

Delhi District Court

Him. Fletcher Moulton L.J. In ... vs . Powells Tillery Steam on 15 December, 2020

CC No.260/2019

DLCT110010402019

IN THE COURT OF SHRI PULASTYA PRAMACHALA, SPECIAL
JUDGE CBI - 13, (PC ACT) ROUSE AVENUE
DISTRICT COURT, NEW DELHI.

CBI No. : 260/2019
Under Section : 7 & 13(2) r/w. 13(1)(d) of PC Act, 1988 (Prior to amendment in 2018)
Branch : Anti Corruption Branch/CBI/New Delhi
FIR No. : DAI/2015/A-0026/ACB/CBI/New Delhi
CNR No. : DLCT11-001040-2019
In the matter of: - CBI

VERSUS

SH. RAJ KUMAR
S/o. Late Sh. Lakhi Ram,
R/o. H.No.89, Bhopura, Distt. Ghaziabad, Uttar Pradesh.

.....ACCUSED

Name and particulars of complainant:Sh. Ved Pal Singh

S/o Sh. Lakhmi Chand,
R/o. Village and Post Office Bistrakh, Distt.
Gautam Budh Nagar, Noida, Uttar Pradesh.

Date of Institution : 18.12.2015
Date of reserving judgment : 03.12.2020
Date of pronouncement : 15.12.2020
Decision : Accused is convicted for offences punishable under Section 7 & 13(2) r/w. 13(1)(d) of PC Act 1988 (prior to amendment in 2018)

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(Pulastya Pramachala)
Special Judge (PC Act) CBI-13,
RADC, New Delhi

CC No.260/2019

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JUDGMENT

THE CASE SET UP BY THE PROSECUTION 1 Complainant Sh. Ved Pal Singh made a complaint to CBI on 24.08.2015, thereby alleging demand of bribe by the accused namely Sh. Raj Kumar.

Accused was working as Peon in the regional office of Kendriya Vidyalaya Sangathan (Delhi Region), Old JNU Campus, New Delhi. Son of the complainant namely Master Lucky Gautam was studying in class 2 nd at Central School, Sector P-III, Greater Noida. As per complaint, on 19.08.2015, complainant had visited office of Kendriya Vidyalaya Sangathan (Delhi Region), Old JNU Campus, New Delhi for transfer of his son Master Lucky Gautam to another Central School situated at Sector-24, Noida, which was nearest to his residence. On that day, complainant met Assistant Commissioner, who informed complainant that transfer of his son was not possible during the year 2015 and it could be considered next year. When complainant was sitting outside the office, accused came to him and enquired about the matter from him. Accused took mobile number of the complainant i.e. 9958978072 and told him that he would talk to the Assistant Commissioner and would inform him accordingly. On the same day i.e. 19.08.2015, complainant received a missed call on his mobile phone from mobile No. 8745895389 and he called back on the aforesaid mobile number. Accused/Raj Kumar picked up the call and he demanded bribe of Rs.12,000/- for getting signature of Assistant Commissioner on the transfer application of his son. However, complainant expressed his inability to pay Rs. 12,000/- to the accused. On this, accused informed complainant that his work would not be done. Thereafter, on 20.08.2015 again complainant made a call to accused/Raj Page 3 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 Kumar and requested him to reduce the bribe amount and accused after bargaining, agreed to accept bribe of Rs.9000/- for doing work of the complainant. Since, complainant did not wish to pay the bribe to the accused, therefore, he approached CBI to lodge his complaint on 24.08.2015.

2 On receipt of complaint from complainant, concerned SP assigned the complaint for verification to Insp. S.P. Singh. Insp. S.P. Singh arranged an independent witness namely Sh. Chetan Swarup, through duty officer. He also arranged a DVR and a new micro SD memory card, blankness of which was ensured. Thereafter, formal voice of independent witness was recorded in the memory card through aforesaid DVR. The hand written complaint dt. 24.08.2015 of the complainant was not only shown to the independent witness, but also details of the same were explained to him. Thereafter, Insp. S.P. Singh left for office of accused along with complainant and independent witness. After reaching the office, DVR was handed over to the complainant in recording mode. Complainant was asked to visit the accused along with independent witness namely Mr. Chetan Swarup. Complainant and Mr. Swarup went to the office of the accused. After 25 minutes, complainant and independent witness came out from the office of accused and returned to Insp. S.P. Singh. The complainant informed Insp. S.P. Singh that he had switched off the recorder after making a call to the SO/accused. He further informed that when he and independent witness entered the office of accused, accused was not present in his office. Thereafter, complainant called the accused and accused informed complainant that he had left the office and directed him to call him after some time. This conversation was recorded in the Page 4 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 memory card using the DVR. Thereafter, the verification team returned back to CBI office. The recording was heard in the CBI office. In the aforesaid recording, accused had directed complainant to contact him after 30 minutes. Insp. S.P. Singh asked complainant to contact the accused on his mobile at about 17.55 hrs. However, said call was not picked. Again a call was made to accused, but this time his mobile phone was found switched off. Thereafter, the DVR containing memory card was kept in a brown envelope and same

was sealed with seal of CBI. Independent witness, complainant and Insp. S.P. Singh signed on the said envelope and same was endorsed with "DVR used in CO 60/2015". The envelope was kept by Insp. S.P. Singh with him for safe custody and the seal after use was handed over to the independent witness with the direction to produce the same on next day i.e. 25.08.2015. A verification memo was prepared by Insp. S.P. Singh to record happenings of that day. Same was signed by all three.

3 On 25.08.2015, Insp. S.P. Singh, in the presence of Shri Vedpal Singh and Shri Chetan Swarup, opened the envelope bearing endorsement "DVR used in CO 60/2015" and took out the DVR from it. After waiting for the call of accused, Insp. S.P. Singh asked complainant to make a call to the accused through his mobile phone, while keeping the same on speaker mode, so as to record the said conversation. Accordingly, complainant made a telephonic call to accused on his mobile phone bearing no. 8745895389, with his mobile phone bearing number 9958978072, keeping his mobile phone on speaker mode. This telephonic conversation was recorded and after the conversation was over, the recording was heard by Insp. S.P. Singh. He came to find that Page 5 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 accused had demanded and agreed to accept Rs. 9,000/- as bargained by the complainant. Accused had also directed the complainant to call him again after 2 hrs or next day. Thereafter, complainant was again asked to make a call to the accused and accordingly, complainant at about 15.35 hours, again made a telephonic call to accused, while keeping his mobile on speaker mode. This conversation was also recorded in the memory card with the use of DVR. In the said conversation, accused/Sh. Raj Kumar directed complainant to call him between 10:00-11:00 hrs on 26.08.2015. After recording the aforesaid call, introductory voice of independent witness was again recorded through DVR. Thereafter, the memory card, containing introductory voice of the independent witness and the aforesaid recorded conversations, was taken out from the DVR. The memory card was kept in an envelope and sealed with the seal of CBI. The envelope was signed by independent witness, complainant and Insp. S.P. Singh. The envelope was endorsed as Q-1. Similarly, DVR after use was also kept in a brown envelope and same was sealed with the seal of CBI. Again independent witness, complainant and Insp. S.P. Singh signed on the envelope and same was also endorsed with "DVR used in CO 60/2015". Additional verification memo was prepared. The facsimile of the CBI seal was also embossed on the memo in ink. The facsimile of the CBI seal in ink and lac was also taken on different white sheets, which were also signed by independent witness and Insp. S.P. Singh. The seal after use was handed over to the independent witness with the direction to produce the same on next day i.e. 26.08.2015. Thereafter, the complainant and witness/Mr. Swarup were directed to visit CBI office on 26.08.2015 for Page 6 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 further proceedings.

4 Thereafter, Insp. S.P. Singh submitted the verification memos to his SP with recommendation for registration of regular case. On the basis of verification memo, present FIR was registered by SP Sh. Anish Prasad at 10.15 p.m. on 26.08.2015. Thereafter, the matter was assigned to Insp. Manoj Kumar Jaiswal (TLO) for laying a trap. TLO formed trap team comprising of other CBI officials including Insp. Nikesh Kumar Upadhyay, Insp. Y.S. Yadav, Insp. Parveen Kumar, SI Manoj Tripathi and complainant. This time, apart from Mr. Chetan Swarup, another independent witness namely Sh. Avinesh Kaushik was also included in the team. TLO explained the complaint and purpose of forming the team to everyone. On demand, complainant produced sum of Rs. 9,000/- comprising of

eighteen notes of Rs. 500 each. Serial numbers of these currency notes were noted down. Then, those currency notes were treated with phenolphthalein powder and demonstration of significance of use of this powder was given. A solution of sodium carbonate and water was prepared and Mr. Chetan Swarup was asked to touch the treated currency notes of Rs. 9,000/- with his right hand. Thereafter, Mr. Chetan Swarup was asked to dip his right hand fingers in the colourless solution of sodium carbonate and water. On doing so, the colourless solution turned pink in colour. Thus, it was explained that phenolphthalein powder after coming into contact with solution of sodium carbonate and water turns the colour of the solution to pink. The said solution was thrown away and the remaining powder was returned to the Malkhana. TLO gave further instructions to the team members regarding the raid. He took DVR from Insp. S.P. Singh and arranged a new memory card in sealed Page 7 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 condition. Introductory voices of the independent witnesses were recorded in the said memory card through DVR, after ensuring its blankness. Once again, at the instance of TLO, at about 11.05 hrs, complainant/Ved Pal Singh was directed to make call to the accused on his mobile phone, so as to fix meeting time. The aforesaid conversation held between complainant and accused was also recorded in the memory card through DVR. During this conversation accused asked complainant to visit his office for delivering the bribe amount on that day itself after about one hour. TLO gave further instructions to the complainant to give signal by scratching his hairs with his left hand, after handing over the bribe amount to accused. Mr. Avinesh Kaushik was asked to act as shadow witness and Mr. Chetan Swarup was directed to remain with the trap team itself. TLO arranged the trap kit and prepared a pre-trap/handling over memo, which was signed by all members of the trap team.

5 At about 11.35 a.m., trap team left for office of accused and reached the office of accused at about 12.25 p.m. Complainant was asked to meet accused/Sh. Raj Kumar at 2ND floor of the office of Deputy Commissioner, Kendriya Vidyalaya Sangathan, Delhi Regional office. Other team members took their position in obtrusive manner in and around the office of accused. Once again DVR was given to complainant in switched on mode, which was put into the left side pant's pocket of complainant. After about one hour, accused came there and gave signal to complainant to come along with him. As soon as complainant followed accused, shadow witness/Sh. Avinesh Kaushik as directed, followed complainant in disguised manner. After walking with complainant for a while, accused Page 8 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 stopped at the end of the corridor of the 2 nd floor and complainant handed over bribe amount to accused on his demand. Complainant gave the pre- decided signal to the TLO by scratching his hair. Thereafter, TLO alerted all the trap team members. They rushed towards the accused. DVR was taken back from the complainant. TLO challenged accused for making demand and accepting the bribe amount of Rs. 9,000/- from the complainant. Both wrists of the accused were caught hold by TLO and Insp. Nikesh Kumar Upadhyay. Complainant informed TLO that on demand of accused, he paid Rs. 9,000/- to him along with transfer application of his son. He further informed that accused accepted the bribe amount of Rs. 9,000/- from his right hand and kept the said bribe amount in his right side pant pocket and the transfer application was kept by accused in his left side pant pocket. Washes of both hand fingers of the accused were taken separately in the solution of sodium carbonate and water. The right hand finger wash solution of the accused turned pink, whereas the left hand finger wash solution of the accused remained colourless. The washes

were transferred into separate bottles and were leveled accordingly and same were signed by the TLO, both independent witnesses and complainant. Bottles were sealed. On direction of TLO, Mr. Chetan Swarup recovered the treated bribe amount of Rs. 9,000/- from the right side pant pocket of the accused and thereafter, numbers of those currency notes were tallied by both the witnesses with the numbers mentioned in the handing over memo. The currency notes were found to be the same as were recorded in the handing over memo. The recovered bribe amount was also sealed in a brown envelope with endorsement 'Trap Money' and same was signed by the TLO, both independent Page 9 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 witnesses and complainant. A rough site plan was prepared at the spot. Thereafter, trap team alongwith accused came back to CBI office. 6 In the CBI office, accused was asked to change his trouser and wash of his right side pant pocket was taken in a fresh solution of sodium carbonate and water. This time also solution turned pink and the solution was transferred in another bottle and was leveled and sealed accordingly. Same was signed by the TLO, both independent witnesses and complainant. After getting the pant of accused dried in the room temperature, inner lining of the right side pocket of aforesaid pant was also signed by TLO as well as both independent witnesses. 7 Thereafter, the accused was formally arrested vide separate arrest cum personal search memo. In his personal search among other articles, the application form given by complainant was also recovered. Recorded conversation held between complainant and accused was played through DVR in the presence of independent witnesses. Thereafter, the memory card, containing recorded conversation held at the spot was taken out from the DVR. The memory card was kept in its plastic cover and same was marked as Q-2. The plastic cover was signed by TLO as well as both independent witnesses. The said memory card in the plastic cover was kept in a brown envelope with endorsement of Q-2 and sealed with the seal of CBI. The envelope was also signed by both independent witnesses and TLO.

