rs.3,000/- per year, totaling Rs.27,000/-, which on request of the complainant was reduced to Rs.20,000/-. The firm came into existence in 1986 and thus the audit would have been for 6 years, and not 9 years as claimed. The appellant's presence at the spot on the day of incident, i.e. on 31.07.1992, has been justified in light of the testimony of *R. N. Arora*, who was examined as a defence witness. There are contradictions also in the testimony of the complainant as to where he arranged the purportedly demanded amount from. Learned Senior Counsel also doubted the credibility of the *panch* witness by contending that he has admitted to being a spot witness, having been involved in 5 other cases. The CFSL report is also sought to be discredited, as the wash samples that were sent were not the ones that were deposited in the *Malkhana*. The samples that were sent to the CFSL were taken out from the almirah of the ACP, Dr. A.



*K. Singh*. The non-examination of material witnesses, including *Vipin Kwatra*, the proprietor of the firm, and other Police Officers who were a part of the raiding team, was also put forth as a ground for seeking setting aside of the impugned judgment. Lastly, the sanction granted by the sanctioning authority was also assailed on ground of non-application of mind, as vital documents such as the *Tehrir* and the forwarding letter were not perused by the sanctioning authority.

7. The contentions made on behalf of the appellant were repelled by the learned APP for State, who submitted that the demand made by the appellant stood proved through the testimony of the complainant as well as the *panch* witness. The treated notes totaling Rs.20,000/- were recovered from the hand of the appellant. The recovery witness/Raid Officer *Tola Ram*, duly proved the recovery of the same. *Vipin Kwatra*, the owner of the firm, was cited as a witness; however, he could not be examined as he expired during pendency of the trial.

8. The complainant/*Amarnath Oberoi* was examined as PW-8. He deposed that he was working as an accountant in M/s Elpar Cables Corporation Limited and an audit was carried out by the Audit Officers from AGCR Excise, Audit Department. In this regard, the appellant along with *R. N. Arora* from the said department visited his office premises and asked him to produce account books of the firm. *R. N. Arora* also told him that the firm had been in existence for the last 9 years and the witness was asked to give Rs.3,000/- per year in exchange for giving a complete and correct report of their firm, and thus the total demand of Rs.27,000/- was made. The witness further deposed that as his employer was not present, *R. N. Arora*, on the



witness' asking, reduced the amount to Rs.20,000/-. The complainant was also told by *R. N. Arora* that the appellant would come on the next day to receive the agreed amount. As the complainant was not happy with the demand, on 31.07.1992, he went in the morning to the AC Branch and lodged a complaint (Ex. PW-8/A). He narrated the instructions and demonstrations given to him in the pre-trap proceedings. He stated that he, along with the raiding party, reached his office situated at the first floor at about 10.30 AM. The appellant came to his office at about 11.15 AM and asked/demanded money. The complainant asked him to give the audit report. The appellant, however, asked the complainant to give the money first. The treated GC notes were accepted by the accused by his right hand. The accused started counting the money. The *panch* witness, who was sitting in the office of the complainant, stepped out and gave the pre-arranged signal to the members of the raiding party. The bribe amount was recovered by Inspector *Tola Ram* and the serial numbers on the notes were tallied with the pre-raid report (Ex. PW-8/B) and seized vide seizure memo (Ex. PW-8/C). The notes were exhibited as Ex. P-1 to Ex. P-40. The complainant further deposed that the hand wash was collected and the accused was arrested.

In cross-examination, the complainant admitted that the firm came into existence in the year 1986. He further deposed that audit was to be conducted since the date of existence till the year 1992. The owner of the firm, *Vipin Kwatra*, expired on 02.08.2001. It was *R. N. Arora*, who was the head of the audit team, who had demanded money in the evening of 30.07.1992. At that time, *Vipin Kwatra* was out of station. The audit team



had conducted inspections on 29.07.1992 and 30.07.1992 and prepared draft notes for preparation of the final audit report. He denied the suggestions that *R. N. Arora* had not demanded bribe amount from him or that *R. N. Arora* had not told him that the accused would come on the next date to receive the agreed amount. He denied the suggestion that the records were not made available to the audit team. He also denied the suggestion that the owner was fearful of legal action on account of irregularities in the records and not maintaining proper records. He denied the suggestion that a false complaint was lodged to ward off legal action on account of an adverse audit report. The complainant stated that he neither withdrew the amount from the account of the firm nor did he have that much cash in hand. He stated that he arranged the said amount from his own sources and friends. The said amount was borrowed from 2 friends, namely *Rakesh Kapoor* and *Anil Oberoi*. He denied the suggestion that no conversation as stated by him had taken place. He further denied the suggestion that he and his employer had snatched the audit draft and rough notes from the hand of the accused. A suggestion was given that the accused had reported the incident to the department as well as the police, and the witness denied having any knowledge about the same.

