

IN THE COURT OF MANOJ KUMAR : SPECIAL JUDGE, (PC
ACT) (CBI)-17, ROUSE AVENUE COURT COMPLEX,
NEW DELHI

CNR No. DLCT11-000742-2019
Cri. Case No. 15/2019
ID No. 169/2019
FIR No. RC DAI-2018-A-0018

In the matter of:

The State*
through Central Bureau of Investigation

VERSUS

**Rajender Kumar Garg @ R.K. Garg,
son of late Dev Karan, resident of
House No. 13, Sudha Sagar Colony,
Foy Sagar Road, Ajmer, Rajasthan.**

..... Accused

Date of Institution : 31.7.2018
Date of Reserving judgment : 27.8.2024
Date of pronouncement : 29.8.2024

For State : Mr. Neel Mani, Public Prosecutor.
For Defence : Mr. Pradeep Rana and Mr. Gagan
Bhatnagar, Advocates.

JUDGMENT :

On 31.7.2018, the police report (charge sheet) giving rise to the present case was put up by the State through Inspector Harnam

Singh, forwarded by Mr. S.K. Sinha, Superintendent of Police, Central Bureau of Investigation (CBI), Anti Corruption Branch (ACB), New Delhi before the learned predecessor with a view to take cognizance of offences punishable under sections 7 and 13(2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988 (Act 49 of 1988), and to proceed against accused Rajender Kumar Garg @ R.K. Garg, age 53 years, who at the relevant time was stated to be working as a Dealing Clerk with the Central Reserved Police Force (CRPF) at Sector-23, Rohini, New Delhi for having committed the said offences.

2. As per the police report, a complaint in writing (Ex.PW7/A) dated 21.5.2018 was submitted by complainant (informant) Vikram Singh Yadav (PW7), son of Sh. Hari Singh Yadav to CBI for taking action against the accused. It was, inter alia, stated in the said complaint that Vikas Yadav, the elder brother of the complainant, who was a Constable in CRPF died in the year 2007, and after his death, his wife got married with the complainant; that a civil suit was filed in Dwarka Court for obtaining the Succession Certificate of legal heir of late Vikas Yadav; that by order dated 15.11.2017 (passed by the court) Smt. Vidhya Yadav, grandmother, became the guardian of Aayush Yadav, and the court also directed to CRPF to release pension and arrears to Ayush Kumar from 2007 to till date; that thereafter, all the documents were submitted to CRPF by the complainant; that on 02.5.2018, at about 01:30 pm the complainant met accused R.K. Garg, dealing clerk, CRPF office at Sector-23,

Rohini, New Delhi for knowing about the status of pension and arrears, and thereafter, on 17.5.2018, at about 09:17 am the complainant received a call from the accused on which he (the accused) demanded ₹80,000/- as bribe to release the pension and arrears, and also asked to meet him on Monday or Tuesday, that is 21/22.5.2018. It is further stated in the police report that the said complaint Ex.PW7/A, made by Vikram Singh Yadav was marked to Sub-Inspector (SI) T.K. Singh (PW10), CBI, ACB Delhi for verification; that SI T.K. Singh conducted verification of the complaint's allegations in the presence of independent witness Mannu Kumar (PW17), Assistant Section Officer, Ministry of HRD, Shastri Bhawan, New Delhi and complainant Vikram Singh Yadav; that during the verification, conducted on 21.5.2018, the complainant made a call from his mobile phone on the mobile phone of the accused in the presence of independent witness Manu Kumar; that the conversation which took place between the accused and complainant Vikram Singh Yadav was recorded in a memory card (Q-1) through a DVR, and the verification confirmed the demand of bribe of ₹35,000/- as part payment of ₹80,000/- by the accused from Vikram Singh Yadav; that during the verification proceedings the aforesaid memory card was sealed by using CBI seal.

3. As per the police report, on the basis of the said complaint dated 21.5.2018 of Vikram Singh Yadav and verification report (Ex.PW10/D) of SI T.K Singh the first information report (FIR:

copy Ex.PW18/A), giving rise to the instant case was registered against accused R. K. Garg, dealing clerk, CRPF, Sector-23, Rohini, New Delhi on 21.5.2018 under section 7 of Act 49 of 1988 and the investigation was entrusted to Inspector N.C Nawal (PW19), CBI, ACB Delhi. As per the police report, on 21.5.2018 a trap team was constituted, comprising of Inspector N.C Nawal, Trap Laying Officer (TLO), independent witnesses Mannu Kumar, Assistant Section Officer, Ministry of HRD, Shastri Bhawan, New Delhi and Narender Singh (PW16), Assistant Section Officer, Ministry of HRD, Shastri Bhawan, New Delhi and others; that the team assembled in the CBI office and purpose of the assembly of laying a trap on accused R.K Garg was explained to all; that Vikram Singh Yadav (the informant) produced amount of ₹35,000/-, the numbers and denomination of which were recorded in the handing over memo (Ex.PW10/E) dated 21.5.2018; that the GC notes were smeared with phenolphthalein {C₂₀H₁₄O₄: IUPAC name 3,3-Bis(4-hydroxyphenyl)-2-benzofuran-1(3H)-one} powder, and the witness was asked to touch the tainted amount of ₹35,000/- and wash the fingers in the freshly prepared solution of sodium carbonate and water; that on doing so, the solution turned pink in colour; that after explaining the significance of reaction, pink colour solution and the remaining phenolphthalein powder were thrown away. As per the police report, a personal search of the complainant was conducted by the independent witness and he was not allowed to keep anything incriminating with him, except his mobile

phone; that the tainted bribe amount of ₹35,000/- was kept in the left side front pocket of grey colour pants of the complainant by witness Narender Singh; that the complainant was directed not to touch the said tainted bribe amount and hand over the same to accused R.K Garg only on his specific demand/or on his specific direction to some other person. As per the police report, a new blank memory card was inserted in the DVR and introductory voices of both the witnesses (Mannu Kumar and Narender Singh) were recorded in it; that the DVR containing the above said memory card was later on given to the complainant on reaching the spot in switched on mode in order to record the likely conversation between him and the accused. As per the police report, the complainant was directed to give the signal by rubbing his face with his both hands and also to make a call from his mobile phone to the mobile phone of Inspector N.C Nawal, TLO, immediately after the transaction of bribe; that all the pre-trap proceedings were recorded in detail in a handing over memo (Ex.PW10/E) dated 21.5.2018. As per the police report, after completion of handing over proceedings, the trap team along with the independent witnesses and the complainant left the office at about 5:40 pm and reached around 7:10 pm on the outer ring and going towards Peeragarhi from District Centre, Janakpuri; that the DVR was put on recording mode and was placed in the pocket of the complainant to record the likely conversation between him and the accused; that the complainant kept with him a packet of cigarettes, match box and

photos from his car and went towards the spot which was pre decided by the accused; that the shadow witness Narender Singh also followed the complainant in a discreet manner; that the trap team members along with another witness Mannu Kumar also followed them in discreet manner. As per the police report, after some time accused R.K. Garg approached complainant Vikram Singh Yadav where he (the complainant) was standing; that the shadow witness Narender Singh was also standing near the complainant and the accused, and thereafter, the accused through gesture of his hand demanded bribe money and photos from the complainant, and on this, the complainant handed over the bribe amount of ₹35,000/- and the photos to accused R.K Garg, who accepted the same; that at about 7:34 pm, the complainant gave pre-decided signal by making a call on the mobile phone of Inspector N.C Nawal, and immediately, N.C Nawal, TLO alerted all the trap team members as well as the witness and all rushed towards the point where the accused was standing with the complainant. As per the police report, the DVR was taken back from the complainant and switched off; that Inspector N.C Nawal, after giving his and trap team's introduction challenged accused R.K Garg for having accepted bribe amount of ₹35,000/- from Vikram Singh Yadav, and on this accused R.K Garg kept mum and became perplexed; that the complainant confirmed that accused R.K Garg had accepted the bribe amount from him by his right hand, and kept in his right hand side pocket of the pants and also kept the photos in the