8 Thereafter, accused was asked to give his voice sample. Accused voluntarily agreed to give his sample voice. A fresh memory card was arranged and inserted in the DVR. Firstly, introductory voice of independent witness was recorded in the said memory card and Page 10 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 thereafter, specimen voice of accused was recorded in the same. At the end of specimen voice of accused, again introductory voice of independent witness was recorded in the said memory card. Thereafter, the said memory card was taken out from the DVR and same was kept in a plastic cover and plastic cover was marked as S-1. The plastic cover was also signed by TLO as well as both independent witnesses. The said memory card in the plastic cover was kept in a brown envelope and sealed with the seal of CBI. The envelope was signed by both independent witnesses and TLO. DVR was also kept in a brown envelope after removing the dry cells and sealed with the seal of CBI. The brown envelope containing DVR also was signed by both independent witnesses and TLO. All the case properties were seized in the case and the CBI seal was handed over to Sh. Avinesh Kaushik for safe custody. TLO prepared recovery memo, which was signed by all members of trap team.

9 Subsequently, further investigation was assigned to IO Insp. H.V. Attri. All the washes in the case were sent for chemical examination to CFSL, New Delhi and subsequently, chemical expert reported presence of phenolphthalein in all the washes. IO got prepared CDs of recorded conversations from CFSL. IO also prepared transcription memo in the presence of the complainant and independent

witnesses. IO also seized certain documents and recorded statements of witnesses. The memory cards and DVR were also sent to CFSL for comparison of specimen voice with questioned voices, report of which was filed after filing of the chargesheet. Sanction for prosecution of accused was obtained from the competent authority i.e. Deputy Commissioner, Kendriya Vidyalaya Page 11 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADAC, New Delhi CC NO.260/2019 Sangathan, Regional Office, JNU Campus, New Delhi. Thereafter, chargesheet was filed against the accused in the court on 18.12.2015. 10 Court took cognizance of offences and summoned the accused vide order dated 02.01.2016. Vide order dated 16.02.2016, charges were framed against accused for offence punishable u/s 7 & Section 13 (2) read with Section 13 (1) (d) of The Prevention of Corruption Act, 1988 (prior to amendment in 2018) (hereinafter referred to as "the Act"). CHARGE 11 In the charge, it has been alleged against the accused that in the month of August 2015, accused while working as Peon to Assistant Commissioner, in the office of Kendriya Vidyalaya Sangathan (Delhi Region), Old JNU Campus, New Delhi, indulged in criminal misconduct being a public servant and demanded a bribe of Rs.12,000/- from complainant Sh. Ved Pal Singh, which was later on settled by him to Rs.9,000/- for the purpose of transfer of school of the child of the complainant. It was further alleged that accused demanded bribe of Rs.9,000/- for the aforesaid work and thereafter, on the same day, he was caught red handed while accepting Rs.9,000/- from complainant at his office.

12 DESCRIPTION OF PROSECUTION EVIDENCE :- Prosecution examined 13 witnesses in support of its case, as per following descriptions :-

S.No. Name of Role & brief testimony of Proved Witness witness documents/ article PW-1 Ms. She was working as Deputy Ex.PW-1/A Santosh Commissioner, Kendriya Vidyalaya (sanction order Mirdha Sangathan, Regional Office, JNU dt. 30.11.2015 Campus, New Delhi in February accorded for Page 12 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADAC, New Delhi CC NO.260/2019 2015. She identified her signature prosecution of at point A on the sanction order, accused Raj which was accorded by her for Kumar);

prosecution of accused Raj
Kumar.
She proved Ex.PW-1/A i.e.
sanction order dt. 30.11.2015
accorded for prosecution of
accused Raj Kumar.
further proved Ex. PW-1/2

Ex.PW-1/2
(letter sent to
SP, CBI,
thereby
conveying
sanction of She
prosecution of

i.e. letter sent to SP, CBI, thereby accused); conveying sanction of prosecution of accused PW-2 Sh. V.B. He was Senior Scientific Officer-, Ex.PW2/A Ramteke Grade-I (Chemistry) in CFSL, CBI, (office copy of New Delhi. forwarding letter He conducted chemical no. RC-DAI-

examination of solutions contained 2015-A- in three sealed bottles i.e. Exhibit 0026/DLI/11564 RHW, Exhibit LHW & Exhibit PANT dated 14.09.15); POCKET WASH and gave his Ex.PW2/B expert opinion regarding presence (report dated of phenolphthalein in the same. 18.09.2015; PW2 identified office copy of EX.PW2/C forwarding letter NO.RC-DAI-2015- (Envelope

A-0026/DLI/11564 dated 14.09.15, containing three of SP, CBI, vide which the exhibits cloth wrappers were sent to CFSL for with seal examination. impression of CBI ACB ND PW2 also identified his signature 68/2014); as well as initials appearing at Ex.PW2/ARTICLE point A on his report dated 1 to 3 (cloth 18.09.2015; envelope containing wrappers); three cloth wrappers with seal Ex.PW2/ARTICLE impression of CBI ACB ND 4 to 6 (three Page 13 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 68/2014 and three bottles sealed bottles sealed with the seal of VBR CHEM DIV with the seal of CFSL CBI NEW DELHI. VBR CHEM DIV PW2 further proved Ex.PW2/A i.e. CFSL CBI NEW office copy of forwarding letter no. DELHI.); RC-DAI-2015-A-0026/DLI/11564 dated 14.09.15.

He further proved Ex.PW2/B i.e. report dated 18.09.2015; Ex.PW2/C i.e. envelope containing three cloth wrappers with seal impression of CBI ACB ND 68/2014; Ex. PW2/ARTICLE1 to 3 i.e. cloth wrappers and bottles of washes as Ex. PW2/ARTICLE 4-6.

PW-3 Dr. U.C. He was working as Assistant Ex. PW3/A Gupta Commissioner, JNU Campus, (production cum Kendriya Vidyalaya Sangathan, seizure memo Regional Office, JNU Campus, dated 27.10.15);

New Delhi. He had handed over documents to IO Sh. H.V. vide production cum seizure memo dated 27.10.15 and he identified his signature on the at point A on Ex. PW3/A i.e. cum seizure memo dated 27.10.15. He further proved Ex. PW3/B i.e. copy of memorandum of appointment dt. 10.05.91 of accused; PW3/C i.e. copy of office order dated 28.06.95 and Ex. PW3/D i.e. office order 17.02.15; He further proved Ex. PW3/E i.e. copy of transfer order dated 26.04.12 bearing his signature at Ex. PW3/F i.e. copy of register and transfer certificate form submitted by

Ex. PW3/B certain (Copy of Attri, CBI memorandum of appointment dt. 10.05.91 of memo accused); production

Ex. PW3/C (copy of office order dated 28.06.95); Ex. PW3/D (Office order dated 17.02.15); Ex. PW3/E (Copy of transfer order point A; dated 26.04.12); school

Ex. PW3/F

(Copy of school

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accused bearing his signature at A, Ex. PW3/G i.e. Copy of Bio-data of accused) bearing his

register and point transfer certificate form

signature at point A.

submitted by

He further proved Ex. PW3/H i.e. accused); attendance register for the month Ex. PW3/G of August 2015 of accused) and (Copy of Bio- Ex. PW3/J i.e. entry/initial of data of accused appearing on page no. 86 accused); of attendance register for the date Ex. PW3/H 26.08.2015). (attendance register for the month of August 2015 of accused);

Ex. PW3/J (entry/ initial of accused on page no. 86 of attendance register for 26.08.15) PW-4 Sh. He was working as Nodal Officer Ex.PW4/A Pawan in Idea Cellular Ltd., Mathura (production- Singh Road, New Delhi, since 2005. cum-seizure He identified his signatures memo dt.

appearing on different documents 29.09.2015); at points A i.e. on production-cum- Ex.PW4/B (CAF seizure memo dated 29.09.2015, in the name of vide which original CAF along with Nitin); its annexures and CDR of mobile Ex.PW4/C(CDR no. 08745895389 in the name of of mobile no. Sh. Nitin S/o Suresh, for the period 08745895389); w.e.f. 15.08.15 to 22.09.15 and Ex.PW4/D (CAF original CAF along with its in the name of annexures and CDR of mobile no. Sh. Ved Pal) 09958978072 in the name of Sh. Ex.PW4/E Page 15 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 Ved Pal S/o Lakhmi Chand, for the (CDR of mobile period w.e.f. 15.08.15 to 22.09.15. no.

He had also given certificate u/s. 09958978072) 65-B of Indian Evidence Act in Ex.PW4/F respect of CDR of mobile numbers (certificates 08745895388 and 09958978072. under Section 65-B of Evidence Act of mobile numbers) PW-5 Sh. In the year 2015, he was posted Ex.PW5/A Avinesh as LDC in DDA at Vikas Sadan, (handing over Kaushik I.N.A., New Delhi. memo);

He was independent/shadow Ex.PW5/B witness of the prosecution. He was (brown witness to the proceedings i.e. envelope pre-trap, trap and post trap containing proceedings, conducted in the tainted currency present case. notes recovered from the He proved documents Ex. PW5/A possession of i.e. handing over memo bearing the accused); his signature at point A; Ex. Ex. PW5/C PW5/B i.e. brown envelope (rough site containing tainted currency notes plan); recovered from the possession of Ex.PW5/D the accused bearing his signature (envelope at point A. containing pant He also proved Ex. PW5/C i.e. of accused from rough site plan bearing his which tainted signature at point A; Ex. PW5/D bribe amount i.e. envelope containing pant of was recovered); accused from which tainted bribe Ex. PW5/E amount was recovered bearing his (arrest cum signature at point A. personal search memo of He also proved Ex. PW5/E i.e. accused);

arrest cum personal search memo of accused

Ex.PW5/F

bearing his signature

at point A; Ex. PW5/F i.e. Recovery memo bearing his signature at point A; Ex. PW5/G i.e. transcription cum voice identification memo bearing his at point A. proved Ex. PW5/H i.e. transcription prepared in his and also identified his	(Recovery memo; Ex.PW5/G (transcription cum voice signature identification He also memo); Ex.PW5/H presence (transcription
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signature appearing at points A on prepared in his all these documents. presence) Ex.PW5/Article
He also proved Ex. PW5/Article -1, -1 (bottle 2 & 4 i.e. bottles containing hand containing right
washes and pant pocket wash of hand wash of accused, bearing his signature at accused);

point B. He also proved Ex. PW5/Article-3	Ex.PW5/Article -2 (bottle
--	------------------------------

i.e. tainted currency notes from 1 containing left to 18 recovered from the hand wash of possession
of the accused. accused);

Ex.PW5/Article He also proved Ex. PW5/Article-5

-4 (Pant pocket i.e. the pant of accused from wash) which tainted currency notes were
Ex.PW5/Article recovered and signature of PW

-3 (tainted Sh. Chetan Swarup , as he had currency notes signed in his presence.

from 1 to 18 He also identified his signature at recovered from point A and proved Ex. accused);

PW5/Article-6 containing micro SD card (Q2), between trap proceedings was recorded.	i.e. -5 (the pant of wherein conversation accused) accused and complainant during Ex.PW5/Article	envelope -6 (envelope
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He also identified his signature at containing micro point A and proved Ex. SD card PW5/Article-7
i.e. Micro SD card wherein (Q2) containing conversation held Page 17 of 73 (Pulastya Pramachala)
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conversation complainant. between He also identified his signature at accused and point A and
proved Ex. complainant PW5/Article-8 i.e. envelope during trap containing micro SD card (S1),
proceedings wherein specimen voice of was recorded);

accused was recorded. also proved Ex. PW5/Article-9 i.e. Micro SD card containing specimen voice of accused, which	Ex.PW5/Article He -7 (Micro SD card containing conversation
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was taken out from the plastic
packet bearing his signature at
A.

held between
accused and point
complainant);

Ex.PW5/Article

He also identified his signature at
point A and proved

-8 (envelope
Ex.