9. The *panch* witness *R. K. Kaushik*, examined as PW-9, stated he was the head of the office, CSI, Technical Education and on 31.07.1992, he was deputed as a *panch* witness in ACB. The statement of the complainant was recorded in his presence. He also deposed about the pre-trap proceedings. He further deposed that the accused came at about 11.15 AM and talked with the complainant. The complainant asked if he had brought the audit report, on which the accused told him that the audit report would come in his



favour, and demanded the settled amount/money. The complainant took out the cash from the left upper pocket of his shirt and gave the same to the accused, who took the notes with his right hand and then counted the same with both hands. The witness came out of the office and gave the pre-arranged signal. The money was recovered from the hands of the accused, the numbers on the notes were tallied, and the notes were seized. Both the hands of the appellant were washed in separate solutions, which turned pink, and were thereafter transferred into two bottles each. The bottles were exhibited as Ex. P-41 to P-44, sealed and marked as Ex. RHW-I, II and LHW-I, II. Seal after use was handed over to the witness, which he returned after 3-4 days.

In cross-examination, he was asked if the complainant had gone alone or with his employer, to which he answered that the complainant was alone. He stated that the complainant had told him that the complainant had arranged Rs.20,000/- from his employer. The witness stated that he did not recall if the briefcase carried by the appellant and the documents lying in it were seized by the RO. He stated that it was possible that the accused was having rough audit notes. He denied the suggestion that the accused had asked him to return the rough notes from the complainant. Suggestions were given that no such talk as stated by him had taken place in the office of the complainant. In response to suggestions regarding how many other raid proceedings he had taken part in, the witness initially stated that he had done so on two occasions and then said that he had gone to the ACB as *panch* witness about 5 times.

10. *Tola Ram*, the Raid Officer was examined as PW-10. He deposed





about the complainant coming to ACB office on 31.07.1992, giving the complaint, and producing 40 GC notes of Rs.500/- each, as well as other pre-raid proceedings. He further deposed that on receiving the pre-determined signal from the *panch* witness at about 11.20 AM, he along with other raiding party members rushed to first floor and recovered the tainted GC notes from the right hand fist of the accused. The numbers of the recovered notes were compared with the numbers noted in the pre-raid report and the same were tallied. He deposed as to washing of the appellant's hands, the solutions turning pink, and the same being sealed in labelled bottles.

In cross examination, he admitted it to be correct that in the complaint, the complainant had alleged that it was *R. N. Arora* who had demanded bribe amount from the complainant. He further stated that he did not make any efforts to arrest *R. N. Arora*. He further stated that he did not enquire as to from where the complainant had arranged Rs.20,000/-. A suggestion was given that the accused was manhandled and rough audit notes were also snatched. The suggestion was denied. He also denied having knowledge that the appellant had reported the same to his department and to local police.

11. Inspector *B. M. Sharma*, examined as PW-11, stated that though he had accompanied the raiding team, he had remained seated in the vehicle. At about 1.45 PM, custody of the accused was handed over to him by the Raid Officer *Tola Ram*. He prepared the site plan (Ex. PW-1/A) at the instance of complainant and the *panch* witness; and also arrested the accused. He further stated that he deposited the case property consisting wash bottles



marked RHW-II and LHW-II along with GC notes in the *Malkhana*, and handed over the 2 wash bottles marked RHW-I and LHW-I to ACP Dr. A. K. Singh along with sample seal. The said bottles were duly sealed with the seal of BMS. The same were kept by the ACP in his office almirah, which was sealed with the seal of AR. The key to the almirah was kept by the ACP. On 03.08.1992, he again visited the office of the ACP and in his presence, the ACP de-sealed and unlocked the almirah, and handed over the two wash bottles, i.e. RHW1 and LHW1, along with the sample seal intact, to him, and the same were deposited in CFSL. He collected the CFSL report (Ex. PW-4/A).

In cross-examination, he stated that the complaint was against one *R. N. Arora* and the demand was also stated to have been made by him. He recorded the statement of *R. N. Arora* in case diary on 14.08.1992. He denied the suggestion that any tampering of the case property took place while it was in his custody.

12. Dr. A. K. Singh was examined as PW-2. He also stated that Inspector *B. M. Sharma* handed over to him two exhibit bottles marked LH1 and RH1 along with sample seal, which were kept in his office almirah, and the same was sealed with the seal of AR. He kept the key, and the seal was handed over to the Inspector. On 03.08.1992, he de-sealed and unlocked the almirah, and the case property was handed over to Inspector *B. M. Sharma* for depositing in CFSL. He stated that the case property during this time was not tampered with and remained intact.