pocket of the T-shirt worn by him; that the bribe amount of ₹35,000/- was recovered from the possession of accused R.K Garg by Mannu Kummar, the independent witness and the photographs were also recovered from his possession. As per the police report, both the witnesses tallied the numbers and denomination mentioned in the handing over memo with recovered bribe amount and found in toto; that the aforesaid tainted bribe amount was sealed by CBI at the spot. As per the police report, the hand wash of accused R.K Gag was taken in a separate fresh colourless solution of sodium carbonate and water which turned pink in colour; that the hand wash was transferred in a separate neat and clean glass bottle and the same was sealed; that the pants pocket wash of accused R.K Garg was also taken in a separate fresh colourless solution of sodium carbonate and water which also turned pink in colour; that the said wash was also transferred in a separate neat and clean glass bottle and the same was also sealed. As per the police report, the DVR used for recording the conversation between accused Rajender Kumar Garg @ R. K Garg and complainant Vikram Singh Yadav was played which confirmed the version of the complainant and the witness; that the memory card (Q-2) of the DVR was taken out and was sealed by using CBI seal. As per the police report, accused Rajender Kumar Garg @ R. K Garg volunteered to give his specimen voice which was taken in a new and blank memory card (S-1) with the help of the DVR in presence of both the independent witnesses, and the said memory card was also sealed; that

the DVR used during verification, pre trap and post trap proceedings was also sealed. As per the police report, during the investigation it was established that the dependent family pension file of Master Ayush Yadav, son of late Vikash Yadav marked as "P-III- 31/2007-pension, court case, Ayush Yadav, son of No.045010029 CT/BUG late Vikash Yadav of 14th BN, DOD-15/04/2007" was received in the office of the Director (Accounts), Pay & Accounts Office, CRPF, Sector-23, Rohini, Delhi vide diary No. 66, dated 2018, and the same was handed over to Rajender Kumar Garg @ R.K Garg, being the dealing hand to deal with the matters of GC-II, CRPF, Ajmer as per the distribution of the work. As per the police report, during the course of investigation, the opinion on washes was obtained; that the expert, vide CFSL No. 2018/C- opined "The exhibits RHW and RPPW gave positive tests for the presence of phenolphthalein"; that the voice exhibits were sent to FSL for opinion. As per the police report during investigation, complainant Vikram Singh Yadav identified his voice and the voice of Rajender Kumar Garg @ R.K Garg; that Sanjay Bhatia, Assistant Accounts Officer also identified the voice of accused Rajender Kumar Garg @ R.K Garg, Senior Accountant. As per the police report, during investigation, the CDR/CAF of mobile No. 7976311074 was collected from the Nodal Officer, and the SIM was found registered in the name of Ms. Arushi Garg, daughter of Rajender Kumar Garg, resident of Plot No.13, Sudha Sagar Colony, Foy Sagar Road, Ajmer, Rajasthan; that at the relevant period of time the said SIM was used by accused

Rajender Kumar Garg @ R.K Garg and the said SIM was also recovered with the mobile phone from his personal search during the trap proceedings. As per the police report during investigation, the CDR/CAF of mobile No. 9958471585 was collected from the Nodal Officer, and the SIM was found registered in the name of Rajender Kumar Garg, son of Sh. Devekaran Garg, resident of Plot No.13, Sudha Sagar Colony, Foy Sagar Road, Ajmer, Rajasthan. As per the police report during investigation, the CDR/CAF of mobile No. 9311220149 was collected from the Nodal Officer, and the SIM was registered in the name of Vikram Singh Yadav, son of Sh. Hari Singh Yadav, resident of House No. RZ-D-385, Street No.14, Sadh Nagar, Palam Colony, New Delhi. As per the police report, during investigation it was established that the accused was competent to deal/process the dependent family pension file of Master Ayush Yadav; that Rajender Kumar Garg @ R.K Garg demanded a bribe of ₹50,000/-, and later settled at ₹35,000/-, from complainant Vikram Singh Yadav, which was accepted by accused Rajender Kumar Garg @ R.K Garg, Senior Accountant; that the said bribe amount was recovered from the specific possession of accused Rajender Kumar Garg @ R.K Garg, Senior Accountant, in the presence of independent witnesses and other CBI team members It is further stated in the police report that the accused has committed offences punishable under section 7 and section 13(2) read with section 13(1)(d) of Act 49 of 1988. It is also stated in the police report that the sanction order for

prosecution against accused Rajender Kumar Garg @ R.K Garg has been received from the competent authority.

4. My learned predecessor, having taken cognizance of the offences upon the police report, procured the presence of the accused before the court and supplied copies of the police report and the documents etc. filed along with the same to him.

5. On 20.9.2018, after hearing the Public Prosecutor as well as the accused and his counsel, the accused was charged with the commission of offences punishable under section 7 and section 13(2) read with section 13(1)(d) of Act 49 of 1988. The charge was read over and explained to the accused to which he did not plead guilty and claimed trial.

6. During the trial, on 22.5.2019 a report (Ex.PW20/6) prepared by Deepak Kumar Tanwar (PW20), Principal Scientific Officer (Physics)-cum-Assistant Chemical Examiner to the Government of India, Central Forensic Science Laboratory (CFSL), Central Bureau of Investigation, New Delhi was filed by the investigating officer.

7. In support of its case the prosecution got examined PW1 Constable Rishi Kumar, Anti Corruption Branch, CBI, New Delhi, PW2 Surender Kumar, Nodal Officer, Bharti Airtel Ltd., PW3 Wasim Mohd., Nodal Officer, Bharti Airtel Ltd., PW4 Kamal Kumar, Nodal Officer, Reliance Jio Infocom, PW5 Head Constable (HC) Vishnu Prasad Pandey, posted with CRPF, GC-2, Ajmer, PW6 Sanjay Bhatia,

Pay & Accounts Officer, PAO (Supply Division), Kolkata, PW7 Vikram Singh Yadav (the informant), PW8 Inspector Anil Kumar Singh (CBI), Anti Corruption Branch, CGO Complex, New Delhi, PW9 Satpal Sehrawat, Assistant Malaria Inspector, South Delhi Municipal Corporation, PW10 SI T.K. Singh, Anti Corruption Branch, CBI, PW11 Kuldeep Kumar, PW12 P.K. Chawla, PW13 Constable Manoj Kumar, Anti Corruption Branch, CBI, New Delhi, PW14 Ms. Deepti Bhargav, Senior Scientific Officer-II-cum-Assistant Chemical Examiner to the Government of India, CFSL, New Delhi, PW15 Chandra Prakash, Senior Administrative Officer, CBSE, Delhi, PW16 Narender Singh, PW17 Mannu Kumar, Assistant Section Officer, Ministry of HRD, New Delhi, PW18 Inspector Harnam Singh, Inspector Law & Order, Delhi Police, PW19 N.C. Nawal, Deputy Superintendent of Police (CBI) and PW20 Deepak Kumar Tanwar. During examination of prosecution witnesses documents and objects Ex.PW2/A (CDR pertaining to the mobile phone of Vikram Singh Yadav), Ex.PW2/B (Customer application form pertaining to Vikram Singh Yadav), Ex.PW2/C (Copies of the documents pertaining to Vikram Singh Yadav), Ex.PW2/D (Copy of bill plan), Ex.PW2/E (Certificate under section 65B of the Indian Evidence Act, 1872), Ex.PW2/F (Production cum seizure memo), Ex.PW3/A (EKYC application form pertaining to the accused), Ex.PW3/B (CDR pertaining to the mobile phone of the accused), Ex.PW3/C (Tower location chart), Ex.PW3/D (Certificate under section 65B of the Indian