PW5/Article-10 i.e. brown containing micro
envelope containing DVR through SD card

which aforesaid conversations and wherein specimen voice were recorded; specimen voice of
accused was He also proved Ex. PW5/ARTICLE-11 recorded);

(DVR used in this case for voice
recording purposes)

Ex.PW5/Article

-9 (Micro SD card
containing specimen
voice of accused);

Ex.PW5/Article

-10 (brown envelope
containing DVR
through which
aforesaid
conversations and
specimen voice were
recorded);

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PW-6

Insp. S.P. He was posted as Inspector in CBI Ex.PW6/A Singh
(verification

Ex.PW5/Article
11 (DVR used
in this case for voice
recording purposes);
ACB, New Delhi.

On 24.08.2015, he was marked a memo, which complaint of complainant Sh. Ved was prepared Pal
Singh, having CO No. 60/2015 by him in this by the then SP Sh. Anish Prasad, case);

for verification. Accordingly, PW6 Ex. PW6/B conducted verification proceedings (complaint and
deposed in this respect. dated PW6 identified his signature 24.08.2015, appearing at point A on
each page which was of Ex. PW6/A i.e. verification marked to him memo, which was prepared by by

the then SP);

him in this case.
PW6 identified endorsement and

Ex.PW6/C
(further

signature of the then SP Sh. Anishverification Prasad at point A on Ex. PW6/B memo dated i.e. complaint dated 24.08.2015, 25.08.2015); which was marked to him by the Ex.PW6/Article then SP. -1 (small brown PW6 also identified his signatures envelope appearing at point A on both the containing four pages of Ex. PW6/C i.e. further intact CBI seal verification memo dated impressions);

25.08.2015.
identified his signature
appearing at points A on Ex.
PW6/Article-1 i.e. small brown
containing four intact
CBI seal impressions;

Ex.PW6/Article PW6
-2 (original
cover of SD
card used envelope
during
verification
Ex.
proceedings)

PW6/Article-2 i.e. original cover of

SD card which was used during Ex.PW6/Article Page 19 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 verification proceedings and -3 (micro SD proved the same. card used during verification proceedings).

PW6 also identified his signatures appearing at point A on Ex. PW6/Article-3 i.e. SD card which was used by him during verification proceedings and proved the same.

PW-7 Sh. In the year 2015, he was posted Ex. PW7/A i.e. Chetan as Beldar in the office of transcription of Swarup Superintendent Engineer, Anand Ex. Q-1 bearing Parvat, Karol Bagh, New Delhi. his signatures at He was also independent witness point A on all of the prosecution. He was witness pages.

to the proceedings i.e. verification, Ex.PW7/PX pre-trap, trap and post trap (His statement proceedings, conducted in the recorded u/s present case. 161 Cr.P.C.) He identified Ex.PW6/B i.e. complaint dated 24.08.2015 which was given by complainant and shown to him on the same day.

He identified his signature appearing at point C on EX.PW5/ARTICLE-1; EX.PW5/ARTICLE-2 & EX.PW5/Article-4. He identified Ex.PW5/Article-3 i.e. GC Notes; EX.PW5/D; EX.PW5/Article-5;

EX.PW5/Article-7 & EX.PW5/ARTICLE-11.

He further identified his signatures appearing at points B on Ex. PW6/ARTICLE-1; Ex. PW6/ARTICLE-2; Ex. PW6/Article-3, Ex. PW6/A on all pages; Ex. PW6/C on all pages; Ex. PW5/A on all pages; Ex. PW5/B; Ex. PW5/C; Ex. PW5/D; Ex. PW5/E;

Ex.PW5/F; Ex.PW5/G; Ex. PW5/Article-6; Ex. PW5/Article-7; Ex. PW5/ARTICLE-10;

He further identified voices of accused Raj Kumar and independent witness Sh. Avinesh Kaushik Page 20 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC NO.260/2019 recorded in his presence.

He also proved his signatures appearing at point A on all the pages of Ex. PW7/A i.e. transcription of Ex. Q-1 as well as his statement recorded u/s 161 Cr.P.C. i.e. Ex. PW7/PX.

PW-8 Sh. Nitin This witness turned hostile and did not prove Kumar anything nor anything could be elicited from him except the fact that sim card of mobile number 8745895389 was taken in his name and according to him this sim was misplaced. (Hostile witness) He denied knowing Gaurav i.e son of accused or handing over this sim to him.

PW-9	Sh. Gaurav Kasana	He is the son of accused. He also did not support the case of prosecution and turned hostile. (Hostile witness)
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PW-10 Sh. Ved He was complainant in the present case. He Pal Singh narrated all the incidents of this case.

He identified his signatures at point B on his complaint dated 24.08.2015 i.e. Ex. PW6/B. He identified his signatures appearing at point C on all the pages of Ex.PW6/A i.e. verification memo, Ex. PW6/C i.e. further verification memo and Ex. PW5/F i.e. recovery memo.

He identified his signature appearing at point C on Ex.PW5/A i.e. handing over memo, Ex. PW5/G i.e. transcription cum voice identification memo dated 29.09.2015.

He further identified his signatures appearing at point B on pages 36 to 40 of Ex.PW7/A i.e. transcription of conversation Q1, on pages 41 to 44 of Ex.PW5/H i.e. transcription of conversation Q2. He further identified his signature appearing at point C on Ex.PW6/ARTICLE-1 envelop containing three seal impressions of CBI-ACB-ND. He further identified his signatures at point C on Ex. PW6/ARTICLE-2 i.e. the packing of the SD card. In this Page 21 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC No.260/2019 SD card (Q1), PW10 identified the voice of Sh. Chetan Swaroop in the file 150824_001 & 150825_005, his voice in the file 150824_002, and his voice and voice of accused in the files 150825_002 & 150825_004.

He further identified his signature appearing at point C on Ex. PW5/Article-6 i.e. envelop containing seven seal impressions of CBI-ACB-ND. He further identified his signatures at point C on Ex. PW5/Article-7 i.e. the cover of SD card. In this SD card (Q2), PW10 identified the voice of Sh. Chetan Swaroop in the file 150825_001, and his voice and voice of accused in the files 150825_002 & 150826_001.

PW-11 Insp.	He was trap laying officer (TLO) of Ex. PW11/A Manoj	CBI in
	the present case. He (FIR)	

Kumar deposed about pre-trap, trap and Jaiswal post
trap proceedings.

He identified signatures of the then SP Sh. Anish Prasad on the FIR at point A and proved the same as Ex. PW11/A. He further identified signatures of Mr. Prasad at point A on Ex. PW6/B.

He further identified signatures of complainant at points C, signatures of Sh. Chetan Swaroop at points B and signature of Insp. S.P. Singh at points A on Ex. PW6/A and on Ex. PW6/C i.e. both verification memos dated 24.08.2015 and 25.08.2015 respectively.

He further identified his signatures appearing at point C, signatures of Insp. Y.S. Yadav at point D, signatures of Insp. Parveen Kumar at point E, signatures of Insp. Nikesh Kumar Upadhyay at point F, signatures of SI Manoj Tripathi at point G, signatures of Sh. Chetan Swarup at point B and signatures of Sh. Avnish Kaushik at point A on all pages of Ex. PW5/A i.e. pre-trap memo dated 26.08.2015.

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PW11 further identified his signatures appearing at point C on the brown envelope i.e. Ex. PW5/Article- 10 as well as the Sony DVR, which was used for recording the conversations in this case. He further identified his signatures at points C on Ex. PW5/Article-3; Ex. PW5/B, Ex. PW5/E i.e. arrest cum personal search memo on all three pages; Ex. PW5/D i.e. the yellow envelope containing trouser worn by accused; Ex. PW5/Article-5 i.e. right inner side pant pocket; Ex. PW5/ARTICLE-10; Ex. PW-5/C i.e. rough site plan.

PW11 further identified his signature at point D on Ex. PW5/Article-4 i.e. the bottle containing the right side pant pocket wash of accused, Ex. PW5/Article- 6, Ex. PW5/F i.e. recovery memo.

PW11 further identified his signature appearing at point B on Ex. PW7/Article-7.

PW11 further identified his signature appearing at point H on each page of facsimile of the brass seal impression i.e. handing over memo and taking over memo. He further identified facsimile seal impression on Ex. PW5/F i.e. recovery memo.

PW-12 Insp. H.V. He was IO of the case. On
07.09.2015, he was entrusted with
further investigation of this case.
Accordingly, he took over the
of present case from
PW11.
He identified signatures of the
SP Sh. Anish Prasad at point

Ex.PW12/A Attri
(Letter dated
14.09.2015,
vide which three charge
memory cards
were sent to
CFSL for then
preparing

He further identified signatures of conversations the then SP Sh. Anish Prasad at and also points A on the letter dt. identified 14.09.2015 at two places, vide signatures of which three memory cards were the then SP Sh.

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sent to CFSL for preparing copies Anish Prasad at of recorded conversations and points A on two proved the same as Ex.PW12/A); places);

He further identified signatures of Ex.PW12/B the then SP Sh. Anish Prasad at (Letter dated points A on letter dated 15.10.2015, 15.10.2015 and proved the same bearing as Ex.PW12/B. signatures of He further identified his signature the then SP Sh. at point D on Ex. PW5/G i.e. Anish Prasad at transcription cum voice points A on two identification memo. places);

He further identified his signature Ex.PW12/C at point C on Ex. PW7/A as well as (Letter dated signature of independent witness 18.04.2016 vide namely Sh. Chetan Swarup at which PW12 point A. filed report of CFSL dated He further identified his signature 13.04.2016 in at point A on Ex. PW3/A i.e. the the court);

production cum seizure memo dated 17.10.2015. Ex.PW12/D (chargesheet) He had recorded the statements of certain witnesses including complainant Sh. Ved Pal Singh.

He also identified document Ex. PW2/V i.e. chemical examination report dated 18.09.2015 received from CFSL.

He identified signatures of Sh. Avinesh Kaushik at point A, signature of Sh. Chetan Swarup, signature of complainant at point C and his signature at point D on all the pages of Ex. PW5/H.

He further identified his signatures appearing at point A on Ex. PW4/A i.e. the production cum seizure memo vide which he sized certain documents from Nodal Officer of Idea Cellular.

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PW12 identified signature of Mr. U.C. Gupta on the seizure memo Ex. PW3/A vide which attendance register (Ex. PW3/H) of KV Sangathan, Regional Office, Delhi was taken into possession by him and Mr. U.C. Gupta had signed the document in his presence at points A.

PW12 proved letter dated 18.04.2016 vide which he filed report of CFSL dated 13.04.2016 in the court as Ex.PW12/C).

PW12 sought sanction for prosecution of accused Raj Kumar (Ex.PW1/A) and after receipt of the sanction, prepared the chargesheet, which was forwarded by the then SP Sh. G. Bairwa and filed the same in the court.

PW12 further identified signature of the then SP Sh. G. Bairwa, on the chargesheet.

PW-13 Dr. He was posted as Director cum Ex.PW13/A Rajender Chemical Examiner to (Report bearing Singh Government of India, CFSL, CBI, no. CFSL2015-

New Delhi. P-1482 dt.

He received forwarding letter no. 13.04.2016 RC-DAI-2015-A-0026/DLI/12708 having his dt. 12.10.2015 from SP, CBI, ACB, signatures at New Delhi, addressed to him i.e. point A on each Ex. PW12/B, vide which exhibits page);

were received in CFSL physics division on 12.10.2015 for examination.

He marked these parcels as Q1, Q2, S1 and DVR. He examined the voices of accused Raj Kumar with respect to his auditory and voice spectrographic technique. After aforesaid examination he opined that the questioned voice of accused Raj Kumar were tallying with specimen voice in respect of linguistic, phonetic and other spectrographic parameters and opined that questioned voice were probable voice of accused.

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PW13 identified his signatures at points A on each page of the report bearing no. CFSL2015-P-1482 dt. 13.04.2016 i.e. Ex. PW13/A and proved the same.

PW13 further identified his official stamp at point A on the last page of his report bearing no.

CFSL2015-P-1482 dt. 13.04.2016 i.e. Ex. PW13/A. He also identified signature of Mr. Mithlesh Jha, case Assistant at point A as well as rubber stamp of the department i.e. 'Case Assistant, CFSL/CBI/CGO Complex, Lodhi Road, New Delhi' on the letter dated 12.10.2015.

He further identified signature of Mr. Mithlesh Jha, case Assistant as well as rubber stamp of the department at point A on the Ex. PW12/A.

PW13 identified his signature at point A on yellow envelope marked Q1. He further identified his signature at point D on small brown envelope taken out from it and which contained memory card. He further identified his initial on the memory card (Q1) Ex. PW6/Article-3 and signature at point A on the white packing.