13. The next relevant witness was *N. K. Prasad* (PW-4), who exhibited the CFSL report as Ex. PW-4/A.



14. The prosecution examined *B. N. Oza*, the Director General of Audit, Central Revenue, AGCR building, New Delhi, as PW-1. He deposed that he had gone through the allegations contained in the police file and the judicial file sent to him, and had granted sanction for prosecution after considering the allegations.

In cross-examination, he admitted it to be correct that a memo was issued to *R. N. Arora*, as there were allegations against him for demand of bribe. *R. N. Arora* had submitted a reply, which is exhibited as Ex. PW-1/DD. A representation was also received on behalf of the accused, a copy of which was exhibited as Ex. PW-1/DE. He was given the suggestion that he had wrongly mentioned in the sanction order that the demand of Rs.20,000/- was made by appellant on 30.07.1992 because he did not apply his mind and mechanically granted the sanction in terms of the draft sanction order, which was denied. He admitted to not calling the appellant or *R.N. Arora* before granting the sanction. He admitted that there was “draft” written on the order which was later removed, but denied that the sanction order was a mere copy of the draft sanction order.

15. The defence also put forth two witnesses. DW-1 was Ct. *Upender Rao*, who brought the notification dated 15.03.1999 vide which the Inspectors of the AC Branch were authorised to investigate the case under the provisions of the PC Act, 1988, and the same was exhibited as Ex. DW-1/1. He also brought one FIR No. 12/1999, which was exhibited as Ex. DW-1/B, wherein one *Vipin Kumar* is the complainant.

16. *R. N. Arora* was examined as DW-2. He deposed that he was working as the Audit Officer while the appellant was the Section Officer, Accounts,



in the office of DGACR. They were to conduct audit of M/s. Elphar Cable Corpn. for a period of 6 years, from 1986-87 to 1991-92. The team had 4 members. The team went to the premises of the firm on 29<sup>th</sup> and 30<sup>th</sup> July 1992. The audit could not be finished as some vital documents were stated to be in the custody of *Vipin Kwatra*, the proprietor of the firm, who was out of station at the time and was expected to come back by the evening of 30.07.1992, which did not happen. Since the witness was occupied on the next day, he asked the appellant to visit the premises to verify records and collect copies of some documents. The appellant visited the premises on 31.07.1992 on his directions for official work. The appellant had been allowed to retain the rough draft of the local audit report. He got to know that the appellant was trapped by the complainant in the present case. The appellant informed the department in writing that official documents like LAR had been snatched away and requested the department to lodge a report. DW-2 had replied to the department memo that he had instructed the appellant to visit the premises and denied having demanded any money.

In cross examination, he was given no suggestions as to him making the initial demand of money.

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

18. To establish an offence under Section 7 or 13 of the PC Act, the factum of prior demand for illegal gratification by the public servant has to be proved as a fact in issue. Mere proof of acceptance would not by itself be sufficient and proof of demand is a *sine qua non* for securing a conviction under Sections 7 and 13 (1)(d) (i) and (ii) of the PC Act. A gainful reference



can be made to the decision in B. Jayaraj v. State of Andhra Pradesh<sup>1</sup>, where the Supreme Court has categorically observed that:-

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

19. The Constitution Bench later affirmed the aforesaid decision in the case of Neeraj Dutta Vs. State (Govt. of NCT of Delhi)<sup>2</sup> and held that:-

*“88. What emerges from the aforesaid discussion is summarised as under:*

*88.1 (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*

*88.2 (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

*88.3 (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

*88.4 (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

*(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*

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

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<sup>1</sup> (2014) 13 SCC 55

<sup>2</sup> (2023) 4 SCC 731



13(1)(d)(i) and (ii) of the Act.

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

20. The Court may, when the foundational facts have been proved by relevant oral and documentary evidence, raise a presumption of fact while considering whether demand of illegal gratification has been proved by the prosecution or not. Needless to state that this presumption of fact is subject to rebuttal by the accused. This presumption is different from the one provided for in Section 20 of the Act. While the former presumption is discretionary in nature, the latter is a mandatory presumption. The Constitution Bench of the Supreme Court in *Neeraj Datta (supra)* holds:-

*"88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands."*

21. In order to attract Section 7 of the PC Act, the prosecution has a bounden duty to prove beyond reasonable doubt that there was a demand for gratification and not a simple demand of money. The presumption under Section 20 is invoked only when the demand and acceptance of bribe is proved. In the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1)(d) cannot be held to be established [Ref. A Subair vs. State of



Kerala<sup>3</sup>]. Further, the word “obtained” used in Section 13(1)(d) of the PC Act has been interpreted as securing or gaining (something) as the result of request or effort. In case of “obtainment”, the initiative vests in the person who receives, and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) [now Section 13(1)(d)] of the Act [Ref. C.K. Damodaran Nair vs. Govt. of India<sup>4</sup>].