Evidence Act, 1872), Ex.PW3/E (Letter received from CBI), Ex.PW3/F (Covering letter), Ex.PW3/G (Seizure memo), Ex.PW4/A (EKYC application form pertaining to Arushi Garg), Ex.PW4/B (CDR pertaining to the mobile phone of Arushi Garg), Ex.PW4/C (Tower location chart), Ex.PW4/D (Certificate under section 65B of the Indian Evidence Act, 1872), Ex.PW4/E (Seizure memo), Ex.PW4F (Forwarding letter), Ex.PW5/A (File pertaining to the family pension and arrears), Ex.PW5/B (Letter dated 28.3.2018 in file Ex.PW5/A), Ex.PW5/C (Calculation sheet in file Ex.PW5/A), Ex.PW5/D (Statement of family pension in file Ex.PW5/A), Ex.PW5/E (Arrears calculation sheet in file Ex.PW5/A), Ex.PW5/F (Sanction order regarding pension etc. in file Ex.PW5/A), Ex.PW5/G (Form of application for grant of family pension in file Ex.PW5/A), Ex.PW5/G-1 to Ex.PW5/G-24 (Annexures to application Ex.PW5/G in file Ex.PW5/A), Ex.PW5/H (Form No. 3 regarding details of family in file Ex.PW5/A), Ex.PW5/J (Declaration by Nodal Officer in file Ex.PW5/A), Ex.PW5/K (No Objection for settlement in file Ex.PW5/A), Ex.PW5/L (Form of NPS in file Ex.PW5/A), Ex.PW5/M (Copy of E stamp in file Ex.PW5/A), Ex.PW5/N (Statement of family pension arrears dated 16.5.2018 pertaining to late Vikas Yadav), Ex.PW6/A (Forwarding letter), Ex.PW6/B (Collectively) (Centralized Pension Proposal Register), Ex.PW7/A (Complaint), Ex.PW7/B (Brown colour envelope), Ex.PW7/C (Photographs), Ex.PW7/D (Transcription memo of Q-1), Ex.PW7/E (Transcription memo of Q-

2), Ex.PW7/F (Transcription cum voice memo dated 11.6.2018), Ex.PW8/A (Authorization letter), Ex.PW8/B (Seizure memo), Ex.PW8/C (Papers seized during the search), Ex.PW8/D (Papers seized during the search), Ex.PW10/A (Brown colour envelope), Ex.PW10/B (Paper cover of memory card), Ex.PW10/C (Plastic cover of memory card), Ex.PW10/D (Memo dated 21.5.2018), Ex.PW10/E (Memo dated 21.5.2018), Ex.PW10/F (Memo dated 21.5.2018), Ex.PW11/A (Letter dated 01.6.2018), Ex.PW12/A (collectively) (Letter dated 06.6.2018 with enclosures), Ex.PW13/A (Forwarding letter 08/07.6.2018), Ex.PW14/A (CFSL report dated 19.6.2018), Ex.PW14/P-1 (Bottle containing Right Hand Wash), Ex.PW14/P-2 (Bottle containing Right Pants Pocket Wash), Ex.PW14/P-3 (Yellow colour envelope), Ex.PW14/P-4 (First cloth wrapper), Ex.PW14/P-5 (First cloth wrapper), Ex.PW15/A (Sanction for prosecution order dated 13.7.2018), Ex.PW16/A (Brass seal), Ex.PW16/B (Arrest cum personal search memo dated 21.5.2018), Ex.PW16/C (Site plan), Ex.PW16/D (Brown colour envelope marked Trap Maney), Ex.PW16/E (Handing over memo), Ex.PW16/F (Pants bearing trade mark Reymonds), Ex.PW16/G (Brown colour envelope containing DVR), Ex.PW16/H (Brown colour envelope containing company packing of SanDisk memory card), Ex.PW16/I (Paper cover), Ex.PW16/J (Plastic cover), Ex.PW16/K (Brown colour envelope), Ex.PW16/L (Paper cover), Ex.PW16/M (Plastic cover), Ex.PW18/A (Copy of FIR), Ex.PW18/B (Letter dated 04.6.2018), Ex.PW18/C

(Production cum seizure memo dated 07.6.2018), Ex.PW18/D (Letter dated 01.6.2018), Ex.PW19/1 (Letter dated 22.5.2018), Ex.PW20/1 (Yellow envelope qua Q-1), Ex.PW20/2 (Yellow colour envelope qua Q-2), Ex.PW20/3 (Yellow colour envelope qua S-1), Ex.PW20/4 (Yellow colour envelope qua DVR), Ex.PW20/5 (DVR), Ex.PW20/6 (CFSL report dated 03.5.2019), Q-1 (Memory card in cover containing files 180521_1028, 180521_1028_01, 180521_1029, 180521_1033 and 180521_1152), Q-2 (Memory card in cover containing files 180521_1720, 180521_1720_01, 180521_1913 and 180521_1923) and S-1 (Memory card in cover containing files 180522_0217, 180522_0218, 180522_0220, 180522_0221, 180522_0224 and 180522_0225) have been adduced in evidence. During cross-examination of PW7 Vikram Singh Yadav and PW16 Narender Singh they were confronted with writing contained in documents Ex.PW7/DX1 and Ex.PW16/DX1 respectively.

8. On 11.8.2023, the accused was examined under section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and his statement was recorded. During his examination under section 313 of Cr.P.C. the accused denied the correctness of, or expressed ignorance about, the incriminating circumstances appearing against him during the prosecution evidence. During his examination under section 313 of Cr.P.C. the accused stated that during the period 20.4.2018 to 21.5.2018 he was taking care of Group Centre 1, and that during the said period the charge of Group Centre 2 was not assigned to him.

