

Manoj Kumar vs C.B.I.

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Court : Delhi

Decided On : Feb-02-2026

Judge : Hon'Ble Ms. Justice Chandrasekharan Sudha

Appeal No. : CRL.A./733/2002

Appellant : Manoj Kumar

Respondent : C.B.I.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 27.01.2026

Judgment pronounced on: 02.02.2026

+ CRL.A. 733/2002 MANOJ KUMARAppellant Through: Mr. Manu Sharma, Sr. Advocate with Mr. Arjun Kakkar, Advocate.

Versus

C.B.I.Respondent Through: Mr. Atul Guleria, SPP for CBI with Mr. Aryan Rakesh and Ms. Atreyi Chatterjee, Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 27 of the Prevention of

Corruption Act, 1947 (the PC Act) read with Section 374 of the

Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by

the accused in C.C.No. 57/1996 on the file of the Court of Special

Judge, Tiz Hazari Court, Delhi challenging the conviction entered

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and sentence passed against him for the offences punishable under

Sections 7 and Section 13(1)(d) r/w 13(2) of the PC Act.

2. The prosecution case is that on 25.09.1995, the accused,

while working as Sub Inspector, Delhi Police and posted at Jama

Masjid Police Station, demanded illegal gratification of 5,000 /-

from PW1, for not taking any adverse action against him in Crime

No. 187/95, which crime was being investigated by the accused.

3. On 06.10.1995, PW1 lodged a complaint, that is, Ext.

PW1/A, with the S.P., CBI, Anti-Corruption Branch, New Delhi,

based on which crime, RC No. 86(A)/95-DLI, that is, Ext. PW5/A

FIR was registered alleging commission of offence punishable

under Section 7 of the PC Act.

4. PW5, Inspector, Anti Corruption Branch, CBI, New Delhi,

conducted investigation into the crime and on completion of the

same, submitted the charge-sheet/ final report alleging commission

of the offences punishable under the aforementioned sections.

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5. Ext. PW2/A sanction order for prosecuting the accused

was accorded by PW2, the then Deputy Commissioner of police,

Central District, Delhi.

6. When the accused on receipt of summons appeared before

the trial court, the Court after complying with the formality contemplated under section 207 Cr.P.C, on 12.09.1997, framed a charge against the accused for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act which was read over and explained to the accused to which he pleaded not guilty.

7. On behalf of the prosecution, PW1 to PW8 were examined

and Ext. PW1/A, Ext. PW2/A, Ext. PW3/A - H, PW4/A, PW5/A-B, PW6/A, Mark A & B, PW8/A were marked in support of the case.

8. After the closure of the prosecution evidence, the accused

was questioned under Section 313 of the Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence

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of the prosecution. The accused denied all those circumstances and

maintained his innocence. He admitted that he was the Investigating Officer in Crime No. 187/95 Jama Masjid, Police Station in which one Om Prakash Tiwari had been arrested and that the latter on questioning, disclosed the involvement of PW1 and so PW1 was also wanted in the said crime. He admitted his presence at Tis Hazari Courts on the date of the trap in connection with his official duties, but denied all other circumstances and maintained his innocence.

9. After questioning the accused under Section. 313 Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, ipso facto vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See Moidu K. vs.

2888). Here, the accused has no case that non-compliance of

Section 232 Cr.P.C. has caused any prejudice to him.

10. On behalf of the accused, DW1 was examined and Ext.

DW1/A-B was marked.

11. On consideration of the oral and documentary evidence

on record and after hearing both sides, the trial court, vide the

impugned judgment dated 21.08.2003, held the accused guilty of

commission of offences punishable under Sections 7 and 13(2)

read with Section 13(1)(d) of the PC Act and accordingly,

sentenced him to undergo rigorous imprisonment for a period of

four years and to fine of 500/- under each provision and in default

of payment of fine, to rigorous imprisonment for three months on

each count. The substantive sentences of imprisonment have been

directed to run concurrently. Aggrieved, the accused has preferred the present appeal.

12. In the FIR and charge-sheet, the appellant herein was

arrayed as the first accused and Head Constable Prem Pal Singh as

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the second accused. However, the trial court discharged the second accused, which order has now become final.

13. The learned Senior counsel appearing for the accused

submitted that insofar as the demand alleged to have been made on

the intervening night of 25.09.1995 and 26.09.1995 at about 3.00

AM is concerned, has not been established as none of the six

persons who were supposed to have accompanied the accused to

the house of the PW1, including Om Prakash Tiwari, was never

examined. Despite the admitted presence of the wife and son of the

PW1 at the house, neither of them was examined. None of the

officials of the Jama Masjid Police Station, in whose presence the demand is alleged to have been made, was examined. The second demand is alleged to have been made on 05.10.1995, to the son of PW1, aged about 22 years, in the absence of the PW1. But the son has also not been examined by the prosecution. Therefore, Crucial and material witnesses were not examined by the prosecution, which is a major factor to doubt the prosecution case.

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13.1 Reliance was placed on the dictum in Mahmood v

State of U.P., (1976) 1 SCC 542 to canvass the point that the

audio cassette alleged to contain the recorded conversation

between PW1 and the accused wherein the demand is alleged to

have been reiterated is inadmissible in evidence as there exists a

clear possibility of tampering, inasmuch as the safe custody of the

said cassette has not been established. The prosecution has failed

to produce the Malkhana register and did not examine the Moharrar Malkhana, thereby rendering the chain of custody doubtful and thus making the electronic evidence unreliable.

13.2 It was further submitted that the original teletape recorder, the audio cassette and the voice samples were never sent for forensic examination, despite the accused having specifically denied that the voice recorded was his. It was pointed out that the tele-tape recorder itself was never produced before the Court.