He further identified his signature at point A on yellow envelope marked Q2. He further identified his signature at point D on small brown envelope taken out from it and which contained memory card. He further identified his initial on the memory card (Q2) Ex. PW5/Article-7 and signature at point A on the red packing.

He further identified his signature at point A on yellow envelope marked S-1. He further identified his signature at point D on small brown envelope taken out from it and which contained memory card. He further identified his initial on the memory card (S1) Ex. PW5/Article-9 and signature at point A on the white packing.

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He further identified his signature at point A on yellow envelope marked Parcel-4. He further identified his signature at point D on small brown envelope taken out from it and which contained DVR of make Sony. He further identified his signature at point A on the DVR Ex. PW5/ARTICLE-11. 13 After prosecution evidence, accused was examined under Section 313 Cr.P.C, and thereafter, accused opted to examine Sh. Roop Chand as DW-1 in his defence.

PLEA OF ACCUSED UNDER SECTION 313 CR.P.C.

14 In his statement under Section 313 Cr.P.C., accused replied that he was innocent and he had been falsely implicated in the present case at the behest of complainant due to enmity. He further took plea that he had never received any bribe money during his entire service period i.e. since his joining uptill 1991. He further replied that his family is having business of selling and purchasing buffalo and in the year 2013, he had sold a buffalo to one Sh. Roop Chand, resident of Ghaziabad for a sum of Rs. 45,000/-. Said Roop Chand paid him Rs. 20,000/- only and promised to pay him remaining amount of Rs. 25,000/- after 3-4 months. However, he did not pay accused the balance amount. That said Roop Chand time and again kept on making promise of paying the remaining amount telephonically by using different numbers. He further took plea that said Roop Chand firstly promised to pay Rs. 15,000/-, thereafter, Rs. 12,000/- and lastly promised to pay Rs. 9,000/-. Since 2 years had already passed and amount of Rs. 25,000/- was still to be paid by him, therefore, accused agreed to receive Rs. 9,000/- from said Roop Chand with the hope that remaining amount

would be received from him at later stage. He further took plea that at the time of incident, accused was not posted Page 27 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 at DC Office. He further took plea that as per office order dated 17.02.2015, he was posted for duty with Sh. R.K. Midha, Indu Kaushik and Sh. S.M. Garg and not with Mr. U.C. Gupta, hence, there was no possibility for him to ask complainant to get his work done through Mr. U.C. Gupta.

DEFENCE EVIDENCE 15 Accused opted to examine Sh. Roop Chand as DW-1 in his defence. DW-1 deposed that he knew Raj Kumar for the last 5-6 years and identified him. He further deposed that some persons told him that Raj Kumar had buffaloes and since he was interested in purchase of a buffalo, he approached accused at his village. The deal for one buffalo struck between them for Rs. 45,000/- and he paid Rs. 25,000/- to the accused as part payment and he further promised him to pay remaining amount as and when he got money from sale of milk i.e. after 3-4 months. He further deposed that a dispute arose between him and accused with regard to remaining amount of the deal, as the buffalo purchased by him was hardly giving milk, thereby causing him loss. The dispute between them continued for long time and accused Raj Kumar also used to visit his house asking him to pay remaining balance amount. However, finally they settled the dispute for Rs. 9,000/- as full and final payment against remaining payment of Rs. 20,000/- and witness paid the settled amount of Rs. 9,000/- to the accused. 16 DW-1 further deposed that he knew complainant namely Mr. Ved Pal Singh S/o Lakshmi, as complainant is the resident of his neighbouring village namely Bistrakh. He further deposed that they both had close relation and visiting terms with each other's family. At times, even they Page 28 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 used to be called to settle some minor disputes cropping up in their village. He further deposed that accused Raj Kumar used to make demands telephonically as well as in person. He further deposed that on one occasion, when accused had made a telephonic call to him, which was on speaker mode, at that time complainant/Ved Pal had come to know about their dispute. Complainant even enquired from the witness about the matter, who had narrated him all about the matter. DW-1 further deposed that at that time Mr. Ved Pal retorted by saying 'dekhenge'. DW- 1 further deposed that after about 6 months Mr. Ved Pal met him while passing through and informed him by saying that 'bhai tumhara bhains wala to jail chala gaya'. He further deposed that he apprised Mr. Ved Pal that he had already paid the settled amount of Rs. 9000/- to the accused/Raj Kumar. He further deposed that later on accused/Raj Kumar told him that he had got him sent to jail on account of dispute of sale price between him and the witness.

17 ARGUMENTS OF CBI 17.1 Ld. Sr. PP for CBI referred to the testimony of PW1/SMT. Santosh Mirdha, Dy. Commissioner Regional Office, JNU Campus, Kendriya Vidyalaya and document Ex.PW1/A i.e. sanction order dated 27.11.2015, bearing her signature at point A, to submit that sanction for prosecution of accused in the present case, has been proved. 17.2 He further referred to the testimony of PW4/Sh. Pawan Singh and documents Ex. PW-4/D i.e. Customer Application Form (CAF) and Ex. PW-4/E i.e. CDR of mobile no. 9958978072, in the name of Sh. Ved Pal, for the period 15.08.2015 to 22.09.2015; Ex. PW4/F i.e. certificate u/s 65B of Indian Evidence Act; Ex. PW-4/B & Ex. PW4/C i.e. Page 29 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 Customer Application Form (CAF) and CDR of mobile no. 08745895389 in the name of Sh. Nitin, for the period 15.08.2015 to 22.09.2015; Ex. PW4/F i.e.

certificate u/s 65B of Indian Evidence Act, to submit that telephonic conversations are established through CDRs also.

17.3 Ld. PP for CBI further referred to ingredients of Section 7 & 13(1)(D) of the Act and to the testimony of PW6/Insp. S.P. Singh, PW7/Sh. Chetan Swarup & PW-10 Sh. Ved Pal Singh (complainant) and documents Ex. PW4/A i.e. verification memo dated 25.08.2015 and Ex. PW6/B i.e. complaint, to argue that verification of demand has been proved.

17.4 Ld. PP for CBI further referred to testimony of PW-5/Sh. Avinesh Kaushik (independent witness), PW-7/Sh. Chetan Swarup (independent witness), PW-11/ Sh. Manoj Kumar Jaiswal, PW-6/Insp. S.P. Singh, PW-11/MANOJ Kumar Jaiswal & PW-12/SH. H.V. Attri to submit that acceptance/obtaining of bribe money, recovery of bribe money, pre-trap proceedings, trap proceedings, handing over memo and recovery memo have been duly proved. Ld. PP for CBI further referred to the testimony of PW-2/SH. V.B. Ramteke to submit that handwashes as well as pant's right side pocket wash of the accused were containing phenolphthalein, which supports the deposition of members of trap team regarding recovery of bribe amount from accused. He further referred to evidence of PW13/DR. Rajender Singh to submit that recorded conversations were containing voice of accused as per transcripts.

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17.5 Ld. PP for CBI further argued that prosecution has proved this case beyond reasonable doubt and also established that accused Raj Kumar demanded a bribe of Rs.12,000/- from the complainant initially. However, after negotiations with the complainant, accused agreed to accept Rs. 9000/-. He further argued that accused Raj Kumar accepted the bribe amount of Rs.9,000/- and said bribe amount was recovered by the independent witness from the right side pant pocket of accused during trap proceedings. Ld. PP further argued that recovery of the application for transfer of son of the complainant from pant pocket of the accused, which he had taken from complainant at the time of acceptance of bribe money on 26.08.2015, also established the motive behind the demand of bribe from the complainant. Ld. PP for CBI further argued that all the ingredients i.e. demand of bribe, acceptance and motive behind such demand and recovery of illegal gratification have been established against the accused Sh. Raj Kumar. He prayed for conviction of accused Raj Kumar for commission of offences punishable under Sections 7 & 13(2) read with Section 13 (1) (d) of the Act, 1988. 18 CASE LAWS CITED BY CBI To substantiate his arguments and to counter the defence arguments, ld. PP for CBI relied upon following case laws :- 18.1 Ld. PP for CBI relied upon M. Narsinga Rao v. State of AP Supreme Court 2001 CRI. L. J.515, to emphasise following observations:

"15. The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said

to be proved when, Page 31 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. [1911 (1) K.B. 988] observed like this:-

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.

17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.

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18. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw

yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani vs. State of Maharashtra [SCC P. 339 para 5]. A presumption can be drawn only from facts

-and not from other presumptions by a process of probable and logical reasoning.

19. Illustration (a) to Section 114 of the Evidence Act says that the court may presume that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellants pocket contained phenolphthalein smeared currency notes for Rs.500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes."

18.2 Ld. PP for CBI further relied upon Madhukar Bhaskar Rao Joshi v. State of Maharashtra, 2000 AIR SCW 4018, to emphasise following observations:

"12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted as motive or reward for doing or forbearing to do any official act.

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So the word gratification need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like gratification or any valuable thing. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

18.3 Ld. PP for CBI further relied upon State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48, Supreme Court, to emphasise following observations:

"9. Section 7 of the PC Act, to the extent it is relevant for this case, provides that whoever, being a public servant, accepts or obtains or attempts to obtain, for himself any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, shall be liable to the prescribed punishment. Explanation (d) to Section 7 the PC Act provides that a person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within the words "a motive or reward for doing". Therefore, a demand for money for doing a favour such as making a student succeed in the examination, would constitute an attempt to obtain illegal gratification as a motive or reward for doing an official act or showing favour in the exercise of official functions, irrespective of whether the public servant attempting to obtain such gratification is or is not in a position to actually extend any such favour."

18.4 Ld. PP for CBI further relied upon Syed Ahmed Vs. State of Karnataka, (2012) 8 SCC 527, to emphasise following observations "25. We agree with the High Court that in view of Explanation Page 34 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019

(d) to Section 7 of the Act, the issue whether Syed Ahmed could or could not deliver results (as it were) becomes irrelevant in view of the acceptance of the testimony of Nagaraja (PW1) and Sidheshwara Swamy (PW2)" 18.5 Ld. PP for CBI further relied upon Ram Karan Pathak v. State, Crl. (A) 155/2008, decided by Delhi High Court on 01.05.2015, to emphasise following observations:

"51. There is also no merit in the appellant's submission that the panch witness (PW-6) was a stock witness of the prosecution, because he had acted as a panch witness in 7-8 earlier cases. It is well-known that the general public does not easily come forward to join the raid proceedings as independent witness. Government officers, who enjoy security of tenure are, therefore, put on duty from time to time, to act as panch witnesses. Pertinently, it is not the appellant's case that the credibility of the panch witness (PW-6) had been doubted earlier in any other proceedings in cases where he acted as a panch witness. The panch witness (PW-6) had no previous acquaintance, or animosity with the appellant, and being a Government servant enjoying security of tenure and service, would be under no compulsion to depose in favour of the prosecution. A perusal of the testimony of the panch witness (PW-6) shows that the same is completely natural. In fact, the so-called minor discrepancies pointed out by the appellant are also indicative of the fact that the panch witness (PW-6) acted completely independently, and was not a tutored, or a stock witness."

18.6 Ld. PP for CBI further relied upon State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48, Supreme Court, to emphasise following observations:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view Page 35 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

18.7 Ld. PP for CBI further relied upon Mahesh Pal v. State, Crl. (A) 645/2010, decided by Delhi High Court on 06.01.2014 to emphasise upon the fact that for section & of the Act, capacity or intention of accused to perform the promised work is irrelevant.

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18.8 Ld. PP for CBI further relied upon Girwar Singh v. CBI, Crl. (A) 263/2019, decided by Delhi High Court on 19.04.2016 to emphasise following observations:

"128 Learned senior counsel had placed reliance on G.V. Nanjundiah (supra) and Pyare Lal (supra) to submit that the evidence of a stock witness cannot be relied upon. However, the same is of no help to the appellants. In the present case, the appellants have failed to point out as to how the independent witnesses (i.e. PW-4 and PW-8), have any vested interest in the outcome of the case or any reason for which they would implicate the appellants. Merely, because Mann Singh (PW-4) was witness to other CBI cases does not make him a stock witness. In fact, perusal of the statement of Mann Singh (PW-4) reveals that he had resiled from his earlier statement at some occasions. Had he been a stock witness, he would have supported the case of prosecution in its entirety. In Zakaullah (supra), the Supreme Court has observed that: "9. It is in evidence that PW6 was examined as a witness in a case at Moradabad in which he himself was the complainant against a doctor who demanded bribe from him. He also admitted that he was a witness in two other cases though he was not yet examined in those cases. Would such antecedents render him a non-independent witness? Similarly, the mere fact that PW7 was the driver of the vehicle in which the officials went to the place, resulted in his losing the status as "independent witness."