During his examination under section 313 of Cr.P.C. the accused further stated that he was having some matrimonial dispute with his wife, and in that connection, in the month of January 2018, for the purpose of consultancy, he met the complainant as he was practicing as an advocate. During his examination under section 313 of Cr.P.C. the accused further stated that for the purpose of filing the divorce petition, the complainant told him to pay ₹2,00,000/- to him and took ₹1,00,000/- in advance from him. During his examination under section 313 of Cr.P.C. the accused further stated that during the said consultancy/meeting with the complainant he (the complainant) got to know that he (the accused) was working in CRPF's Pension Department. During his examination under section 313 of Cr.P.C. the accused further stated that in the month of April 2018, the complainant told him to help his mother for the purpose of pension of Master Ayush, to which he informed the complainant that he was not the person concerned for the said work as he was working in GC-1 and the pension work of Vidya Devi was concerning GC-2 and the official concerned of the said branch, that is GC-2 was Vishnu Pandey and S.S. Rana. During his examination under section 313 of Cr.P.C. the accused further stated that in the meantime due to intervention of his well wishers and relatives the matrimonial dispute between him and his wife was settled and he did not wish to file any case against her, and upon which he demanded back his money of ₹1,00,000/- from the complainant which was given to him for filing a case. During his

examination under section 313 of Cr.P.C. the accused further stated that after his insistence and request, the complainant agreed to return ₹80,000/- after deducting ₹20,000/- as consultancy fee in installments. During his examination under section 313 of Cr.P.C. the accused further stated that the complainant did not want to return the said amount since the beginning, and that is why he (the complainant) hatched a deep rooted conspiracy to falsely implicate him (the accused) in a false case and on the same time he (the complainant) kept on talking to him harmoniously on the pretext that he (the accused) should request Vishnu Pandey to make the process of the application of Vidya Devi fast. During his examination under section 313 of Cr.P.C. the accused further stated that even on the day of his arrest, and previously, the complainant kept on telling him that his money would be returned. During his examination under section 313 of Cr.P.C. the accused further stated that the complainant called him on the pretext of returning his money, but he was falsely arrested in this case after planting the tainted bribe money, photos and other articles in collusion with the investigating agency. During his examination under section 313 of Cr.P.C. the accused further stated that no demand of bribe, as alleged, was ever made, the recording of voice have been tampered, edited and manufactured as no demand was ever made by him as alleged. During his examination under section 313 of Cr.P.C. the accused further stated that his trousers was not taken and his hands were never put in the solution as stated by the

investigating agency; and the same were planted upon him in order to falsely implicate him in the present case by the investigating agency in collusion with the complainant. During his examination under section 313 of Cr.P.C. the accused further stated that the CBI officials took his signatures on blank papers which were later created as false evidence against him.

9. In his defence, the accused got examined himself as DW4. He also got examined DW1 Umesh Garg, DW2 Madhuri Garg (his wife) and DW3 Akilesh Gupta (the brother of his wife). During examination of DW1 Umesh Garg documents Ex.DW1/1 (Application dated 18.9.2018 under the Right to Information Act, 2005) and Ex.DW1/2 (Reply to the application dated 19.9.2018) have been tendered in evidence.

10. I have heard Mr. Neel Mani, Public Prosecutor for the State (CBI) and Mr. Pradeep Rana and Mr. Gagan Bhatnagar, Advocates for the accused and have gone through the record of the case carefully. I have also gone through the written arguments filed on behalf of the accused.

11. Having drawn the attention of the court on the testimonies of PW1 Constable Rishi Kumar, PW2 Surender Kumar, PW3 Wasim Mohd., PW4 Kamal Kumar, PW5 HC Vishnu Prasad Pandey, PW6 Sanjay Bhatia, PW7 Vikram Singh Yadav, PW8 Inspector Anil Kumar, PW9 Satpal Sehrawat, PW10 SI T.K. Singh, PW11 Kuldeep Kumar, PW12 P.K. Chawla, PW13 Constable Manoj Kumar, PW14 Ms.

Deepti Bhargav, PW15 Chandra Prakash, PW16 Narender Singh, PW17 Mannu Kumar, PW18 Inspector Harnam Singh, PW19 N.C. Nawal and PW20 Deepak Kumar Tanwar; documents and objects Ex.PW2/A, Ex.PW2/B, Ex.PW2/C, Ex.PW2/D, Ex.PW2/E, Ex.PW2/F, Ex.PW3/A, Ex.PW3/B, Ex.PW3/C, Ex.PW3/D, Ex.PW3/E, Ex.PW3/F, Ex.PW3/G, Ex.PW4/A, Ex.PW4/B, Ex.PW4/C, Ex.PW4/D, Ex.PW4/E, Ex.PW4F, Ex.PW5/A, Ex.PW5/B, Ex.PW5/C, Ex.PW5/D, Ex.PW5/E, Ex.PW5/F, Ex.PW5/G, Ex.PW5/G-1 to Ex.PW5/G-24, Ex.PW5/H, Ex.PW5/J, Ex.PW5/K, Ex.PW5/L, Ex.PW5/M, Ex.PW5/N, Ex.PW6/A, Ex.PW6/B (Collectively), Ex.PW7/A, Ex.PW7/B, Ex.PW7/C, Ex.PW7/D, Ex.PW7/E, Ex.PW7/F, Ex.PW8/A, Ex.PW8/B, Ex.PW8/C, Ex.PW8/D, Ex.PW10/A, Ex.PW10/B, Ex.PW10/C, Ex.PW10/D, Ex.PW10/E, Ex.PW10/F, Ex.PW11/A, Ex.PW12/A, Ex.PW13/A, Ex.PW14/A, Ex.PW14/P-1, Ex.PW14/P-2, Ex.PW14/P-3, Ex.PW14/P-4, Ex.PW14/P-5, Ex.PW15/A, Ex.PW16/A, Ex.PW16/B, Ex.PW16/C, Ex.PW16/D, Ex.PW16/E, Ex.PW16/F, Ex.PW16/G, Ex.PW16/H, Ex.PW16/I, Ex.PW16/J, Ex.PW16/K, Ex.PW16/L, Ex.PW16/M, Ex.PW18/A, Ex.PW18/B, Ex.PW18/C, Ex.PW18/D, Ex.PW19/1, Ex.PW20/1, Ex.PW20/2, Ex.PW20/3, Ex.PW20/4, Ex.PW20/5, Ex.PW20/6, Q-1, Q-2 and S-1; Neeraj Dutta v. State (Govt. of NCT of Delhi), (2023) 4 SCC 731, C.M. Sharma v. State of A.P., (2010) 15 SCC 1, M. Narsinga Rao v. State of Andhra Pradesh, AIR 2001 SC 318, State of U.P. v. Zakaullah, AIR 1998 SC 1474, State of U.P. v.

M.K. Anthony, (1985) 1 SCC 505, Hazari Lal v. State (Delhi Administration), AIR 1980SC 873, Dhaneshwar Narain Saxena v. The Delhi Administration, 1962 (1) Cri. L. J. 203, Vinod Kumar v. State of Punjab, 2015 Cri.L.J. 1442, Syed Ahmed v. State of Karnataka, 2012 Cri.L.j 4017, Madhukar Bhaskarrao Joshi v. State of Maharashtra, 2001 Cri.L.J 175, Dattatraya Krishanji Joshi v. State of Maharashtra, 1991 Cri.L.J. 2097, Hori Ram Singh v. King Emperor, (1940) 42 Bom. L. R. 619, copy of judgment dated 06.01.2014 passed by the Hon'ble Delhi High Court in CrI. A. No.645 of 2010 entitled Mahesh Pal Singh v. State of NCT of Delhi, copy of judgment dated 05.11.2022 passed by the Hon'ble Allahbad High Court in Criminal Revision No. 921 of 2022 entitled Shyam Sundar Prasad v. Central Bureau of Investigation and copy of judgment dated 27.01.2016 passed by the Hon'ble Madras High Court in Criminal Appeal No. 110 of 2015 entitled K. Ramajayam @ Appu v. The Inspector of Police it is submitted by the learned Public Prosecutor that after the death of his father Vikas Yadav, who was a Constable in CRPF, Master Ayush Yadav through his grandmother and guardian Smt. Vidhya Yadav applied for the dependent pension and its arrears, and the said application was being pursued by his uncle PW7 Vikram Singh Yadav, who is a lawyer by profession. It is further submitted by the learned Public Prosecutor that on 28.3.2018, the file Ex.PW5/A, pertaining to the said application of Master Ayush Yadav, after processing by the Group Centre II, CRPF, Ajmer was dispatched to the Accounts Office, CRPF, Rohini, New