Consequently, the mandatory conditions for admissibility of tape-recorded evidence as given by the Honble Apex Court in Ram

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Singh and others v. Col Ram Singh (1985) Suppl SCC 611 were not complied with, rendering the alleged recording inadmissible in evidence. The prosecution has failed to comply with the mandatory provisions of the CBI Manual, 1991, particularly Paras 52/313 to

relation to proper maintenance of the Malkhana, as well as

Annexure II, Para B(11) of Chapter XXI dealing with the

procedure prescribed for recording conversations through audio

recording systems.

13.3 It was also submitted by the learned senior counsel for

the accused that though the prosecution claims that the cassette

recorded on 06.10.1995 at the CBI office was sealed and handed

over to PW3, after a gap of 28 days, permission was sought from

the Court on 03.11.1995 and thereafter, vide memorandum dated

29.11.1995, the sealed cassette was reopened at the CBI office,

transcript was prepared and resealed with the same seal alleged to

have been retained by PW3. The cassette was thereafter deposited

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in the malkhana and the seal was handed over to PW3 for the safe

custody. All these proceedings took place in the office of the CBI.

It was further pointed out that the cassette was not produced along with the chargesheet filed before the court 11.04.1996, which is clear breach of Section 170 Cr.P.C. The same was produced much later pursuant to court directions, only on 04.10.1996, for preparation of copies. It was also submitted that the second portion of the recorded conversation in the tape is missing in the transcript, rendering the transcript doubtful. These serious doubts arise regarding the safe custody and sanctity of the cassette during the period from 06.10.1995 to 03.11.1995 and thereafter from 03.11.1995 to 04.10.1996.

13.4 The learned senior counsel further pointed out that there are material contradictions in the testimonies of PW1, PW3, PW4 and PW5 with regard to the very genesis of the alleged telephonic conversation, namely, as to who had supplied the accuseds

telephone number and who actually dialled the said number. PW1,
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in his examination in chief, claimed that he himself dialled the
accused on the number mentioned on a visiting card on the
instructions of PW5. However, in his statement under Section 161
Cr.P.C., he stated that PW3 had dialled the number and thereafter
handed over the phone to him. Significantly, neither Ext. PW1/A
complaint, nor the statement under Section 161 Cr.P.C., nor the
handing over memo Ex PW3/B contains any reference to such a
visiting card, a fact admitted by PW1 in his cross examination. No
such visiting card was ever seized by the investigating agency.

PW4, in his examination-in-chief, deposed that the call was made
by PW1, but in cross examination contradicted himself by stating
that the call was dialled by a CBI Inspector at some undisclosed
number, without any reference to a visiting card. PW5, in his

examination-in-chief, stated that he had directed PW3 to dial the number given by him and to hand over the phone to the PW1, again without any mention of a visiting card. PW3, on the other hand, merely stated in his chief examination that the PW1 was

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talking to someone on the phone and made no assertion with regard to the alleged visiting card. In view of the aforesaid contradictions, it was submitted that the prosecution has failed to establish the alleged demand, which constitutes the sine qua non for the offences punishable under Sections 7 and 13(1)(d) of the PC Act. Consequently, in the absence of proof of such foundational facts, the statutory presumption contemplated under Section 20 of the PC Act does not arise at all. Reliance was placed on the dictum in P Satyanarayana Murthy v the Dist. Inspector of Police & Ors, (2015) 10 SCC152.

13.5 The learned senior counsel for the accused pointed out

to certain contradictions, which according to him, goes to the

root of the matter. They are :- PW1, in his examination-in-chief,

was completely silent about any huge crowd gathering outside

Court No. 253; refusal of public persons to join the post trap

proceedings; the accused being taken to the scooter parking; or the

alleged firing of the service pistol of the accused, asserting instead

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that the entire proceedings concluded inside Court No. 253. In total

contrast, PW4 and PW5 speak of a large crowd compelling

removal of the accused to the scooter stand, though they remain

silent on any firing incident. PW1 deposed that seven persons

came to his residence on the intervening night of 25.09.1995 and

26.09.1995, whereas his statement under Section 161 Cr.P.C. and

Ext. PW1/A complaint mention only six persons. There are further

contradictions regarding the handling of the currency notes, PW1 claiming that they were placed in the left pocket of his shirt, while PW3 asserted they were first wrapped in paper and then put in the PW1s pocket. Contradictions persist on whether the money was wrapped before or after the alleged directions, whether the accused was inside or outside the courtroom when instructions were given, and even on whether the court was functioning at the relevant time. Lastly, PW1 claims that after the alleged firing incident the pistol and cartridges were deposited at Jama Masjid Police Post, whereas the recovery memo records their retention. PW5 is completely

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silent on any firing incident, there being no memo evidencing deposit of the pistol and cartridges. It was further submitted that since PW1 was not declared hostile, his version binds the prosecution and must be treated as its admitted case as held in

Raja Ram v State, (2005) 5 SCC 272.

13.6 The learned senior counsel further submitted that the prosecution failed to collect the voice samples of the accused and the PW1 and did not send the currency notes, matchbox, transcript, audio cassette, or the tele tape recorder for forensic examination or handwriting analysis. Further, the agency failed to examine

Advocate Y.K. Sharma, who was a vital witness to the alleged trap and recovery proceedings, as well as any court staff, lawyers, or members of the public, despite the claim of a large crowd having gathered outside Court No. 253 and at the scooter stand. Even in such circumstances, no independent witness was associated with the recovery memo, casting doubt upon the prosecution version.