10. The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicted person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other.

Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not Page 37 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that he was a dependent of the police or other officials for any purpose whatsoever. (Hazari Lal v. Delhi Administration, (1980) 2 SCC 390"

(Emphasis supplied)

129. Therefore, merely because the witness was involved in other cases or had prior acquaintance with the police officers, would not result in the loss of his status as an independent witness. The appellants have also failed to show the dependability of PW-4 or PW-8 on the CBI officials, involved in CrI. A. 263/2009 & CrI. A. 279/2009 Page 55 of 68 the present case. Both PW-4 and PW-8 were government employees. They enjoyed security of their status as government servants. There was no reason for them to implicate the appellants falsely. Moreover, the present case is not based solely

upon only the testimony of PW-4 and PW8. The testimony of the complainant (PW-3) and TLO (PW-14) stand corroborated with that of PW-4 and PW8. From the aforesaid discussion, it is clear that the bribe amount of Rs.20,000/- was recovered from appellant NO.1."

19 ARGUMENTS OF ACCUSED 19.1 NO DEMAND OF MONEY AND ITS ACCEPTANCE 19.1.1 In respect of demand, ld. counsel for accused mentioned in his written submissions that there is no evidence of demand of money. It is mentioned that complainant PW10 did not state about the demand of bribe money of Rs.9,000/- nor about handing over of said money to the accused Raj Kumar. Ld. counsel argued that in cross examination conducted by him, complainant said that accused was apprehended by CBI officials and he had not given Page 38 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 money to accused.

19.1.2 Ld. counsel for accused further mentioned that shadow witness i.e. PW7/Sh. Chetan Swarup deposed that he was at distance of 30 feet along with the trap party, therefore, he could not hear the conversation between the accused and the complainant Ved Pal. Initially PW7/Sh. Chetan Swarup stated that he came to know of handing over the money to the accused when specified gesture was made, but later he made an improvement in his statement as he stated in his examination in chief of having seen the money being handed over to the accused by the complainant at a distance of about 30 feet but admitted in the cross examination that he did not state the fact of having seen the money being handed over to the accused by the complainant in his statement under section 161.Cr.P.C.

19.1.3 Ld. counsel for accused further mentioned that PW-10/SH. Vedpal deposed that the shadow witness immediately behind him was at a distance of 7 Meters so the testimony of PW-5/Sh. Avinash Kaushik is devoid of any reliance. The place is frequented by many persons. It is further mentioned in arguments that the conversation between the complainant and the accused could not be proved by the prosecution as PW7/Sh. Chetan Swarup deposed that he did not hear the conversation and PW5 deposed that he did not remember whether any conversation took place between the complainant and the accused.

19.1.4 Ld. counsel further mentioned that in the absence of independent corroboration, the statement of complainant regarding Page 39 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 demand of illegal gratification by the accused cannot be relied upon.

19.2 CHEMICAL EXAMINATION OF PHENOLPHTHALEIN IS DOUBTFUL 19.2.1 It is mentioned in the written submission filed by the accused that the bottles of LHW, RHW and pant pocket wash were not pink in colour, when produced before the Court and the same was observed by the Hon'ble Court at the time of recording of evidence and the witness also deposed that the colour of the washes is whitish/grayish but actually the contents of the bottles is colour less if personally observed by the Court.

19.3 FORMATION OF TRAP TEAM IS DOUBTFUL 19.3.1 It is mentioned in the written submission filed by the accused that PW6 is stated to have prepared a verification report dated 24/08/2015 associating PW7/Sh. Chetan Swarup, but no record/explanation has been placed/afforded by CBI

regarding as to how the DVR & memory cards were obtained. It is further mentioned in the arguments that similarly no record was produced for obtaining DVR and memory card for verification report dated 25/08/2015. Likewise, while preparing the handing over memo and trap proceedings no record for procurement/obtaining DVR, memory card and the quantity of phenolphthalein powder was either prepared or produced before the court. 19.4 PROSECUTION STORY IS DOUBTFUL ITSELF 19.4.1 It is mentioned in the written submission filed by the accused that PW-7/Sh. Ved Pal deposed that he had obtained approval from the school of his son as well as from the school where transfer was Page 40 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 sought. It is further mentioned that PW-12/SH. H.V. Attri did not make any inquiry either from the transferor school or transferee school about aforesaid facts. On the other hand, PW 1 stated that the procedure of transfer of student was that the application for transfer was to be submitted to the Principal of the school and the Principal forwards the application to the regional Deputy Commissioner's office and PW-3/Sh. UC Gupta deposed that no such application was received in office of Deputy Commissioner, Kendriya Vidyalaya.

19.5 RECORDED CONVERSATIONS ARE TAMPERED AND NOT AN ADMISSIBLE PIECE OF EVIDENCE 19.5.1 In respect of recorded conversations, ld. counsel for accused argued that the recording in DVR is devoid of any worth of corroborative value.

19.6 NO DOCUMENTARY EVIDENCE CONCERNING PROCUREMENT OF MEMORY CARD, DVR, PHENOLPHTHALEIN POWDER AND ARRIVAL & DEPARTURE ENTRY OF WITNESSES 19.6.1 Ld. counsel further mentioned that important link evidence is missing that no record from Malkhana was produced regarding obtaining or depositing DVR, memory card, quantity of phenolphthalein Powder and the kit. No record relating to arrival of the witnesses on 24/8/15, 25/8/15 and 26/8/2015 at CBI office and the departure of the witness on 24/8/15, 25/8/15 and 26/8/2015 from CBI office was produced. He further argued that similarly the record relating to arrival and departure of CBI officials and trap team on 24/8/15 and 26/8/15 from CBI office was not produced Page 41 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 although such register of arrival and departure was maintained in the CBI office.

19.7 TAMPERING OF CASE PROPERTIES i.e. LHW, RHW & PANT WASH 19.7.1 It is further mentioned that the important link evidence is missing as no record of Malkhana regarding the deposit of the LHW, RHW and pant pocket wash was produced and also no record or evidence regarding handing over the washes and other case properties from Malkhana to the Laboratory was produced by CBI before the court. It is further mentioned that Malkhana incharge was not even cited as witness in the present case and hence, there is every possibility of tampering with these case properties for the want of their safe and intact custody.

20 CASE LAW CITED BY ACCUSED 20.1 Ld. counsel for accused Raj Kumar relied upon Jitendra Kumar Jain v. CBI & Anr., CrI. (A) 1146/2012, decided by Bombay High Court, to emphasise following observations:

"26 It is true that these factors viz:- 'the hand wash of the accused turning pink, though the tainted amount had been wrapped in a plain white paper to which

phenolphthalein powder had not been applied', and 'though the accused is said to have accepted the packet containing tainted money by his right hand, presence of phenolphthalein powder in his left hand solution, was also found' - by themselves would not be of great significance, and certainly would not be fatal for the prosecution. It is because there would be a number of possible explanation as to how it could have happened.

What, however, cannot be overlooked is that there would be a number of possible explanations the other way also - i.e. consistent with the defence that the accused had never received or accepted the tainted amount. Therefore, when the demand of bribe is not satisfactorily established, and when Page 42 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC NO.260/2019 Amrutbhai appears to have kept the witness away, and also not recorded the conversation wherein the demand took place, it would be hazardous to hold the acceptance of bribe by the accused as proved only on the basis of the evidence of the hand wash of the accused turning pink. The theory of acceptance of bribe cannot be believed merely on the basis of the hand wash turning pink.

27 In this regard, the learned counsel for the accused has placed reliance on a decision of the Supreme Court of India. From the observations made by the Supreme Court of India in the case of P. Parshuram Reddy Vs. State of Andhra Pradesh, 2012 SCC CR.552, it appears that when there would be no satisfactory evidence regarding the demand of bribe, and when independent witnesses had not heard the conversation between the complainant and the accused, the evidence of phenolphthalein powder would not be sufficient to convict an accused. In the instant case, in the light of the weaknesses in the prosecution case, not only with respect to the demand of bribe, but also with respect to its acceptance, it would not be possible to hold the accused guilty only on the basis of the evidence of the hand wash of the accused turning pink.....

31 There are a number of suspicious features in this case which create a reasonable doubt of the truth of the prosecution case. They may be summarized as below:-

(a) There is absolutely no corroboration to the evidence of the initial demand made by the accused on 2ND January 2007 except the oral testimony of the complainant Amrutbhai Patel (PW No. 2).

(b) Corroboration could have been obtained to some extent by producing the entry in the mobile telephone records of Amrutbhai showing that he had received a telephone call from Vijay Matera on 29TH December 2006. This could have been done even by producing the CDRs in respect of Amrutbhai's mobile telephone. Interestingly, the Investigating Officer claims to have collected such records, but the same were not produced before the Court during evidence with no plausible explanation therefor.

(c) The aspect of the demand for bribe (made on 2 nd January Page 43 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC NO.260/2019 2009) was to be verified and for verification thereof, the telephonic conversation that took place between the accused and Amrutbhai was recorded on 5th January 2007. The transcript of the recorded conversation, however, does not

provide any 'verification' and does not even make any reference to the meeting that allegedly took place between the accused and Amrutbhai on 2ND January 2007. This is significant. Thus, the trap was laid without the verification of the demand of bribe being done.

(d) Even on 8th January 2007, the verification did not take place as the conversation that took place in the first meeting between the accused and Amrutbhai on that day, as reflected from the relevant transcript, does not lend any support to the theory of demand. In fact, it appears that the accused did not even identify Amrutbhai. The conversation which Amrutbhai made, does not refer to any previous meeting having been taken place between him and the accused.

(e) The recorded conversation is not audible at several places, but it does appear that some discussion regarding amount finds place in the conversation recorded on 8th January 2007. However, the conversation is insufficient to show that the accused asked any amount to be paid to Vijay Matera. The claim of Amrutbhai that accused said ' mls ns nks ', is not found to be incorrect from the record of the conversation as reflected in the transcript thereof. According to Amrutbhai, the accused had made a categorical and clear demand of bribe from him on 2ND January 2007, but the subsequent conversations that took place between the accused and Amrutbhai i.e on 5th January 2007 and 8 th January 2007, do not spell out any such demand.

(f) Amrutbhai avoided being accompanied by a panch when the verification of the demand made by the accused was to be done, by saying that 'the accused was of a suspicious nature', and 'would not make the demand in the presence of a third person'. Similarly, Amrutbhai did not record the crucial conversation that allegedly took place when he entered the chamber of the accused after Vijay Matera had refused to accept the amount of bribe. Thus, when the crucial things are said to have happened, i.e the demand of bribe on 2ND Page 44 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 January 2007, and the actual demand and acceptance of bribe by the accused on 8 th January 2007, Amrutbhai is the only person who was present. At the cost of repetition, it may be mentioned that there is no plausible reason for Amrutbhai not having recorded the conversation that took place between him and the accused at that time, despite the fact that a tape recorder had been provided to him for recording the same.

(g) The theory of accused having selected Vijay Matera to act as a middle man, is difficult to understand in the light of the fact that the accused had issued a memo to him and also the fact that the accused did not even know his telephone number.

(h) The accused had been posted at Silvassa as the Resident Deputy Collector only a few days before the incident. On the contrary, Amrutbhai and Vijay Matera knew each other since a number of years. Vijay Matera has stated that he knew Amrutbhai since 10 years.

(i) The tainted amount was not recovered from the person of the accused. It was recovered from a shelf in the iron rack in the cabin of the accused situated at about 10 feet away from the chair of the accused.

(j) The hand wash of the accused turned pink, but how could it happen when the notes had been wrapped in a white paper on the surface of which there could not be any phenolphthalein powder, is not clear. This is more mysterious because the hand wash of even the left hand showed traces of phenolphthalein powder as per the report from the CSFL." 21 APPRECIATION OF ARGUMENTS ON THE PARAMETERS OF LAW FACTS & EVIDENCE AND FINDINGS 21.1 INGREDIENTS OF ALLEGED OFFENCES Before I look into the evidence and appreciate the arguments, it is appropriate to refer to the requirements to establish a case under Section 7 and under Section 13 (1)(D)(I)&(II) of the Act. Same may be summarised in following manner :-

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21.1.1 INGREDIENTS OF SECTION 7 OF THE ACT 21.1.1.1 The accused at the time of offence, was or expected to be a public servant;

21.1.1.2 Accused accepted, or obtained, or agreed to accept or attempted to obtain from some person a gratification; 21.1.1.3 That such gratification was not legal remuneration due to him;

21.1.1.4 Accused accepted the gratification in question as a motive or reward for :-

21.1.1.4.1 Doing or forbearing to do any official act; or 21.1.1.4.2 Showing or forbearing to show favour or disfavour to someone in the exercise of his official functions; or rendering or attempting to render any service, disservice to someone, with the Central Government or any State Government or Parliament or the Legislature of any State or with any public servant.