Delhi, where it was received on 04.6.2018 and came under the charge of the accused for further action. It is further submitted by the learned Public Prosecutor that to know about the progress of the claim of Master Ayush, on 02.5.2018 PW7 Vikram Singh Yadav met the accused in his office, and thereafter, on 17.5.2018, in the morning, he received a call from the accused whereby he demanded ₹80,000/- as bribe to clear the dependent pension of Master Ayush Yadav and its arrears. It is further submitted by the learned Public Prosecutor that since PW7 Vikram Singh Yadav and his mother were not willing to pay the bribe to the accused, therefore, on 21.5.2018 PW7 Vikram Singh Yadav approached CBI with his complaint Ex.PW7/A, and after verification of the truthfulness of his complaint in presence of PW10 SI T.K. Singh and PW17 Mannu Kumar, the independent witness, the FIR giving rise to the present case was registered and a trap was organized with the aid PW7 Vikram Singh Yadav, PW10 T.K. Singh, PW16 Narender Singh, PW17 Mannu Kumar, PW19 Inspector N.C. Nawal and other police officers and subordinate staff, during which an amount of ₹35,000/- arranged by the complainant was used. It is further submitted by the learned public Prosecutor that during the trap proceedings, in the evening of 21.5.2018, at the designated place appointed by the accused, the accused, in presence of shadow witness PW16 Narender Singh demanded ₹35,000/- as bribe from PW7 Vikram Singh Yadav and received the said money from him, and thereafter, he was apprehended at the spot by the team of CBI in

presence of the independent witnesses and the complainant. It is further submitted by the learned Public Prosecutor that the fingers of the right hand of the accused and the right side pocket of his trousers were dipped in the solution of sodium carbonate and water, which on such dipping, on two separate occasions, turned pink indicating that the accused demanded and accepted the bribe money laced with phenolphthalein powder from PW7 Vikram Singh Yadav and kept the same in the pocket of his pants. It is further submitted by the learned Public Prosecutor that voice sample of the accused was obtained after taking all necessary precautions, and thereafter the three memory cards kept in Q-1, Q-2 and S-1, containing the recorded conversations between the accused and the complainant along with the voices of independent witnesses and the sample voice of the accused were sent to CFSL for analysis and report, and as per the testimony of PW20 Deepak Tanwar and his report Ex.PW20/A the sample voice of the accused matched with his recorded voice in the memory cards kept in Q-1 and Q-2. It is further submitted by the learned Public Prosecutor that as per the testimony of PW14 Ms. Deepti Bhargav and her report Ex.PW14/A the hand wash and pants wash submitted to her in two bottles sealed at the spot during the trap proceedings contained traces of phenolphthalein powder, thus supporting the charge against the accused. It is further submitted by the learned Public Prosecutor that during the relevant period, especially from 17.5.2018 to 21.5.2018 the accused was a public servant in the service of the Central Government,

and being such public servant on 17.5.2018 and 21.5.2018 he demanded bribe of ₹80,000/- from PW7 Vikram Singh Yadav to clear the file related to the dependent pension of Master Ayush Yadav and its arrears, and actually accepted bribe in the sum of ₹35,000/- from him, and thus he has committed the offences punishable under sections 7 and 13(2) read with section 13(1)(d) of Act 49 of 1988. It is further submitted by the learned Public Prosecutor that the sanction to prosecute the accused under section 19 of Act 49 of 1988 has been obtained vide order Ex.PW15/A, which has proved with the aid of PW15 Chandra Prakash as Ms. Vibha Pandey, Additional Controller General of Accounts, who accorded the sanction had passed away before her examination as a prosecution witness. It is further submitted by the learned Public Prosecutor that the prosecution has succeeded to prove the charge against accused Rajender Kumar Garg @ R.K. Garg, therefore, he be convicted for the commission of offences punishable under sections 7 and 13(2) read with section 13(1)(d) of Act 49 of 1988 and be severely punished.

12. Per-contra, having drawn the attention of the court on the evidence adduced by the prosecution and the accused, especially the testimonies of PW5 HC Vishnu Prasad Pandey, PW6 Sanjay Bhatia, PW7 Vikram Singh Yadav, PW8 Inspector Anil Kumar, PW9 Satpal Sehrawat, PW10 SI T.K. Singh, PW11 Kuldeep Kumar, PW12 P.K. Chawla, PW14 Ms. Deepti Bhargav, PW15 Chandra Prakash, PW16 Narender Singh, PW17 Mannu Kumar, PW18 Inspector Harnam

Singh, PW19 N.C. Nawal and PW20 Deepak Kumar Tanwar, DW1 Umesh Garg, DW2 Madhuri Garg, DW3 Akilesh Gupta and DW4 Rajender Kumar Garg; documents and objects Ex.DW1/1, Ex.DW1/2, Ex.PW2/A, Ex.PW3/B, Ex.PW5/A, Ex.PW5/B, Ex.PW5/C, Ex.PW5/D, Ex.PW5/E, Ex.PW5/F, Ex.PW5/G, Ex.PW5/H, Ex.PW5/J, Ex.PW5/K, Ex.PW5/L, Ex.PW5/M, Ex.PW5/N, Ex.PW6/B (Collectively), Ex.PW7/A, Ex.PW7/B, Ex.PW7/C, Ex.PW7/D, Ex.PW7/E, Ex.PW7/F, Ex.PW8/A, Ex.PW8/B, Ex.PW8/C, Ex.PW8/D, Ex.PW10/A, Ex.PW10/B, Ex.PW10/C, Ex.PW12/A (collectively), Ex.PW14/A, Ex.PW15/A, Ex.PW16/D, Ex.PW16/E, Ex.PW16/F, Ex.PW16/G, Ex.PW16/H, Ex.PW16/I, Ex.PW16/J, Ex.PW16/K, Ex.PW16/L, Ex.PW16/M, Ex.PW18/B, Ex.PW20/6, Ex.PW7/DX1 and Ex.PW16/DX1; N. Vijaykumar v. State of Tamil Nadu, (2021) 3 SCC 687, Khaleel Ahmed v. State of Karnataka, (2015) 16 SCC 350, Selvraj v. State of Karnataka, (2015) 10 SCC 230, Satvir Singh v. State of Delhi, (2014) 13 SCC 143, V. Venkata Subbarao v. State represented by Inspector of Police, A.P., (2006) 13 SCC 305, Union of India through Inspector, CBI v. Purnandu Biswas, (2005) 12 SCC 576, Ram Dutt Tyagi v. State Thr. C.B.I., 2024 SCC OnLine Del 3745, Arun Kumar Gurjar v. Central Bureau of Investigation, 2024 SCC OnLine Del 2483, Sudesh Kaushik v. CBI, 2022 SCC OnLine Del 4300, Dinesh Chand Gupta v. State, 2016 SCC OnLine Del 3137, The State of Maharashtra v. Ananda Vedu Pagar, 2015 SCC OnLine Bom 5947, The State of Maharashtra v. Shivram