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14. Per contra, the learned Special Public Prosecutor

appearing for the CBI submitted that the trial court has duly

considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits. It was therefore submitted that the impugned judgment does not suffer from any infirmity warranting interference by this court. With regard to the allegation of the missing portion of the transcript, the learned SPP submitted that such contention was rightly rejected by the trial court as it was not germane to the incident on hand and therefore it is irrelevant. It was also submitted by the learned SPP that, to the question of non-examination of the PW1s son, the trial court was right in holding that such non-examination cannot prove fatal since it was only repetition of the demand of bribe that had been communicated through him and it is the conduct of the public servant during the trap which turns out to be clinching. It was further contended by

the learned SPP that the non-production of the matchbox, on which
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the name of the lawyer and the chamber details were written by the
accused and handed over to PW1, is not a material lapse and that
the prosecution case does not rest solely upon the said
circumstance. It was further submitted that all due formalities were
duly complied with and the same stood verified through the
testimonies of PW6, PW7 and PW8. It was contended that except
minor discrepancies, PW1 consistently adhered to the version
stated in Ext. PW1/A complaint throughout the proceedings and,
therefore, no defect exists in the foundational facts of the
prosecution case, which were duly supported by the testimonies of
PW3 and PW4, thereby providing sufficient corroboration. It was
also contended that PW3 could not be treated as a wholly hostile
witness, as he merely stated that he was unable to witness the

transaction since he had been asked to sit outside the courtroom.

Under these circumstances, the learned SPP submitted that the

Court is entitled to draw the general presumption as well as the

statutory presumption contemplated under Section 20 of the PC

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Act and that the same has not been rebutted. Reliance was placed

on the dictum in Neeraj Dutta v. State (NCT of Delhi), (2023) 4

SCC 731.

15. Heard Both sides and perused the records.

16. The only point that arises for consideration in the present

appeal is whether there is any infirmity in the impugned

judgment calling for an interference by this Court.

17. I shall first refer to the evidence on record relied on by

the prosecution in support of the case. PW1, in Ext. PW1/A

complaint dated 06.10.1995 based on which the crime was

registered, has stated thus:- on the night of 25.09.1995 at

about 3:00 AM, six men came to my house and called out to me.

When I came out, one man who was in police uniform asked me

if I knew Om Prakash Tiwari. I said that Om Prakash Tiwari

used to work in our university library. Sub-Inspector Manoj

Kumar (the accused) asked me to go to the police station. On

reaching Jama Masjid Post, Manoj Kumar said that Om

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Prakash Tiwari who sells fake degrees has disclosed my name

also in the crime and so if I wanted to save myself, I was to

arrange for 15,000/-, if not he would send me to jail. When I

said that I could not arrange so much money, he beat me up

badly. After that, he asked me to arrange 5,000/- as soon as

possible. Last night, Sub-Inspector Manoj Kumar came to my

house when I was not at home and told my son that I should

contact him at Jama Masjid Police Post on 06.10.1995 after

arranging the money. I have been able to arrange only 4,000/-.

I do not want to give a bribe; therefore, legal action should be taken.

17.1 PW1 when examined before the trial court stood by his case in Exhibit PW1/A complaint. He further deposed in detail regarding the pre-trap formalities undertaken by Inspector Sinha (PW5) and the other officials. As directed by the officials of the

CBI, currency notes worth 4,000/- treated with chemical

powder was kept in the left front pocket of his shirt and he was

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directed to pass on the notes to the accused as and when the

latter made a specific demand. PW4, Laxman Dass, was

directed to act as the shadow witness and to remain with him to

overhear his conversation the accused as well as for watching

the transactions. PW4 was also directed to give signal to the trap

party by putting both his hands on his head in the event the accused accepted the bribe. According to PW1, he alongwith the trap team left the office of the CBI at about 01:00 p.m. in the official vehicle and reached Tis Hazari Court premises by about 01:50 p.m. He along with PW4 proceeded to Court No.253 while the other members followed them at a short distance in small groups. By about 02:15 p.m., the accused arrived and directly entered Court No.253, at which time he was standing at the door of the Court room. On seeing the accused, he signaled to the accused by folding his hands. The accused came out of the Court room, took him to the gallery, at which time PW4 accompanied them. The accused inquired about the identity of

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PW4, to which he replied that PW4 was his Saalu. Thereafter, the accused instructed him to give the money to a lawyer in

chamber no.71. Accused referred to the name of a lawyer whose initials are YK. According to PW1, he then told the accused that he might forget the name of the lawyer and so requested the latter to write the name of the lawyer on a piece of paper. The accused took out a match box and wrote the name of the lawyer as well as the chamber number and signed it. The accused gave the match box to him. PW1 further deposed that when such instructions was given, he again contacted the CBI trap team and informed them about the instructions given by the accused. He, was then, instructed by the TLO (PW5) to go back to court no. 253 and inform the accused that the lawyer was not available in the Chamber. Therefore, as directed, he alongwith PW4 went back to court no.253 and informed the accused that the lawyer was not available in the Chamber. The accused then,

called Head Constable Prem Pal Singh, who was also present in
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the Court room and directed the money to be given to the said constable. As directed by the accused, he came out of the court room proceeded to the gallery with Head Constable Prem Pal Singh, took the money from his pocket and gave it to Prem Pal Singh and asked him to count the same. Head Constable Prem Pal Singh replied that he would not count the money but directed that the same be handed over after wrapping it in a paper. Prem Pal Singh, then give him a piece of paper in which he wrapped the currency notes and passed it to the former who accepted the same and kept it in the right side of his pant pocket. PW4 gave the pre-appointed signal to the CBI team pursuant to which the CBI officials arrived at the spot and apprehended Constable Prem Pal Singh as well as the accused

herein. The TLO (PW5) disclosed his identity and confronted the accused as well as Constable Prem Pal Singh. PW3, Man Singh, recovered the notes from the pocket of Prem Pal Singh.