21.1.2 INGREDIENTS OF SECTION 13 (1) (d) (i) & (ii) OF THE ACT 21.1.2.1 Accused was a public servant at the time of commission of offence;

21.1.2.2 Accused obtained any valuable thing or pecuniary advantage;

21.1.2.3 The valuable thing or pecuniary advantage was meant for accused or for any other person;

21.1.2.4 The valuable thing or pecuniary advantage was obtained by corrupt or illegal means; or by abusing his position as a public servant.

21.1.3 As far as first requirement for both offences is concerned, there is no dispute to the fact that at the time of commission of alleged offence, accused was working as Peon in the regional office of Kendriya Vidyalaya Sangathan (Delhi Region), Old JNU Campus, New Delhi and thus, was a public servant.

21.2 DEMAND 21.2.1 Next factor is element of demand. As far as demand is concerned, there is no doubt that complainant i.e. PW10 was the prime witness of prosecution to prove such fact. It is worth to mention here that as per allegations, the initial demand was made Page 46 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 for Rs. 12,000/-, which was bargained for Rs. 9,000/-. When the demand for Rs. 12,000/- was made during first telephonic talk between COMPLAINANT/PW10 and accused, such conversation was not recorded. PW10 approached CBI only after having bargained the bribe amount at Rs. 9,000/-. The recording of conversations started only after approaching CBI office. 21.2.2 As per testimony of PW10, he wanted transfer of his son from Central School, Greater Noida to Central School, SECTOR-24, Noida. He was told by the officials of school at SECTOR-24, at Noida about requirement of permission from Regional Office of Kendriya Vidyalaya for this transfer. Thereafter, he went to Regional Office on 19.08.2015 and met Asst. Commissioner. PW10 was told by Asst. Commissioner that transfer was not possible in that particular academic year. He was asked to contact again next year. PW10 again went there next day and again made request to Asst. Commissioner for transfer. He also met several persons there, who were present for transfer of their children. Thereafter, he sat down in the reception of the office. At that place accused met him, who enquired from him about purpose of his visit. PW10 told him about the purpose. Accused asked for mobile number of PW10 and assured that he would speak to Asst. Commissioner in that regard. On that day itself, PW10 received a missed call even before reaching home. PW10 called back at that number and then he had conversation with accused Raj Kumar. Accused told PW10 that he had spoken to Asst. Commissioner and transfer of son of PW10 could be arranged if, PW10 made arrangement for payment of Rs.

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12,000/-. PW10 expressed his inability to pay Rs. 12,000/-. Then he was told that unless he paid the money, his son's school would not be transferred. Next day, PW10 again called at the same number and requested for reducing the amount of money to be given for transfer of his son. After discussion accused Raj Kumar agreed to take Rs. 9,000/- for transfer.

21.2.3 Aforesaid was allegedly the first instance of demand and bargain over the bribe money. Thereafter, PW10 had approached CBI with his complaint on 24.08.2015. PW6/Insp. S.P. Singh was assigned the job of verifying the allegations made by PW10. On 24.08.2015, PW6 alongwith PW7 and PW10 visited Regional Office, but accused was not found there. PW10, thereafter had telephonic conversation with the accused and as per case of prosecution, such conversations had taken place while keeping the mobile phone on speaker mode, so that same could be recorded in the DVR and same could be also heard by PW6 and PW7. In this respect, as per testimony of PW10, on 25.08.2015 he had conversation with accused when accused asked him to come with money on next day. Thereafter, PW10 again visited Regional Office on 26.08.2015 alongwith CBI team. This time, PW10 again had talk with accused. Accused after meeting PW10 in the corridor of the office, asked if he had brought the money and PW10 affirmed the same, though he requested the accused to accept

part payment. 21.2.4 In the cross-examination conducted by ld. defence counsel, PW10 reaffirmed that during his meeting accused on 26.08.2015, accused had asked if PW10 had brought the money and had made Page 48 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC No.260/2019 demand for the money. There was no grilling of PW10 in respect of earlier telephonic conversation wherein demand for money was made initially and was bargained subsequently. He was simplicitor given suggestion that no such conversation had taken place, which were denied by PW10. PW10 also denied the suggestion that he deposed about receiving phone call from accused or about negotiation of bribe amount at the instance of CBI. Thereafter, on certain points PW10 was cross-examined by ld. Sr. PP for CBI also and during such deposition as well, PW10 again reaffirmed that on 26.08.2015, accused asked for money from him. Thus, as far as demand for Rs. 9000/- is concerned, this fact has been again and again reaffirmed by PW10 in his testimony. 21.2.5 Besides PW10, PW6 and PW7 are the witnesses, before whom PW10 had allegedly talked to accused on telephone, while keeping the same on speaker mode. In this respect as per testimony of PW6, on 25.08.2015 at about 12.55 p.m. he asked PW10 to make call to the accused, because they had been waiting for call from the accused, but same was not received by that time. A conversation took place between PW10 and the accused, which was heard by PW6 and PW7. In this conversation, accused had agreed to accept bribe amount of Rs. 9,000/- and directed PW10 to call him again after 2 hours.

21.2.6 According to testimony of PW7, PW6 asked PW10 to make call to accused on 25.08.2015, while keeping the phone on speaker mode. The conversation was recorded in the DVR and was heard by them. In this conversation, bribe amount was negotiated to Rs.

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9,000/- and accused asked complainant to come alongwith bribe amount on next day.

21.2.7 Though, the aforesaid testimony of PW6 and PW7 do not relate to demand being made in its strict sense, but they relate to the subsequent conduct of the accused to confirm that accused actually made such demand with PW10 in the past. 21.2.8 The relevant part of transcript of recorded telephonic conversation taken place between PW10 and accused on 25.08.2015 from audio file no. 150825_002 are as follows:-

Accused : Aapne kaha tha toh aap pahunchke nahi abhi Complainant : Sir bachche ki tabiyat kharab ho gayi thee wahaan achanak mujhe lekar bhagna pada toh fir maine bola thaa hospital se nipat ke main aata bhi hun toh fir main sidhe nikal aaya thaa wahan se jaake maine phone kiya thaa toh aap nikal chuke the mera kuchh paisa wahaan bhi kharch.

Accused : Bhaayiya adhikaari sare chale gae toh sign kiske karaate fir hum.

Complainant : Sir mera kuchch paisa wahaan bhi kharch ho gaya bachche ke hospital me fir main ugain tigan se jo aapne 9 hazar kaiha pure 9 hazar jugaad karke laya tha.

Accused : Haan.

Complainant : Toh aap 10 ke kai raye toh main 9 ka pura jugaad kar liya tha maine ab usme se kuchh paisa kharch ho gae hain sir 8-7 hazar bache hain unme se.

Accused : Uska kya karun bataao.

Complainant : Sir kitna karun fir chal jaega 7 hazar me.

Accused : Nahin bhaiya darasal 9 toh tumse kah hi diya tha jab tum jyada kah rahe ho toh ab tum unme se bhi kam karoge toh bhaiya kaam toh, apni jeb se thode hi bharunga.

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Complainant : Sir dekh lo 7 hazar me kaam chala lo.

Accused : Nahin bhaiya nahin.

Complainant : Main bataya tha bahut garib hun sir.

Accused : Nahin hoyega main mujhe thode hi chahiye yaar bandaa aage or adhikaari jayege mere thode hi jeb me aaege.

Complainant : Sir meri majboori bhi to dekho, sir bachcha fir hospital me bhi lag gaya hai thoda kahte ho to main.

Accused : Ye toh, bhayi meri baat suno ek toh isse kam hoyega nahi aur parso aana.

Complainant : Sir kal mera kal weekly off hai, kal aa jata hun parso meri din ki duty chal rahi hai, sir abhi bhi main duty me hun.

Accused : Aap mujhe ek baar kal phone kare ya do ghante baad kare.

Complainant : Chalo sir main fir do ghante baad phone kar leta hun, meri teen baje duty off hoti hai.

Accused : Lekin ye isse kam me nahi hoyega yah bata de bhayi wo nahi manega, badi mushkil se manaya. Complainant : Chalo sir hazar rupaye aur kar lata hun, main 8 hazar kar lo sir.

Accused : Bhayi nahi nahi nahi, bekaar hai phone karna aapko yah kam mere.

Complainant : Chalo chal, chalo sir, main fir main karta hun, jugaad pure 9 hazar ka.

Accused : Hun, badi mushkil se usko raazi kiya tha ab tum unme se bhi ghataoge toh wo gaali yoon sochega chal main kha rha hun yaar paise.

Complainant : Chalo sir theek hai fir.

Accused : Hame kuchh nahi chahiye, hame toh ye hai koyi khushi se apni se bhaiya jab admission ho jae toh de Page 51 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC NO.260/2019 jata, toh de de, hazar paanch sau rupaye deta hai to koyi na toh bhaiya wo bhi apne bachchan ko khila dega. Complainant : Theek hai sir fir main karta hun 9 hazar pura jugaad karta hun kya karun sir 2 ghante baad karun sir fir phone.

21.2.9 I shall deal with the aspect of admissibility and credibility of recorded conversation separately.

21.3 RECORDED CONVERSATIONS 21.3.1 As already mentioned herein above, allegedly a DVR with a fresh memory card inserted in the same, was used for recording conversation of PW10 with the accused during verification and trap proceedings. Memory card Q1 WAS used in verification proceedings and memory card Q2 WAS used during trap.

21.3.2 From the testimony of PW6, PW7 and PW10, it is well confirmed and established that a fresh memory card was used to record telephonic conversation between PW10 and the accused, during verification proceedings. PW6 deposed that first of all introductory voice of PW7 was recorded in this memory card on 24.08.2015 itself. On 24.08.2015, no concrete talk had taken place between PW10 and accused, as accused had asked PW10 to come next day. Thereafter, two more calls were made, but same were not answered. The DVR with memory card was kept in an envelope and was sealed with CBI seal. This seal was handed over to PW7 with direction to bring it on next day. Next day i.e. on 5.08.2015, DVR was taken out from the sealed envelope in front of PW7 and PW10 and seal was taken back from PW7. Thereafter, at 12.55 p.m. a telephonic conversation took place between PW10 and accused, which was recorded in this memory card through Page 52 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADDC, New Delhi CC No.260/2019 DVR. Since, accused had asked PW10 to call next day, therefore, proceedings of that day were concluded by recording concluding voice of PW7. The memory card was taken out and was marked as Q-1. The packing of memory card as well as the envelope wherein it was kept were signed by PW6, PW7 & PW10 and the envelope was again sealed with the seal of CBI. Similarly, DVR was also sealed in another envelope and the seal was handed over to PW7 with direction to bring it next day. Such facts have been confirmed by PW7 also in his testimony. PW6, PW7 and PW10 identified their signatures

on the packet and envelope of memory card Q-1. Thus, the envelope containing memory card Q-1 remained sealed since 25.08.2015 and facsimile of that seal was also taken in ink and lac on the verification memo Ex. PW6/A. The seal used by PW6 was having impression of 68/2014 ACB ND CBI.

21.3.3 Similarly, in respect of memory card Q-2, TLO/PW11 deposed that he used a fresh memory card for trap proceedings taken place on 26.08.2015. He had received DVR in sealed envelope, which was opened by PW7. The DVR was fitted with new memory card and after coming back to CBI office during post trap proceedings. He had heard the conversation recorded in the memory card and thereafter, that memory card was taken out and was kept in a plastic cover. Thereafter, it was kept in an envelope. The plastic cover and the envelope were signed. Thereafter, new memory card was arranged, wherein specimen voice of accused was recorded and that memory card was also signed and sealed in similar manner. DVR was also sealed in another envelope and signed.