and another, 2011 SCC OnLine Bom 210, Vishnupant Narute v. State of Maharashtra, 2008 SCC OnLine Bom 1801, copy of judgment dated 17.4.2023 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1592 of 2022 entitled Soundarajan v. State rep. by the Inspector of Police Vigilance Anticorruption Dindigul, copy of judgment dated 17.3.2023 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1669 of 2009 entitled Neeraj Dutta v. State (Govt. of NCT of Delhi) and copy of judgment dated 29.3.2022 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1769 of 2014 entitled Rajesh Gupta v. State through Central Bureau of Investigation it is submitted by the learned counsel for the accused that aggrieved person, if any, was Smt. Vidya Yadav @ Vidyawati Yadav, who has neither made any complaint before any authority nor has appeared as a witness in this case. It is further submitted by counsel for the accused that CBI deliberately suppressed the receipt diary of concerned pension branch shown to have been enclosed at serial No. IV in enclosures of letter Ex.PW12/A (collectively) and have not produced the same as evidence. It is further submitted by counsel for the accused that document Ex.PW5/N was not recovered from the possession of the accused, and the testimonies of PW8 Inspector Anil Kumar and PW9 Satpal Sehrawat regarding the search proceedings are not reliable. It is further submitted by counsel for the accused that during the investigation, for mala fide reason, neither the phone of the complainant was seized and got analyzed nor his voice sample was

collected for forensic analysis. It is further submitted by counsel for the accused that for analyzing the contents of the alleged memory cards Q-1, Q-1 and Q-3, and the DVR CFSL, New Delhi was not an Examiner of Electronic Evidence under section 79A of the Information Technology Act, 2000 and PW20 Deepak Kumar Tanwar was not a competent expert under section 45A of the Indian Evidence Act, 1872, therefore, his opinion and report Ex.PW20/6 cannot be relied upon. It is further submitted by counsel for the accused that the contents of Q-1, Q-2 and S-1 are manipulated and the alleged transcripts of the conversations between the accused and PW7 Vikram Singh Yadav are also manipulated. It is further submitted by counsel for the accused that the alleged sample of the voice of the accused was illegally obtained by CBI. It is further submitted by counsel for the accused that there are material contradictions in the testimonies of the complainant, so called independent witnesses, TLO and PW10 SI T.K. Singh and the same are not reliable. It is further submitted by counsel for the accused that the accused never demanded or accepted any bribe from PW7 Vikram Singh Yadav. It is further submitted by counsel for the accused that at the relevant time the accused was not dealing with the file of Master Ayush Yadav because from 20.4.2018 onwards, as per office order dated 20.4.2018 forming part of Ex.PW12/A he was not looking after the work of the Group Centre II, Ajmer, and this fact was within the knowledge of CBI. It is further submitted by counsel for the accused that the sanction for prosecution against the accused is not

valid sanction as the same was accorded mechanically, without application of mind and without taking into account the relevant material, including the CFSL reports and the transcripts of the alleged conversations. It further submitted by the learned counsel for the accused that the prosecution has failed to prove its case beyond reasonable doubt, therefore, the accused is entitled to be acquitted.

13. I have given my thoughtful consideration to the submissions made on behalf of the parties.

14. Sections 7, 13(1)(d), 13(2), 19 and 20 of Act 49 of 1988, as they stood prior to their amendments on 26.7.2018 read as under:

7. Public servant taking gratification other than legal remuneration in respect of an official act.— Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, 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 or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.

Explanations—(a) “Expecting to be a public servant”. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification”. The word “gratification” is not restricted to pecuniary gratifications gratifications estimable in money.

(c) “Legal remuneration”. The words or to “legal remuneration” are

not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) “A motive or reward for doing”. 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 this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

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13. Criminal misconduct by a public servant.— (1) A public servant is said to commit the offence of criminal misconduct,—

(a)

(b)

(c)

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

Explanation.- For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine

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19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

(a) in the case of a person who is employed in connection with the

affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

- (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
- (c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
- (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
- (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

- (a) error includes competency of the authority to grant sanction;
- (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

15. In the light of the charge framed against the accused and arguments advanced before the court the first point for determination is: whether during the period 17.5.2018 and 21.5.2018 the accused was a public servant?

16. On this point, apart from two office orders dated

28.02.2018 and 20.4.2018, forming parts of Ex.PW12/A, no other record has been called by the prosecution from the office of the accused or any other office. The office order dated 28.02.2018, apparently, is not complete, for it does not bear any number and the name and designation of the authority which issued it. Unlike the office order dated 28.02.2018, the other office order dated 20.4.2018 was issued by R.K. Khurana, PAO (Admn), the office of the Director (Accounts), Pay & Accounts Office, CRPF, MHA, Plot No. 14, Sector-23, Rohini, New Delhi, and bears Office Order No. 142/2018. As per the office order dated 28.02.2018, R.K. Garg, Senior Accountant, working under Senior Accounts Officer K.V. Kaushik and Sanjay Bhatia, AAO as Pension Auditor was looking after the work of GC-I AJM (3,33, 83, 40,157) and GC-II AJM (14, 49, 61, 154, 180). As per the office order No. 142 dated 20.4.2018, issued in the name of the Director (Accounts), Pay & Accounts Office, CRPF, MHA, New Delhi under the signature of R.K. Khurana, PAO (Admn), with immediate effect, that is from 20.4.2018 R.K. Garg, Senior Accountant, working under Senior Accounts Officer K.V. Kaushik and Sanjay Bhatia, AAO as Pension Auditor was entrusted with the work of GC-I, Ajmer and 3rd Signal, whereas S.S. Rana, Senior Accountant, working under Senior Accounts Officer K.V. Kaushik and Sanjay Bhatia, AAO as Pension Auditor was entrusted with the work of GC-II, Ajmer and 4th Signal.

17. The said two office orders dated 28.02.2018 and

20.4.2018, forming parts of Ex.PW12/A, were tendered in evidence during the examination of PW12 P.K. Chawla, who, inter alia, deposed that in the year 2018 he was posted as Sr. Accounts Officer in Pay & Accounts Office, CRPF, Rohini, New Delhi. He further deposed that besides him there were around fifteen other Sr. Account Officers in the above office, and Sh Rajiv Khurana was also working with him. He further deposed that CBI had sought some documents from them, and they supplied the documents D-14 (copy of office order dated 28.02.2018), D-15 (copy of office order 20.4.2018) and D-16 (copy of entry No. 66 of Register Ex.PW6/B) through letter Ex.PW12/A.

18. Another witness PW6 Sanjay Bhatia during his examination-in-chief deposed that he remained posted as Assistant Accounts Officer (AAO) with CRPF Delhi from August, 2016 till 06.7.2018, and used to see Pension Department, Division No. II. He further deposed that he knew accused Rajender Kumar Garg as he was his junior officer being Senior Accountant. PW6 Sanjay Bhatia further deposed that the accused used to deal with the pension cases which were received from his designated Group Centres.

19. There is no material before the court to suggest that after 20.4.2018 the accused was not working as Senior Accountant with CRPF or ceased to be in the service of the Central Government. Further, during his examination under section 313 of Cr.P.C. the accused stated that the charge of Group Centre II, CRPF was not assigned to him for the period 20.4.2018 to 21.5.2018; and that he was

taking care of Group Centre I. Thus, from the testimonies of PW6 Sanjay Bhatia and PW12 P.K. Chawla, contents of office orders dated 28.02.2018 and 20.4.2018 forming parts of Ex.PW12/A and the statement of the accused made during his examination under section 313 of Cr.P.C. it has been proved that during the period 17.5.2018 and 21.5.2018 the accused was working as the Senior Accountant in the office of the Director (Accounts), Pay & Accounts Office, CRPF, MHA, Plot No. 14, Sector-23, Rohini, New Delhi, and that he was a public servant.