22. Since the inception of the case, from the written complaint (Ex. PW-8/A) to the complainant’s deposition in Court, it has been the consistent stand of the prosecution that the initial demand was made by *R. N. Arora*. The first big question which arises in the mind of this Court is that if the initial demand was made by *R. N. Arora*, why were no criminal proceedings ever initiated against him. Curiously, *R. N. Arora*, instead of being an accused, appeared as defence witness DW-2. No question was put to him as to him making the initial demand.

23. Even the sanction order (Ex. PW-1/A) is conspicuously bereft of any mention of *R. N. Arora*. The draft and the final sanction order goes so far as to state that it was the appellant who had demanded money on 30.07.1992, which has never been the prosecution case. The DCP’s letter to the sanctioning authority dated 10.08.1994 (Ex. PW-1/DA) seeking sanction clearly mentions that on 30.07.1992, *R. N. Arora* had made the demand. The sanction order is not dated. PW-1, in his cross examination, has admitted that there was “*draft*” written on the order, which was later removed. The sanction order appears to have been made without any application of mind to the specific facts of the present case.

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<sup>3</sup> (2009) 6 SCC 587



24. The complainant has deposed that the initial demand was made by *R. N. Arora* on 30.07.1992. He has not stated that the said demand was made in the presence of the appellant. He has also not stated that there was any overt act on the part of the appellant which would show that he was also aware of the demand. He has deposed that the initial demand of Rs.27,000/- was made on the basis of Rs.3,000/- per year since the last 9 years, which was the time since when the firm was in existence. However, in cross examination, he admitted that the firm only came into being in 1986, i.e. only 6 years ago, and the audit was to be conducted from 1986 till 1992.

25. There is also a discrepancy as to the source of the money used in the trap proceedings. The complainant has deposed that he borrowed the amount from two friends, *Rakesh Kapoor* and *Anil Oberoi*; however, the *panch* witness has deposed that the complainant told him that he had arranged the sum from his employer, i.e., *Vipin Kwatra*.

26. Coming now to the *panch* witness/PW-9. He has deposed that the appellant was carrying a briefcase, which was checked by the RO after the raid and the same was found to contain some official documents. He admitted the possibility that the appellant had rough audit notes. He also admitted that he had gone to ACB on duty as *panch* witness 5 times, and that AC people used to write for departmental action against *panch* witnesses who did not depose as per the version recorded by AC Inspector. This raises a strong possibility of the *panch* being a stock witness.

27. As per the testimony of the *panch* witness/PW-9, the hand wash of the appellant was stored in 4 bottles, marked LHW-I, II and RHW-I, II. PW-11

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<sup>4</sup> (1997) 9 SCC 477





deposed that he deposited RHW-II and LHW-II in the *Malkhana*; however, LHW-I and RHW-I were deposited in the office almirah of ACP, Dr. A. K. Singh. It was these samples which were sent to CFSL. In his cross examination, Dr. A. K. Singh admitted that his office was not a notified *Malkhana*. Neither any entry was made nor were any independent witnesses present at the time of deposit and withdrawal of the case property, thus introducing a break in the chain of custody. The CFSL Report (Ex. PW-4/A) does not contain any methodology or explanation for the result.

28. Strongly hurting the prosecution case is the examination of *R. N. Arora*, who was stated to have made the initial demand, as defence witness DW-2. No effort was made to discredit his creditworthiness on this account. He deposed that they were authorised to conduct audit for a period of 6 years and that the appellant was directed by him to visit the premises on the date of raid for official work. He had, in his possession, the rough draft of local audit report. The appellant had informed the department in writing that these official documents were snatched by the assessee and he requested them to lodge a report. The *panch* witness has confirmed that some official documents were present in the briefcase of the appellant. However, the same were not exhibited in the trial.

29. The prosecution case, in the present instance, has suffered death by a thousand cuts. The blatantly apparent attempt at saving *R. N. Arora*, the mechanical sanction order, the logic of demand for 9 years of audit not making sense when the firm was in existence only for 6 years, the discrepancy in the source of the large amount arranged for the trap, the *panch* witness being a stock witness for the ACB, the break in chain of



custody for the hand wash solutions, the FSL report not recording its methodology, and the credibility of the defence taken by the appellant, duly supported by the testimony of *R. N. Arora*, though not being fatal on their own, have cumulatively acted to shroud the prosecution case in doubt. The benefit of the doubt must be extended to the appellant.

30. Consequently, the appellant is acquitted of all charges. The judgement of conviction and order on sentence are set aside.

31. The appellant's bail bonds are cancelled and sureties discharged.

32. A copy of this judgement be communicated to the concerned Jail Superintendent as well as to the Trial Court.

**MANOJ KUMAR OHRI**  
**(JUDGE)**

**JANUARY 08, 2026**

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