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21.3.4 Subsequently, these envelopes were sent to CFSL, New Delhi, Photo Division for preparation of four copies of the memory cards and thereafter, they were received back in CBI office with seal of CFSL. CBI, though, did not examine the expert, who prepared copies of these memory cards, but PW13/DR. Rajinder Singh was examined, who had received the parcels containing Q1, Q-2, S-1 and DVR in CFSL later on for examination. He gave his report Ex. PW13/A after examining all the exhibits. From his testimony and aforesaid report, it is clear that the parcels received by PW13, were sealed with the seal of "CFSL PHOTO DIVISION CBI N.D. A.D.TIWARI S.S.O.II". These three parcels of memory cards were containing another brown envelope in open condition bearing seal impression of "C.B.I. A.C.B. N.D. 68/2014". Thus, it is well reflected that initially the sealed envelopes of Q-1, Q-2 & S-1 WERE sent to CFSL Photo Division, when these envelopes were opened and thereafter, they were sealed in other separate parcels with seal of expert from Photo Division. PW13 had identified signature of an official from his lab, who had received and acknowledged the receipt of these parcels on first occasion, on the forwarding letter of S.P. CBI dated 14.09.2015 i.e. Ex. PW12/A. This fact also signifies that these envelopes were initially received in Photo Division, CFSL and thereafter, they were again received in Physics Division, CFSL. Absence of any manipulation also appears from the fact mentioned in the report Ex. PW13/A that envelope of DVR was found sealed by PW13 with aforesaid seal of CBI, rather than seal of expert from Photo Division. This signifies the fact that since DVR was not Page 54 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 required to be opened in Photo Division, therefore, envelope of the same remained intact till it was sent to CFSL Physics Division vide forwarding letter Ex. PW12/B. PW13 was though cross-examined by ld. defence counsel but nothing could be extracted from him, so as to raise any doubt over intact condition of these parcels. PW13 rather identified his signature on the parcels, in which he had sent the exhibits back to CBI in sealed condition, as well as on the envelopes in which these exhibits were initially sealed by PW6 and

PW11. He also identified his initials on the memory cards and DVR as mark of examining the same.

21.3.5 Ld. defence counsel raised contention that CBI did not prove any record of acquiring DVR as well as memory cards. However, I do not find much importance of such records. Similarly, absence of record from Malkhana regarding deposit of exhibits and sending the same to CFSL, cannot be given so much importance, so as to reject the consistent testimony of aforesaid PWs in respect of proper sealing of all the envelopes of the exhibits and receipt of the same in CFSL, New Delhi in same condition. Moreover, the opinion given by PW13 in his report Ex. PW13/A to the effect that no pause, no discontinuity of speech, no change in background noise in speech conversation, or no spikes in speech wave form were found in any of the memory cards, assume importance to show absence of any manipulation in these memory cards. In that situation, I do not find any reason to doubt the duly examined contents of these memory cards. PW13 also opined that DVR could have been used for recording the audio files as contained in these memory cards.

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Therefore, on the basis of testimony of aforesaid witnesses and the aforesaid CFSL report, there remains no scope of any doubt regarding the alleged telephonic conversations and the last face to face conversation between PW10 and accused, having been actually taken place.

21.3.6 It is important to appreciate that recorded conversations are scientific piece of evidence. They have potential to depict exact replica of the conversations. On the other hand, human mind has limitations to remember the things exactly. Different persons have different level of retaining capacity. Therefore, scientific evidence assumes importance, which not only corroborate the testimony of relevant witnesses, but also project the exact replica of conversations and most importantly, unless manipulated, unlike human they do not lie.

21.3.7 PW13 in his aforesaid report mentioned that there were eight audio files in FOLDER 01 in memory card Q-1. The audio file bearing no. 150824_002 WAS marked as Q-1 (2). However, PW13 observed that voice of questioned speaker i.e. accused was indiscernible in this audio file. Therefore, this file could not be considered for examination. This audio file pertained to telephonic conversation between PW10 and accused allegedly taken place on 24.08.2015.

21.3.8 PW13 marked another audio file bearing no. 150825_002 as Q-1 (5) and found clearly audible utterances of a person starting with sentence "Hello, hanji, namaste. " allegedly spoken by accused. He also picked some common words/sentences from Page 56 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 specimen voice of accused from memory card S-1 and then put these common words/sentences picked from aforesaid audio file and specimen voice of accused for spectrographic analysis. He also conducted auditory examination of these questioned voices. As far as questioned voice from aforesaid audio file is concerned, PW13 on

the basis of spectrographic examination and auditory examination, found that same corresponded to respective features in the specimen utterances of same speaker i.e. accused. Thus, in both the examination conducted by PW13, the voice in aforesaid audio file as imputed to the accused, was found to be probable voice of the accused.

21.3.9 Apart from aforesaid audio file, PW13 had also conducted auditory examination in respect of some utterances picked from other audio file bearing number 150825_004 from Q-1 and audio files bearing number 150825_002 and 150826_001 from memory card Q-2. He recorded that he could not conduct spectrographic examination in respect of aforesaid three audio files, for want of sufficient clearly audible common words/sentences in the specimen voice of accused. However, on the basis of auditory examination, PW13 reported that the voice picked from aforesaid questioned audio files and the specimen voice of the accused were similar in respect of their linguistic and phonetic features. 21.3.10 PW10 heard the recorded conversations as contained in Q-1 and Q-2 in the court and he affirmed that same conversations had taken place between him and the accused. He also correctly identified introductory voice of PW7 in both the memory cards.

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Even PW7 identified his voice in these memory cards and vouched that he had given such introductory voice. The transcript of these recorded conversations were also proved by these witnesses. I also heard all the recordings and found that though, all recorded conversations were not discernable, still some of them gave sufficient clue of talk between the parties, especially the conversation in Q1.

21.3.11 In the case of Ram Singh v. Col. Ram Singh, 1985 Supp SCC 611, hon'ble Supreme Court stated some of the conditions necessary for admissibility of tape recorded statements, in the following terms:

"(1) the voice of the speaker must be identified by the maker of the record or by others who recognise his voice. Where the voice is 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.

(3) Every possibility of tampering with or erasure of a part of the 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.

(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."

21.3.12 In the present case, PW10 duly identified the conversations in the recordings and vouched for the same. He was one of the participants in the conversations, hence, his testimony assumes Page 58 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 importance. PW13 gave report against any manipulation in the memory cards. Hence, the recorded conversations are admissible as well as credible evidence in this case.

21.3.13 The above-mentioned opinion given by PW13 supports and corroborates the allegations made by prosecution and it's witnesses that it was accused who had been talking to PW10 in respect of demand of bribe of Rs. 9,000/- and delivery of the same. When this fact stands well established, in that situation, the fact that PW8 and PW9 turned hostile before the court, does not affect the case of prosecution adversely. This is well established that accused actually made demand for Rs. 9,000/- on the pretext of getting job of PW10 done.

21.4 TRAP PROCEEDINGS, ACCEPTANCE AND RECOVERY 21.4.1 PW5, PW7, PW10 & PW11 WERE the witnesses of trap proceedings, acceptance and recovery of bribe amount. PW10 once again was the most important witness in respect of acceptance of the bribe amount by the accused. As per his testimony, on the day of trap, accused took him on one side of the corridor and asked if he had brought the money to be paid for the transfer of his child. PW10 handed over Rs. 9,000/- along with application for transfer of his child. Thereafter, CBI officials came and apprehended the accused. PW10 identified the accused before the court as the same person, who had demanded and taken money from him. In his cross-examination conducted by the ld. defence counsel, he made some changes in his statement to say that he met accused at the end of corridor in the office. He had Page 59 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 small talk with him. He requested accused to take the money later on, as his child was not well, but accused asked him if he had brought the money. PW10 told accused that he had brought the money, but requested to take it later on rather than on that day and gave him the application. Accused however, demanded the money and when he was giving the money to accused, CBI officials came at the spot and apprehended the accused. CBI official asked him about the money and PW10 told them that same was with him. Thereafter, PW10 was again examined by ld. Sr. PP for CBI. This time, PW10 deposed that accused asked him if he had brought the money and PW10 told accused to take the money later on as his son was not well. On this accused told PW10 that in such situation, PW10 should get transfer of his son's school also later on. Accused demanded the money and PW10 took out money from his pocket and gave it to the accused. Thereafter, he gave signal by waving his hand to CBI officials and CBI officials came at the spot and caught the wrist of the accused.

21.4.2 Thereafter, once again ld. defence counsel cross-examined PW10 and PW10 again admitted the suggestion that he had deposed during his earlier cross-examination that while he was in the process of taking out the money, CBI officials immediately came at the spot and apprehended the accused. He further deposed that while he was still taking money from his pocket, the CBI officials

apprehended the accused. At the same time, he denied the suggestion that he did not give any signal by waving his hand to the waiting CBI officials.

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21.4.3 The aforesaid fluctuation of PW10 in respect of handing over the bribe amount to the accused, was made a ground by ld. defence counsel to dispute the case presented by the prosecution regarding acceptance and recovery of bribe amount. According to ld. defence counsel, PW10 admitted that he did not hand over the bribe amount to the accused. However, in order to find credibility of a particular statement, the court has to look into the various factors surrounding the examination of a prime witness like PW10 in this case. This witness supported the case of prosecution without any contradictions during his examination in chief, which took place on 30.05.2017. Thereafter, his further examination was deferred and he was again examined on 04.01.2018, when his cross- examination by ld. defence counsel was also started. His cross-examination was further conducted on 19.02.2018, when all of aforesaid fluctuation started taking place. This time gap assumes importance to signify possibility of either some influences exercised upon this witness or the witness getting confused. I will also discuss the evidence of other witnesses, in order to assess the credibility of allegations regarding acceptance and recovery. 21.4.4 PW5 was the shadow witness and in his testimony, he deposed that on 26.08.2015, he was instructed to remain present with the complainant and to give signal when the transaction was over. During trap, they were sitting on the second floor of that building. PW10 called and informed the other person that he had arrived. They remained there for about 45 minutes and thereafter, accused arrived (duly identified in the court as the same person).

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Accused called PW10 at one end of the corridor. Thereafter, PW10 handed over money from his pocket to the accused in his presence. Accused counted the currency notes and kept in the right pocket of his pant. The application of transfer was also taken by the accused from PW10 and he kept it in his left side pocket of the pant. Thereafter, PW10 gave signal and he also gave signal by scratching his head.

21.4.5 In his cross-examination conducted by ld. defence counsel, PW5 disclosed that he had taken part in some other traps conducted by CBI. In respect of trap proceedings, he deposed that other CBI officials were also present on the second floor of the office. PW5 could not see the person who replied the phone of PW10. He had seen the accused for the first time, when he was talking with

PW10 and at that time PW5 was at a distance of about 5 feet. Other CBI officials were present in the main hall, which was about 15-20 meters away from accused and PW10. His face was towards accused when he was present in the corridor and CBI officials were towards his back. Therefore, he did not know if any other person was present between him and the CBI officials. 21.4.6 PW7 was the witness, who remained with the remaining part of the trap team. As per his testimony, all the team members reached second floor and they sat in the verandah in front of Dy. Commissioner. Accused was not available at that time and they waited for one hour. PW11 asked PW10 to make telephonic call to the accused and PW10 accordingly made call to the accused and told him that he had come with money. Since, PW7 was at some Page 62 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 distance therefore, he could not hear the reply of the accused. After sometime accused came and gave a signal to PW10 to follow him. Both of them went towards end of that corridor. PW5 also followed them by maintaining some distance. PW10 handed over the money to the accused as well as the application and thereafter, the accused counted the money. However, PW7 was at a distance, therefore, he did not see accused counting the money. PW10 gave the signal and thereafter, entire team went towards the accused. PW7 identified the accused before the court as the same person. 21.4.7 In his cross-examination conducted by ld. defence counsel, this witness deposed that he had hearing problem at the relevant time. A court observation was also recorded to the effect that this witness was hearing the question put to him, but at times, he asked for repetition. PW7 further deposed that on 26.08.2015, he and other CBI team were at a distance of 15 feet from PW5 on second floor of the building. He saw accused for the first time when he was speaking with PW10 and at that time, the distance between them was about 30 feet. He admitted the suggestion that he did not hear the conversation of accused and PW10 because of the distance. They had waited for about 45 minutes to one hour for arrival of the accused. PW10 had given pre-decided signal by putting his palm on the hair. During subsequent part of cross-examination, PW7 further deposed that PW10 was clearly visible, though, face of accused was partially visible to him. PW5 was standing between CBI team and accused & PW10. PW5 was facing accused and PW10. The distance between PW5 and accused & PW10 was Page 63 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC NO.260/2019 about 15 feet. He denied the suggestion that amount of Rs. 9,000/- was not recovered from the accused as deposed by him or that such amount was not handed over to accused by PW10. 21.4.8 PW11 deposed that all the members of trap team were directed to take convenient position on the second floor of the office. He had directed PW10 to get in touch with the accused. After waiting for about an hour, PW11 saw accused who indicated to the complainant to follow him. PW11 alerted his team members by gesture. PW11 saw the accused stopping at the end of the corridor. PW10 also stopped near the accused after few minutes. PW5 gave pre-determined signal. PW10 also gave similar signal and then they rushed to that place. PW11 challenged the accused for receiving the bribe amount on which accused requested for forgiveness. At that time PW10 told him that accused demanded bribe money and PW10 gave the tainted money to the accused. Accused received the same through his right hand and kept in the right hand pant pocket. PW10 also told that transfer application form was also handed over to the accused. In his cross-examination conducted by ld. defence counsel, PW11 deposed that it was a long corridor of about 50 meter length. Nothing more particular question was asked in respect of acceptance of bribe amount by the accused from this witness.