Both the accused as well as Constable Prem Pal Singh were

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arrested. PW1 also deposed that the match box in which the accused had written the name of the lawyer and chamber number was recovered from him. The currency notes paper in which notes were wrapped as well as the match box were seized as per Exhibit PW3/F recovery memo in which he is an attestor.

The currency notes were marked as Exhibit P1 to P40. The paper in which the notes were wrapped as Exhibit P41 and the matchbox as Exhibit P42. PW1 also deposed that about 15-20 days thereafter he was summoned to the office of CBI and in his presence, the sealed packet of the audio cassette in which his

conversation with the accused had been recorded during the pre trap proceedings, was opened, the contents played and a transcript prepared at which time PW3 Man Singh and PW4 Laxman Dass were present. Exhibit PW3/H is the memo prepared in the said regard which contains his signature. The transcript of the audio cassette has been marked as Exhibit

PW3/G.

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17.2 In the cross examination PW1 deposed that during the course of investigation, the CBI officials had not taken him to the Jama Masjid Police Station for identification of the other police officials who were present alongwith the accused when they came to his residence during the intervening night of 25.09.2015 and 26.09.2015. He denied the suggestion that the Department in which he was working also had suspicion about him also being

involved in the crime relating to issuance of forged degrees of the University. PW1 admitted that when the accused along with Om Prakash and others came to his residence, his wife as well as his son aged 22 years were present and that he was taken away from his residence in their presence. He further deposed that when the accused demanded the bribe at Jama Masjid Police Station, Om Prakash was not present. He also admitted that the CBI officials has not recorded the statement of his son or his wife. He denied the suggestion that he was apprehending his arrest by the police in the crime pertaining to fake degrees and so in order to save himself he

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has lodged a false complaint against the accused herein. PW1 also deposed that a visiting card had been given by the accused which contained the telephone number of the latter. He had handed over the visiting card to the TLO, who had thereafter returned the same

to him and that the visiting card had not seized by the TLO. PW1 admitted that he had not made a reference to the visiting card in Exhibit PW1/A, complaint. He denied the suggestion that the accused had not given his visiting card. He denied the suggestion that he never had any telephonic conversation with the accused from the office of the CBI and that Exhibit P45 audio cassette is a fabricated document. He further deposed that when he reached room no. 253 in Tis Hazari Court, the Court was functioning and the Judge was on his seat. According to PW1, the CBI officials had first apprehended Constable Prem Pal Singh at which time a crowd had gathered. The accused did not come out of the court room but he was apprehended from the inside the court room. PW1 further deposed that he does not recall whether the accused had resisted or

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protested his arrest. The accused at the said time was carrying a

pistol with him. He also deposed that he cannot recall whether the accused had resisted the attempt of the officials of the CBI, when they were trying to bring him out of the court room. He also deposed that he cannot recall as to whether or not the service revolver of the accused had fired when the CBI officials tried to snatch the pistol from the accused. According to PW1 after the accused and Head Constable Prem Pal Singh were apprehended, they were brought down stairs and taken to the Jama Masjid Police post from where they proceeded to the office of CBI.

18. PW2, the then, Deputy Commissioner of Police, Central

District Delhi, deposed that he was the appointing-cum-

disciplinary authority of Sub-Inspectors as well as Head

Constables of the Delhi Police. He had accorded sanction for

prosecution as per Exhibit PW2/A, Order. In the cross examination

of PW2 deposed that he could not recall whether any draft/sanction

order was received in his office alongwith the connected papers.

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He denied the suggestion that Exhibit PW2/A was not prepared as per his directions.

19. PW3 deposed that on 06.10.1995, he was posted in the

Vigilance Department, Head Office, NDMC. On the said day, two

officials from the CBI, visited his office by around 11:a.m., met

his Senior Officer and as per the directions of the latter he as well

as PW4 Laxman Dass were directed to proceed to the office of the

CBI. As directed, he alongwith PW4 proceeded to the Office of

CBI and met PW5, S.K. Sinha, Inspector, CBI, at which time,

PW1 was also present. PW3 further deposed about the complaint

of PW1 as well as the recording of the conversation that took place

between PW1 and the accused during which time the demand was

reiterated. PW3 also deposed regarding pre-trap formalities that

were completed in the office of the CBI, pursuant to which the currency notes treated with chemical powder wrapped in a paper was handed over to PW1 with direction to give the same to the accused as and when a specific demand for the same was made.

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PW3 deposed that he could not recall whether the currency notes were kept in the shirt pocket or pant pocket of PW1. PW4, Laxman Dass, was directed to act as a shadow witness and remain with PW1 to hear the conversation and watch the transactions. PW4 was also directed that in the event of acceptance of bribe by the accused, the former should give a signal by placing his hands on his head. Pursuant to the formalities being completed, they left to the office of the CBI and proceeded to Tis Hazari Courts. He does not remember the number of the court room to which they had gone. However, PW1 and PW4, Laxman Dass were directed to go

ahead and contact the accused. He had been directed to sit on a bench in the gallery outside the court room, that is, the corridor.