20. The second point for determination is: whether due sanction under section 19 of the Prevention of Corruption Act, 1988 has been accorded against the accused?

21. PW18 Inspector Harnam Singh deposed that being investigating officer, during the investigation he sent request for sanction for prosecution against the accused to the sanctioning authority and received the sanction order. He did not elaborate as to what steps were taken by him for obtaining the sanction for prosecution against the accused, and on which date or dates.

22. Unfortunately, during the trial, before her examination as prosecution witness, Ms. Vibha Pandey, Additional Controller General of Accounts, Government of India, who purportedly accorded the sanction for prosecution against the accused passed away in the month of January, 2019. To prove the sanction for prosecution the prosecution got examined PW15 Chandra Prakash, Senior AO, CBSE, Delhi, who

during his examination-in-chief deposed that in the year 2018 he was posted as Senior Accounts Officer in the Office of Controller General of Accounts, INA, Delhi. He further deposed that a request along with the file was received in their office from the office of the Chief Controller of Accounts, Ministry of Home Affairs regarding sanction for prosecution of R.K. Garg. PW15 Chandra Prakash further deposed that the file was routed through him, and he had put the file before Ms Vibha Pandey, the then Additional Controller General of Accounts. He further deposed that that after perusal of the entire record she had accorded sanction for prosecution against R.K. Garg, Sr. Accountant. PW15 Chandra Prakash further deposed that Ms Vibha Pandey could have removed R.K. Garg from his service as he was posted as Sr. Accountant and Ms Vibha Pandey was the competent authority for removal of Sr. Accountant. He further deposed that Ms Vibha Pandey was no more as she had expired in the month of January, 2019. PW15 Chandra Prakash further deposed that sanction order for prosecution dated 13.7.2018 total 03 pages Ex.PW15/A bore signatures and official stamp of Vibha Pandey at point A on each page.

23. During his cross-examination PW15 Chandra Prakash deposed that he was not handling pension files. During his cross-examination he denied that the entire relevant record, that is FIR, disclosure statement, statements of witness, recovery memo, draft charge sheet and all the relevant material was not sent to the sanctioning authority. During his cross-examination PW15 Chandra

Prakash affirmed that he had no knowledge about the facts of the present case and he had forwarded the material which was received from CBI to Ms. Vibha Pandey, the then Additional Controller General of Accounts.

24. Having drawn the attention of the court on document Ex.PW15/A, testimony of PW15 Chandra Prakash and Sudesh Kaushik's case (supra) it is vehemently argued by the learned counsel for the accused that the sanction for prosecution is not as per law and the same has been accorded without application of mind and ignoring the fact that all necessary material, including the CFSL report Ex.PW14/A and Ex.PW20/6 dated 19.6.2018 and 03.5.2019 respectively and the transcripts of the alleged conversation between the complainant and the accused were not put before the sanctioning authority. It is further submitted by counsel for the accused that true facts could have been established by the accused in the cross-examination of Ms. Vibha Pandey, but, unfortunately, before her examination she passed away, whereas PW15 Chandra Prakash had no knowledge about the facts of the case. It is further submitted by counsel for the accused that owing to the death of Ms. Vibha Pandey the veracity or fairness of Ex.PW15/A could not be examined. On the other hand it is submitted by the learned Public Prosecutor that the sanction for prosecution is valid as per law.

25. In Sudesh Kaushik's case (supra), where the appellant challenged her conviction under sections 7 and 13(2) read with section

13(1)(d) of Act 49 of 1988, while considering the question of grant of sanction the Hon'ble Delhi High Court held as follows:

(i) Irregularity in Sanction

24. The first issue before this Court is whether the sanction for prosecution accorded against the appellant is valid in law or not. In the present case, after the trap and arrest of appellant, the request letter seeking sanction for prosecution of the appellant was forwarded by C.B.I. to DCP Dependra Pathak (PW-1) on 14.10.2004. PW-1 in his testimony deposed that the request letter of the C.B.I. for grant of sanction consisted of FIR, complaint, various statements recorded under Section 161 Cr.P.C., transcript of the tape-recorded version, CFSL report of voice as well as washes and other related documents. Further, PW-1 admitted in the cross-examination that he had also received a draft sanction order along with the request letter on 14.10.2004. Pursuant thereof, sanction was granted and the same was supplied to C.B.I. on 16.11.2004. A perusal of the copy of sanction order, in light of the testimony of DW-2 ASI Bhoop Singh, shows that the office copy of the said sanction order was prepared on 20.10.2004. 25. In this regard, it is argued by the learned counsel for appellant that the CFSL report of voice comparison which was received by sanctioning authority on 14.10.2004, was in-fact prepared on 15.10.2004 by Dr. Rajinder Singh (PW-3). The same was collected by IO Mridula Shukla (PW-10) on 02.11.2004, much after the sanction order came into existence (i.e., 20.10.2004). Further, even the number of the CFSL Report (CFSL-2004/P-0338), which was prepared on 15.10.2004 and was collected on 02.11.2004, was mentioned on the draft sanction order which was forwarded to sanctioning authority on 14.10.2004, which is earlier than the date of the report.

26. It is further argued that the transcriptions of conversation marked as Ex. PW 4/E and Ex. PW 4/F were prepared on 16.11.2014 by IO Mridula Shukla (PW-10) as deposed by her in her cross-examination, and were thereafter shown to Complainant Gagan Hoon (PW-4) for verification of its contents. However as deposed by PW-1, the same were forwarded to him by C.B.I. on 14.10.2004 along with the request letter, more than one month prior to its coming into existence.

27. Learned counsel for appellant has relied upon the judgment of Mohd. Iqbal Ahmed v. State of Andhra Pradesh (supra), wherein the Hon'ble Supreme Court has held as under:

3.... It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a

case for sanction has been made out constituting the offence. This should be done in two ways: either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, or (2) by adducing evidence aliunde to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio.”

28. Reliance is also placed upon the judgment of Hon’ble Supreme Court in the case of CBI v. Ashok Kumar Aggarwal (supra) has held as under: —

16. In view of the above, the legal propositions can be summarised as under:

16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

29. Learned SPP for CBI, in response, contended that the learned Trial Court in the impugned judgment had rightly presumed that the sanctioning authority must have come to know, through other sources, regarding the existence and contents of the transcript of conversations and CFSL report on voice comparison on the day when the sanction was accorded. The observation of the learned Trial Court in this respect is as under: —

38. ...In view of this, it is quite probable that report was ready on 14.10.04 and the opinion and its dispatch number was obtained by

the Investigating Officer telephonically. As such, it cannot be said that the report of voice expert was not in existence on 14.10.04. The same might have been dispatched on 15.10.04, but its existence on 14.10.04 cannot be disputed...”