21.4.9 On analysis of testimony of PW5, PW7 and PW11, I find that as far as factum of acceptance of bribe amount by the accused is concerned, same is duly deposed consistently by PW5 and PW7. PW11 did not claim to have seen delivery of amount to the accused Page 64 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 himself, though, if there would have been artificial element added to the case and evidence of the prosecution, then he could have also claimed having seen delivery of the amount. Ld. defence counsel referred to distance between PW5 and PW7 from the accused, to dispute their claim about seeing the delivery of money to accused. However, estimate of distance as given by PW5 & PW7 should not be taken as very accurate distance. Such estimate given by different persons is bound to differ, which happens to be based upon their respective guess work. Material thing is that PW5 had been following PW10 with some distance and he was facing PW10 & accused. PW5 was expected to keep a watch over accused and PW10. Similarly, other members of trap team had taken different position and subject to possibilities, they were also expected to keep their eyes on the accused and PW10 from their respective position. Therefore, if PW5 & PW7 could see delivery of money to accused by PW10, then I do not find any thing suspicious about it. Rather, from PW5, it was well expected to see such transaction, which was taking place in open corridor. Movement of some other persons cannot be a ground to suspect the consistent testimony of these witnesses in material terms.

21.4.10 On the basis of testimony of PW5 and PW7, I find that the testimony of PW10 regarding insistence of accused to demand for bribe money and payment of the same by PW10 to the accused, is the correct version of the facts. Even otherwise, it does not make any sense for TLO/PW11 and his team to apprehend the accused even without getting signal from PW10 and shadow witness PW5.

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Therefore, there remains of no iota of doubt regarding acceptance of bribe amount by the accused.

21.4.11 Recovery of bribe amount from the person of accused is nothing but another supporting circumstance to establish the acceptance of bribe amount by the accused. PW5, PW7, PW10 and PW11 deposed about recovery of bribe amount from the right hand pant pocket of the accused. They also deposed about recovering application from the left hand pant pocket of the accused. This fact of recovering application from the pant pocket of accused is also mentioned in the arrest cum personal search memo i.e. Ex. PW5/E. This recovery is well in consonance with the testimony of PW10 that he also handed over the application form to the accused. The currency notes were compared with serial numbers mentioned in the handing over memo and were found same.

21.5 HAND WASH AND PANT POCKET WASH 21.5.1 PW5, PW7, PW10 and PW11 also consistently deposed about right hand wash of the accused being taken in a solution of sodium carbonate and water and colour of the solution turning to pink. They also deposed about left hand wash as well as right side pant pocket wash being taken. Just because pant pocket wash was taken in the CBI office

or that officials of regional office were not invited to join the proceedings of taking hand washes, evidence of aforesaid witnesses cannot be rejected. These witnesses deposed that left hand wash did not give any different colour, though, pocket wash had also turned the colour of solution into pink.

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21.5.2 All the aforesaid washes were transferred into separate bottles and were sealed with their labels being signed by TLO and independent witnesses. These signatures were duly identified by these witnesses before the court. These washes were sent to CFSL, Chemistry Division, New Delhi, vide forwarding letter Ex. PW2/A. PW2 WAS the expert in CFSL, who examined these washes and gave his report. According to his report Ex. PW2/B, all the washes gave positive test for the presence of phenolphthalein. Although, when these washes were produced before the court during evidence, all of them were found colourless solutions. On the basis of this development, ld. defence counsel challenged the report given by PW2 as well as the process of taking these washes. He also argued that there was no record of malkhana to show deposit and transit of these washes to CFSL. 21.5.3 Though, accused had kept that amount in his right pant pocket with right hand, but even left hand wash was found having traces of phenolphthalein. Thus, presence of phenolphthalein in left hand wash and absence of pink colour in the solutions of all the washes during their production before the court, do cause some anxiety. In order to appreciate aforesaid situation, it is worth to recount testimony of PW10, who deposed that after receiving amount from PW10, accused counted that amount. Thus, the left hand wash giving positive result for phenolphthalein test, was not an abnormal situation, because, during counting of the currency notes, it was much likely that some traces of phenolphthalein would have transferred to left hand fingers of the accused.

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21.5.4 As far as absence of pink colour in the solutions is concerned, for that purpose, I would refer to the scientific reason as mentioned in an article on this subject. In the article titled as "Forensic Analysis of Phenolphthalein in Trap Cases, A Critical Review", published in International Journal of Multidisciplinary Approach and Studies, (Volume 01. No.4, July - Aug. 2014), it has been mentioned that coloured phenolphthalein solution has the tendency to gradually fade away. The relevant observations made in this article are as under:-

"Phenolphthalein is known to give pink color in alkaline at a concentration as low as 0.005 x 10⁻³ % (5g per 100ML). The pink color of this solution persists for some days to some months depending upon the quantity of phenolphthalein and the strength of

alkali solution. It gradually fades and turns in to colorless. The colored phenolphthalein solution has a tendency to gradually fade away due to chemical changes with passage of time varying from days to months. Its intensity may considerably decrease and the alkaline solution may become colorless. The fading away of the color of alkaline phenolphthalein solution can be due to two reasons i.e. either the PH of solution is out of limit /high or phenolphthalein has chemically broken down in to other colorless products i.e. 2[4-HYDROXY-BENZOYL]-BENZOIC acid and phenol which may be caused by the action of alkali, heat, light and the oxygen present in the air."

21.5.5 The reasons mentioned in above article are very relevant to appreciate the situation involved in the present case. The solution of sodium carbonate and water is not shown to be prepared in very calculated manner. The quantity of sodium carbonate in the solution plays an important role for subsistence of pink colour, after amalgamation with phenolphthalein. Therefore, absence of pink Page 68 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 colour does not lead to a conclusion that there could not have been phenolphthalein in that solution. The minor quantity of phenolphthalein to the extent of $0.005 \times 10^{-3} \%$ (5g per 100ML) is sufficient to give positive result of presence of phenolphthalein in the solution, even though colour of the solution would not have changed. Thus, the absence of pink colour in the washes produced before the court in this case, does not become a ground to say that there could not have been traces of phenolphthalein in these washes.

21.5.6 I have gone through the case laws cited by both the parties. As far as the judgment passed in Jitender Kumar Jain v. CBI (supra) as relied upon by defence is concerned, I find that the facts and evidence in that case were substantially different from the facts and evidence of this case. The observations relied upon by ld. defence counsel, were made peculiar to the facts and evidence of that case. Those observations cannot be applicable to the present case. 21.5.7 Ld. counsel raised contention against credibility of PW5 on the allegations of being stock witness of CBI. He referred to his testimony to say that this witness had joined other traps of CBI in the past also and hence, he was a stock witness. Therefore, his evidence is not worth reliance. However, such contention of defence does not hold ground in absence of any concrete evidence to show that this witness was actually biased against accused and he was simply planted in this case as a witness. PW7 and PW10 have duly testified confirming to role played by PW5. Hence, his testimony cannot be rejected on aforesaid grounds. Observations Page 69 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 made by hon'ble Delhi High Court in the cases of Girwar Singh and Ram Karan (supra) leave no doubt regarding reliability of evidence of this witness, in the back ground of participation in other traps.

21.5.8 I would also like to refer to one observation made by Hon'ble Delhi High Court for the purpose of analysis of the evidence of complainant in the cases like in hand. These observations were made by the High Court in the case of Madan Lal v. State, 2010 (9) AD Delhi 685, and same were reiterated and reproduced in the case of Mahesh Pal (supra) also. Delhi High Court observed that "Ordinarily the testimony of complainant need to be believed unless there are strong and compelling reasons creating serious doubt on the truthfulness of his testimony". These observations

were made by Delhi High Court after referring to various adverse circumstances on the risk of which, a complainant opts to make a complaint of corruption against a public servant. I find these observations to be relevant for this case as well, because, if complainant was interested for transfer of his son from one school to another school of Kendriya Vidyalaya Sangthan, it was obviously a hard decision taken by him to oppose the demand made by one of the officials working in the regional office of aforesaid organization.

21.5.9 Ld. defence counsel referred to testimony of DW1 to allege that this complaint was made by PW10 out of vengeance in the background of a dispute between DW1 and the accused. Even accused has taken such plea in his statement u/s 313 Cr.P.C., Page 70 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 which has already been mentioned herein above. However, on careful scrutiny of testimony of DW1, I find that DW1 did not claim that he ever asked PW10 to help him to get rid of demand of accused or to teach a lesson to the accused. DW1 simply said that PW10 after coming to know about dispute between DW1 and accused reacted by saying 'Dekhenge' (we will see). DW1 did not claim that at any point of time, he ever planned with PW10 to decide any action to be taken against the accused. A person howsoever close he be to DW1, he is not expected to take revenge for another person i.e DW1, even without any such interest and request on the part of that other person. Therefore, such claim of defence that PW10 lodged present complaint at the behest of DW1 or to teach a lesson because of a dispute between DW1 and the accused, is incomprehensible. Thus, testimony of DW1 does not inspire any confidence, even if, I presume that he was actually known to PW10.

21.5.10 Ld. defence counsel referred to absence of any investigation done by IO/PW12 regarding approval for transfer taken by PW10 from both schools, as claimed by PW10 in his testimony. I find that there was not requirement of making such investigation in this case, because the case related to corrupt practices of the accused, rather than such permission, if given by both of these schools. It is also immaterial if there was a different procedure, so as to submit the application for transfer in the school concerned, rather than directly in the regional office. If PW10 did not adopt right procedure, then such fact did not give any licence to the accused to indulge in Page 71 of 73 (Pulastya Pramachala) Special Judge (PC Act) CBI-13, RADC, New Delhi CC No.260/2019 the corrupt practices.

21.5.11 It is also immaterial fact that accused actually intended to get the work of PW10 done or not. The judgments relied upon by ld. PP and the explanation to Section 7 leave no doubt about such capacity or intention of accused being immaterial in the case in hand.

21.5.12 Ld. defence counsel also referred to testimony of PW10 to say that he had taken two different names of his son in his testimony i.e. Kabir and Lucky. This may be for the reason that PW10 would be calling his son with two names one at home and one for school. This is not such a fact, which goes into the roots of allegations of criminal misconduct against the accused. 21.6 SANCTION 21.6.1 Ld. counsel did not make any arguments to challenge the sanction accorded by PW1. In her testimony, PW1 deposed that she had accorded sanction on the basis of documents received from CBI. She further deposed that she applied her mind and accorded sanction. She denied suggestion of defence that she accorded sanction mechanically or signed on the draft prepared by CBI.

21.6.2 In absence of any concrete material, it cannot be presumed that sanction was accorded by PW1 in mechanical manner. Therefore, I have no reason to discard the testimony of PW1. Hence, I find that there was a valid sanction for prosecution of accused.

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CONCLUSION

22 In view of my foregoing discussions, observations and findings, I conclude that prosecution has successfully proved that accused while working as Peon in the regional office of Kendriya Vidyalaya Sangathan, New Delhi, demanded bribe of Rs. 9,000/- from the COMPLAINANT/PW10 on the pretext of getting permission from Asst. Commissioner for transfer of school of the son of PW10. It is also established beyond doubts that accused accepted amount of Rs. 9,000/- as bribe from PW10 for aforesaid purpose. Thus, accused obtained illegal gratification from PW10 in order to get his aforesaid work done. For this purpose, accused misused his official position for his own pecuniary enrichment. Under Section 7 of the Act, a public servant is also liable, if he obtains bribe for showing some favour or for rendering any service. The assurance given by accused in the present case was in the form of showing favour and rendering service to PW10 by taking his application and for getting that job done.

DECISION 23 Accordingly, accused is held guilty for offences punishable u/s 7 & 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (Prior to amendment in 2018) and is convicted accordingly.

Digitally signed by PULASTYA PULASTYA PRAMACHALA PRAMACHALA Date:

2020.12.15 12:22:49 +0530 Announced in the open court (PULASTYA PRAMACHALA) today on 15.12.2020 Special Judge (PC Act) CBI-13, (This order contains 73 pages) Rouse Avenue District Court, New Delhi.

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