The members of the trap team took position near by. By about 3:15 p.m., the accused came into the corridor and entered into the court room also which time PW1 and PW4, Laxman Dass were not visible to him. Five minutes thereafter, he saw PW1, accused and PW4 Laxman Dass coming out of the court room talking to each

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other. Thereafter PW1 and PW4 went stairs down at which time the accused went back into the court room. 10 to 15 minutes later, he saw Shri S.K. Peshin, DSP, running towards the court room and signalling him to follow him. He followed S.K. Peshin, DSP.

However, it took him some time to reach the court room because there was a crowd in the corridor. At this juncture, the prosecutor is seen to have requested the permission of the Court to cross

examine the witness on the ground that the latter had resiled from his previous statement. The request was allowed.

19.1. On further examination by the prosecutor, PW3 denied Inspector S.K. Sinha (PW5) having recorded his statement on 17.10.1995. According to PW3, he was actually called to the office of CBI on 17.10.1995 and Inspector S.K. Sinha had written out a statement on his own which statement had not been read over to him. PW3 deposed that he could not admit or deny if phenolphthalein powder had been applied to the currency notes. He also denied the fact that the currency notes had actually been

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handed over to PW1 as it was and not after wrapping the same in a paper. PW3 admitted that the team had gone to the corridor near room no.253 of Tis Hazari Court. PW3 deposed that he was not shown the matchbox by PW1 and that neither he nor PW4 had

signed on the matchbox or returned the same to PW1. He could not recall whether Inspector Sinha had directed PW1 and PW4 to go to chamber no.71. He denied having given such a statement to the CBI. He also denied having given a statement to the CBI that PW1 and PW4 had returned after some time and informed that Advocate Y.K. Sharma was not present in his chamber. He admitted that PW1 and the shadow witness had gone to room no. 253 and that the remaining members of the trap team had taken positions near the said room. He denied having stated to the CBI that at about 03:15 p.m. he had seen the accused coming out of the room no. 253 and talking to PW1. He also denied having given a statement that he had seen the accused talking to Head Constable Prem Pal Singh. He also denied having stated that he had seen Head

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Constable accepting the money wrapped in paper from PW1 with

his left hand and putting the same in the left side pocket of his pant. He did not see PW4 giving the pre-arranged signal. He also denied having given a statement to the effect that when the trap-team rushed to apprehend Prem Pal Singh and the accused, he had followed them and that he had seen Inspector, CBI, catching hold of the accused by his wrist and Sub-inspector J.B. Singh and Constable Man Singh catching hold of Head Constable Prem Pal Singh by his wrist. According to PW3, at that time he was sitting on a bench as had been earlier directed. He had seen S.K. Peshin, DSP moving towards the crowd. As directed by the DSP, he followed the former and when he reached the spot, he saw the officials of the CBI holding a Constable in uniform and other officials of the CBI bringing the accused out of the court room, at which time money was lying on the floor. He denied having

witnessed the officials of the CBI apprehending the accused. He

also denied having stated to the CBI that on the direction of

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Inspector Sinha (PW5) he had recovered 40 currency notes of the

denomination of 100/- each wrapped in a plain paper from the left

side pant pocket of Prem Pal Singh, Head Constable. He also

denied having stated that as a large crowd had gathered at the spot,

the accused and Prem Pal Singh had been brought down to the

Scooters stand near the entrance of the Tis Hazari Court for

completing the post-trap formalities. According to PW3, when he

saw the court room, it was vacant and the Judge was not at his seat.

PW3, however, admitted that the serial number of the currency

notes when compared with the number that had already been noted

in Annexure-A did tally. He admitted that on a personal search of

PW-1, a matchbox has been recovered from the former which was

seized, then wrapped in cloth, sealed and that he had signed on the same. He denied having witnessed the accused and Head

Constable Prem Pal Singh being searched. However, he admitted his signature in the recovery memo marked as exhibit PW3/F.

PW3 also admitted that on 29.11.1995, he had been called to the
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office of the CBI and that in his presence a sealed packet containing audio cassette had been opened. The cassette played and its transcript prepared. He also admitted that the transcript marked as exhibit PW3/G bears the signature. The memo that was prepared then, that is, exhibit PW3/H also bears his signature. He further admitted that exhibits P1 to P40 are the currency notes which were used for the trap and thereafter recovered. He also admitted his signature in exhibit P41 paper. However, he denied that exhibit P41 was same paper which was used for wrapping the

currency notes while the same was given to PW1. PW3 further deposed that exhibit P41 paper was signed by him during the post raid proceedings. He admitted his signature in Ext. P42 matchbox, which was the same matchbox on which he had signed during the trap proceedings at the Tis Hazari Court. He also admitted that exhibit P43 is the cloth pertaining to the Pulanda of the matchbox which also bears the signature. He admitted his signature in exhibit P45 audio cassette also. In the cross examination PW3 admitted

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that when the accused was apprehended by the officials of the CBI, one Inspector Tokas had taken the service revolver of the accused and while it was being checked, it accidentally fired.

20. PW4, Lakshman Das, the shadow witness, deposed that

he had gone to the office of CBI about 10-12 days after the trap at which time, PW3 Man Singh was also there. On the said date, his

statement had been recorded. However, no other proceedings took place on the said date. PW4 deposed that he could not recall whether on the said date the transcript of the tape recording had been prepared. At this juncture, the prosecutor sought the permission of the trial court to cross examine the witness on the ground that he was suppressing the truth and resiling from his previous statement, which request is seen allowed by the trial court. On further examination by the prosecutor PW4 deposed that he could not admit or deny as to whether he had gone to the office of the CBI on 29.11.1995. He admitted that his statement had been recorded by the Inspector Ved Prakash, but he could not recall if

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the said statement was recorded on 29.11.1995. He admitted the presence of PW1 on his subsequent visit to the office of the CBI.

He also admitted that on the said day a sealed packet containing

the audio cassette was opened and the same played in his presence at which time PW1 as well as PW3 were also present. Exhibit PW3/G is the transcript of the same which contains the signature. He also admitted that PW3/H is the memo prepared relating to the aforesaid proceedings and that the same also contains his signature. He also admitted that after preparing the transcript the audio cassette was re-sealed with the seal of CBI by the Inspector, CBI. He also admitted that the audio cassette was re-sealed with the seal which was brought by PW3 Man Singh to the office of the CBI, which seal had been handed over to the latter on the date of the trap. PW4 identified exhibits P1 to P40 currency notes which were used for the trap and recovered from the Head Constable. He also identified Exhibit P42 matchbox as well as P45 audio cassette. According to PW4, Exhibit P46 is the cloth piece that was used for

sealing the audio cassette during the post-raid proceedings. He also admitted that on 29.11.1995, exhibit P46 cloth piece had been sealed in exhibit P47 envelope when the audio cassette had been taken out from the cloth wrapping for preparing the transcript.

20.1 PW4 in the cross examination deposed that during the course of the pre-raid proceedings, the telephone number of Jama Masjid, Police Station was dialled by Inspector, CBI. The said telephone number had not been disclosed to him during the pre-raid proceedings. He also did not hear the telephonic conversation that took place between PW1 and the accused. PW4 further deposed that on the day of the trap, when he and PW1 were waiting for the arrival of the accused, the latter without stopping to talk to PW1 had directly gone into the court room, at which time, the Presiding Officer of the Court was not at his seat. PW1, went

inside the court room and spoke to the accused at which time, he was standing outside the Court room near the door at about a distance of 1 feet from PW1 and the accused and, therefore, he

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could not hear the conversation that took place between them.

After the conversation between PW1 and the accused, they came

out of the Court room, at which time PW1 offered the money to

the accused but latter did not accept the same. He denied the

suggestion that the accused had not written anything on the

matchbox. He also denied the suggestion that the accused had not

given any direction to PW1 to go the chamber of a lawyer and to

hand over the money to him. He had also not accompanied PW1 to

the chamber of the lawyer. PW4 further deposed that he had seen

Head Constable Prem Pal Singh for the first time when the latter

entered into Court room. Thereafter, a second conversation took

place between PW1 and the accused outside the court room after which the accused again went inside the court room. Thereafter Head Constable Prem Pal Singh who was inside the court room, came out of the court room, at which time money was given by PW1 to the former. PW4 deposed that he does not recall and, therefore, he can neither admit or deny whether the accused had

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directed PW1 to give the money to Head Constable Prem Pal Singh. It was after Prem Pal Singh was apprehended by the Officers of the CBI in the corridor of the court, the accused had been brought out of the court room, at which time he was in his uniform and was also having his service revolver. PW4 deposed that he cannot recall whether or not one bullet got accidentally fired from the service revolver of the accused. When the accused was apprehended outside the court hall, the Judge was not holding

Court. From the corridor of the court hall, both the accused as well as Prem Pal Singh were brought to the Scooter parking of the Tis Hazari Court, Complex, where the post-raid formalities were completed. PW4 denied the suggestion that no post raid proceedings had been conducted in his presence or that post raid memos do not contain his signatures.

21. PW5, the TLO, deposed that on 06.10.1995, he was

working as Inspector, Anti Corruption Branch, CBI, New Delhi, at which time, R.K. Dutta, was the S.P., CBI, ACB, New Delhi. PW5

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identified the signature of R.K. Dutta in Exhibit PW1/A complaint.

PW5 deposed that SP had given him the complaint of PW1 with an endorsement and thereafter as directed he arranged the presence of PW3 and PW4 for whom requisition signed by the SP was sent through the Duty Officer. PW5, described in detail the pre-trap

proceedings, the incident that took place at Tis Hazari Court and the formalities post trap proceedings. In the cross examination PW5 deposed that he had not questioned or recorded the statement of PW1s son. He had requisitioned the chemical powder from the Malkhana and the same had been brought by the in-charge of Malkhana. He also did not record the statement of the Advocate to whom the money was directed to be paid by the accused. When the accused was apprehended, was in the uniform and was carrying a pistol. The service pistol of the accused was seized and when it was being unloaded at the Scooter parking by Inspector R.S.

Tokas, the last round accidentally fired. This fact has been mentioned in the recovery memo as well as in the case diary. The

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pistol was deposited at the Police Station and the DCP concerned was duly intimated. He denied the suggestion that one round from

the pistol got accidentally fired when the trap team were trying to snatch the service revolver of the accused forcibly in the gallery of the court premises and that the firing incident attracted a large crowd. At the time of the incident, Head Constable Prem Pal Singh was posted at Chandni Mahal, Police Station and the accused at Jama Masjid, Police Station. According to PW5, the trap took place on the second floor of the Tis Hazari Court, Delhi, and the post trap proceedings were conducted at the Scooter stand of the Tis Hazari Court. He admitted that no hand wash of the accused or Prem Pal Singh had been taken.

22. PW6, the then, SHO, Karol Bagh, Police Station deposed

that in response to letter No. RO 86(A)/95/ dated 06.12.1995 received from Inspector Ved Prakash, ACB, (CBI), Delhi, he had given Exhibit PW6/A letter regarding the details of the posting of the accused as Sub-Inspector and also regarding the posting of

Head Constable Prem Pal Singh.

23. PW7, the then, SHO, Jama Masjid, Police Station

deposed that investigation of Crime No. 187/1995, Jama Masjid,

Police Station, had been entrusted to SI Manoj Kumar (the

accused), who was at that time posted at the said station.

24. PW8, SHO, Chandni Mahal, Police Station, deposed that

on 06.10.1995, the accused persons in FIR No. 244, 247, 248, 249,

250 and 245 were produced before the Court and that custody of

all the said persons had been entrusted to Head Constable Prem Pal

Singh.

25. On behalf of the accused, DW1, Sub-Inspector, DCP,

(Central District), Delhi Police, was examined. He produced the

file relating to the sanction for prosecution of the accused. Exhibit

DW1/A is a letter addressed to P.N. Aggarwal, D.C.P. (Central

District) under the signature of S.P., C.B.I. and Exhibit DW1/B is

the draft performa order sent by the CBI.

26. Now the question is, whether the aforesaid evidence is

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sufficient to find the accused guilty of the offences charged against

him. It is true that Om Prakash Tiwari; PW1s son, and the other

members of the group of officials present along with with the

accused, when he is alleged to have gone to the residence of PW1

in the intervening night of 25.09.1995 and 26.09.1995 were not

examined. Om Prakash Tiwari, according to the prosecution, was

an accused in Crime no. 187/95, Jama Masjid, police station

relating to sale of fake university degrees. The appellant/accused

admits that he was the Investigating Officer in the said crime.

According to PW1, the accused told him that the investigation

revealed that the former was also involved in the crime, pursuant

to the same, he was taken to the Police Station. PW1 deposed that

when the demand for bribe was first made by the accused in the Police Station, Om Prakash Tiwari was not present. Moreover, as rightly pointed out by the trial court, Om Prakash Tiwari, in the light of his role in the crime would have been a reluctant witness in this case.

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26.1. As far as, the non-examination of the other officials present alongwith the accused is concerned, is also of no consequence in this case as evidence has to be weighed and not counted. The complainant in a case of this nature is not an accomplice and the question to be considered is whether his testimony can be relied on or believed to substantiate the prosecution case of demand of the bribe. It is not always necessary that his testimony has to be corroborated by independent evidence.

27. I have already referred to in detail the testimony of PW1

which has not been discredited in any manner and no material(s) have been brought in to doubt his version of the story. It is also true that PW1s son has not been examined. This also appears immaterial since PW1 stood by his case all throughout the proceedings. The fact that the accused was the investigating officer in the crime relating to fake degrees and the fact that he was the Sub-Inspector, Jama Masjid, Police Station at the relevant time has been brought out from the materials on record. Therefore, this is

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not a case, in which the accused had no connection whatsoever with the crime that was being investigated, in which crime, PW1s involvement was suspected.

28. It was also pointed out that the authenticity of the audio

cassette is in doubt as it was not kept in proper custody. The transcript that has been prepared also does not tally with the

contents of the audio cassette. It is true that a small portion of the conversation at the end is not there in the transcript. This part however does not deal with the relevant portion dealing with the demand. As regards, the custody and the manner it was kept, I have already referred to the testimony of the witnesses including that of PW3 and PW4. Though, both of them are partially hostile to the prosecution case, they have supported the prosecution case in material particulars. Even if, a witness is partially hostile to the prosecution case, is no reason to disbelieve or disregard his entire testimony, if the remaining evidence or testimony is credible.

PW3 and PW4 also speak of the recording of the conversation that

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took place during the pre-trap proceedings, the recording of the same, as well as packing and sealing of the cassette. It is true that for preparation of the transcript, the sealed packet containing the

audio cassette was opened in the office of the CBI. But this was done after obtaining the order of the court. It was also in the presence of PW1, PW3 and Pw4. According to PW4, after the transcript was prepared, the audio cassette was again packed and sealed with the seal brought by PW3. PW4 also deposed that the said seal had been handed over to PW3 on the day of the trap.

Nobody has a case that the sealed packet had been tampered with during the period from the pre-trap proceedings when the cassette had been sealed and the day on which it was opened for preparing the transcript.

29. Here, the accused has not been able to show as to why

PW3 and PW4 should also depose falsehood against him. PW3 and PW4 supports the prosecution case to a great extent relating to the pre-trap proceedings including the recording of the

conversation, the proceedings that took place in Tis Hazari Court and the post trap proceedings. Even assuming for argument sake that the audio cassette and the transcript cannot be relied on, the question that arises is-does the absence of the same in any way result in discarding the entire remaining materials on record and throwing out the prosecution case. The answer would certainly have to be in the negative in the light of the other materials on record. The purpose for which the telephonic conversation between PW1 and the accused was recorded appears to be to confirm and ascertain whether the complaint given by PW1 was actually genuine or not. The demand for the bribe was not made for the first time when the conversation was recorded, but it was on an earlier date, that is, the day on which PW1 had been taken to the police station on 25.09.1995/26.09.1995. Even if the audio

cassette and transcript are ignored, there are other materials on record, which also needs to be taken into consideration by this Court.

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30. I have already referred to in detail the testimony of the material prosecution witnesses which is relied on by the prosecution to prove the case. As noticed earlier, though, PW3 and PW4 are partially hostile, they have supported the prosecution in material particulars. Their testimony to the extent of supporting the prosecution case can certainly be accepted (Mohan Lal v. State of Punjab; AIR 2013 SC 2408; Lella Srinivasa Rao v. State of A.P.; AIR 2004 SC 1720). No materials have been brought in to disbelieve or discard their testimony. Therefore, I find no reasons to disbelieve to them also.

31. Further, the inconsistencies in the testimonies of PW1,

PW3 and PW4 highlighted on behalf of the appellant/accused to

which I have already referred to in paragraphs 13.4 and 13.5 of this

judgment are not material and has not in any way affected the core

prosecution case. As far as the firing incident is concerned, it is

true that PW1 is silent about it. PW4 deposed that he could not

recall such an incident. PW3 and PW5 admit the same. However,

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this is also immaterial because this incident is admitted by the

accused himself. In fact, a suggestion was put to PW 5 on behalf of

the accused during cross examination that the gun had accidentally

fired when the CBI team tried to snatch it from the accused. That

being the position, the silence of PW1 on this aspect or the

inconsistent version of the other prosecution witnesses is also of no

consequence.

32. Another aspect that was pointed out is regarding the

matchbox on which the accused wrote the name of the lawyer and the chamber number in which the money was directed to be delivered. It would certainly have been ideal, had the Investigating Officer (IO) got the handwriting on the same examined by an expert and opinion obtained. However, for reasons best known to the IO, the same was not done. Defects in the investigation cannot automatically go to the benefit of the accused or result in automatic acquittal unless materials are shown that the evidence brought on record is unbelievable or that the prosecution case is so

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improbable that it could never have occurred. That is not the position in the case on hand. Here again, it is pertinent to mention that PW3 and PW4 support this aspect of the prosecution case also.

33. Initially, PW3 deposed that PW1 had not shown him the matchbox. But on further questioning, he admitted that the

matchbox had been recovered from PW1 and that the same had been seized and sealed. PW3 also identified exhibit P42 matchbox. PW3 admitted his signature on the same. Likewise, PW4 also identified Ext. P42 matchbox. It is quite interesting to note that when PW1 was cross-examined, there is not even a suggestion seen put to him denying the endorsements stated to have been made by the accused on the matchbox.

34. Yet another argument advanced is the non-examination of Advocate Y. K. Sharma or any of the members of the public or the court staff that were present on the day in the court premises, also cast serious doubt of the prosecution case. According to PW1, the accused had first instructed him to deliver the money to the

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aforesaid advocate. In such circumstance, the prosecution cannot be expected to examine such a person as their witness as there is

no likelihood of him supporting the prosecution case. The non-examination of said witness has also not affected the prosecution case because as stated earlier PW3 and PW4, who are in no way inimical terms with the accused has supported the prosecution case in all material particulars. Their testimony corroborates the testimony of the remaining prosecution witnesses, who also stood by the prosecution case. Hence, I find no reason(s) to disbelieve them or discard their testimony.

35. Further referring to Ext. PW1/A complaint and the

Section 161 statement as well as the testimony of PW1, it was argued that there are contradictions in his version. This argument is also liable to be rejected because a statement under Section 161 Cr.P.C. cannot be used for any purpose other than for the purpose of contradiction. The statements made under Section 161 are statements made to the police during the course of investigation

and the same cannot be used except for the purpose stated in the

proviso to the Section. Under the proviso to Section 162 (1)

Cr.P.C., such statements can be used only for the purpose of

contradicting a prosecution witness in the manner indicated in

Section 145 of the Evidence Act and for no other purpose. They

cannot be used for the purpose of seeking corroboration or

assurance for the testimony of the witness in Court. (See

Tahsildar Singh v. State of U.P., AIR 1959 SC 1012; Satpal v.

Delhi Administration, 1976 (1) SCC 727 and Delhi

Administration. v. Lakshman Kumar 1985 KHC 741: (1985) 4

SCC 476).

36. Further, no contradictions have been brought out or

proved in the manner contemplated under law. The procedure for

contradicting a witness is by resort to Section 145 of the Evidence

Act. Section 145 is in two parts :- the first part enables accused to cross examine a witness as to the previous statement made by him in writing or reduced to writing without such writing being shown

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to him; the second part deals with a situation where the cross examination assumes the shape of contradiction: in other words, both parts deal with cross examination; the first part with cross examination other than by way of contradiction, and the second with cross examination by way of contradiction only. Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and if the former statement has been reduced to writing, then Section 145 requires that his attention must be drawn to those parts which are used for the contradiction. But that position does not arise when the witness admits the former

statement. In such a case, all that is necessary is look to the former statement of which no further proof is necessary because of the admission that it has been made. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. His

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attention can be drawn to that part of the statement made before the court which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; If he does not admit, the practise generally followed is to admit it subject to proof by the police officer (See Tahasildar Singh (supra) and State of Kerala versus Thomas, 2005 KHC 1823 :

2005 (4), KLT SN 103).

37. The aforesaid procedure is not seen followed in the case

and hence, the appellant/accused cannot take advantage of the contradictions in the statement of the witness.

38. Another argument advanced is that the mandatory

provisions of the CBI manual was failed to be complied with,

which is yet another defect in the prosecution case. The Apex

Court in the Constitution Bench decision in *Lalita Kumari v.*

Govt. of U.P., 2013(4) KHC 552 : (2014) 2 SCC 1 has held that

the Crime Manual of the CBI is not a Statute and has not been

enacted by the legislature. It is a set of administrative orders issued

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for internal guidance of the CBI officers. It cannot supersede the

code. Therefore, even assuming that there was violation(s) of the

Manual, that also cannot go against the prosecution. (See also

State of Rajasthan v. Ramsarai, 1964 KHC 568, AIR 1964 SC

1361).

39. In the light of the materials on record, I do not find any

reason to disbelieve the prosecution case. Hence, I find no

infirmity in the impugned judgement calling for an interference by

this court.

40. In the result, the appeal is dismissed. Application(s), if any,

pending shall stand closed.

CHANDRASEKHARAN SUDHA

(JUDGE)

FEBRUARY 02, 2026

pma/rs/abp

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