30. This Court is unable to agree to and accept the arguments advanced by the learned SPP for CBI and observations made by learned Trial Court. These arguments and observations are meritless since in a criminal trial, nothing can be left on presumptions if the documents placed on record speak and reveal otherwise. In the facts at hand, there is nothing on record in the form of evidence, documentary or oral, to suggest that the sanctioning authority (PW-1) was informed regarding existence of CFSL report of voice comparison or the transcripts when the sanction was accorded. (emphasis added)

26. In this connection Ex.PW15/A, purporting to be the sanction for prosecution under section 19 of Act 49 of 1988 reads as follows:

NO. 100/7-Y/PR.AO(ADMN)/MHA/CBI Case/RKG/2018-19/ 4058
Ministry of Home Affairs
Principal Accounts Office (Admn)
0/o the Pr. Chief Controller of Accounts
New Delhi

Dated 13th July, 2018

SANCTION ORDER FOR PROSECUTION

Whereas, the case RC-18-(A)/2018/DLI was registered by CBI, ACB, New Delhi U/s 7 of P.C. Act, 1988 on the basis of verification of a complaint dated 21.05.2018 of Complaint (sic), Sh. Vikram Singh Yadav S/o Sh. Hari Singh Yadav, R/o RZ-D-385, Street No. 14, Sadh Nagar, Palam Colony, New Delhi - 110045.

2. And whereas, it is alleged in the complaint that the brother of complainant Sh. Vikas Yadav was Constable in CRPF and he died in the year 2007. After death of Sh. Vikas Yadav, his wife got married to younger brother of late Vikas Yadav. Thereafter, a civil suit was filed in the Dwarka Court for obtaining certificate of legal heirs of Sh. Ayush Yadav, S/o late Sh. Vikas Yadav. Hon'ble Court's vide order dated 15.11.2017, Smt. Vidhya Yadav, grand mother became guardian of Sh. Aayush Yadav and the court also directed to CRPF to release pension and arrears to Sh. Ayush Kumar from 2007 to till date. Thereafter, all documents were submitted to CRPF by the complainant. On 02.05.2018,

the complainant met with the accused R. K. Garg, Dealing Clerk, CRP office at Sec-23, Rohini, New Delhi at about 01.30 PM for knowing about the status of pension and arrear (sic). Thereafter, the complainant received a call from the accused R. K. Garg on 17.05.2018 at about 9.17 AM on which the accused R. K. Garg demanded Rs. 80,000/- as bribe to release the pension and arrear (sic) and also asked to meet him on Monday or Tuesday i.e. 21/22.05.2018.

3. And whereas, the complainant Sh. Vikram Singh Yadav did not want to pay the bribe, therefore, he made the present complaint on 21.05.2018 to SP, CBI, ACB, Delhi for taking action in the matter.

4. And whereas, in order to verify the genuineness of allegations of the complaint verification was conducted by Sh. T. K. Singh, Sub. Inspector, CBI, ACB, Delhi in the presence of Independent Witness Sh. Mannu Kumar, Asst. Section Officer, MHRD, Shastri Bhawan, New Delhi. During verification accused demanded Rs. 50,000/- as bribe and agreed to accept Rs. 35,000/- The conversations held between accused Rajender Kumar Garg @ R. K. Garg and complainant Sh. Vikram Singh Yadav through their mobile phone (sic) was recorded in a memory card through DVR which disclosed demand of bribe on the part of accused, therefore case was registered u/s 7 of P. C. Act, 1988.

5. And whereas, a trap team was constituted on 21.05.2018 comprising of S/Shri N. C. Nawal, Inspector/Trap Laying Officer (TLO), independent witnesses Sh. Mannu Kumar & Sh. Narender Singh both Assistant Section Officer's (sic), Ministry of HRD, Shastri Bhawan, New Delhi and others. The team assembled in the CBI office and purpose of the assembly of laying a trap on accused R.K. Garg was explained to all. The complainant Sh. Vikram Singh Yadav produced tainted amount of Rs. 35,000/-, numbers and denomination of which were recorded in the Handing Over Memo dated 21.05.2018. The GC Notes were smeared with Phenolphthalein Powder.

6. And whereas, the accused Rajender Kumar Garg @ R. K. Garg was caught red while demanding and accepting the negotiated bribe amount of Rs. 35,000/- on 21.05.2018 from the complainant. The trap money was recovered from accused Rajender Kumar Garg @ R.K. Garg in the presence of independent witnesses. The wash of the Right hand and the pocket of the paint (sic) of accused Rajender Kumar Garg @ R. K. Garg was taken in Sodium Carbonate in water. On doing so the colour of solution turned pink. Subsequently, Rajender Kumar Garg @ R. K. Garg was arrested.

7. And whereas, the recorded conversation held between complainant Sh. Vikram Singh Yadav and accused Rajender Kumar Garg @ R. K. Garg at

the trap spot was heard by the CBI team in the presence of independent witnesses which corroborated the version of complainant that accused Rajender Kumar Garg @ R. K. Garg accepted the bribe of Rs. 35,000/- from the complainant.

8. And whereas, the recovered bribe amount of Rs. 35,000/- was put in an envelope, Q-2 the memory card which contained the recorded conversation, S-1 the memory card which contained the specimen voice of accused Rajender Kumar Garg @ R. K. Garg, DVR through which these conversations were recorded, Right Hand Wash and Paint (sic) Pocket Wash of accused Rajender Kumar Garg @ R. K. Garg and the paint (sic) were properly sealed and signed by witnesses, complainant and TLO and the same was taken into police possession. Simultaneously the Q-1 memory card which contained the recorded conversation between the complainant & accused was also taken in police possession.

9. And whereas, the hand wash and other washes of accused Rajender Kumar Garg @ R. K. Garg and sample voice of accused Rajender Kumar Garg @ R. K. Garg were sent to CFSL, New Delhi for examination and expert opinion the same is still awaited. The washes has establish that accused Rajender Kumar Garg @ R. K. Garg has accepted the bribe amount of Rs. 35,000/- by his right hand and kept the same in the pocket of his paint. The sample voice of accused Rajender Kumar Garg @ R. K. Garg alongwith Q-1 & Q-2 were sent to CFSL for obtaining expert opinion, which is still awaited but the complainant has identified the voices of the accused person in the presence of independent witness. In this regard, a Transcription cum Voice Identification Memo has been prepared.

10. And whereas, the above said facts disclose the commission of offences punishable U/s 7 and 13(2) r/w 13(1)(d) of PC Act, 1988 on the part of accused Rajender Kumar Garg @ R. K. Garg, Sr. Accountant, O/o Director (Accts), Pay & Accounts Office, CRPF, Sec-23, Rohini, New Delhi.

11. And whereas, I Vibha Pandey being the competent authority to remove the said accused Shri Rajender Kumar Garg @ R. K. Garg, O/o Director (Accts), Pay & Accounts Office, CRPF, Sec-23, Rohini, New Delhi - 110086 from his office, after considering the facts & circumstances of this case and after duly and carefully examining the materials/documents i.e. FIR, Memos, Statement of Witnesses, and other documents/materials collected during investigation placed before me in respect of the said allegations and after applying my mind, consider that Shri Rajender Kumar Garg @ R. K. Garg, Sr. Accountant, O/o Director (Accts), Pay & Accounts Office, CRPF, Sec-23, Rohini, New Delhi

should be prosecuted in the court of Law for the aforesaid offences.

12. Now, therefore, I Vibha Pandey do hereby accord sanction U/s 19 of Prevention of Corruption Act, 1988 for the prosecution of the said accused Rajender Kumar Garg @ R. K. Garg, Sr. Accountant, O/o Director (Accts), Pay & Accounts Office, CRPF, Sec-23, Rohini, New Delhi for the offences punishable U/s 7 & 13(2) r/w 13(1)(d) of P. C. Act, 1988 and for any other offence made out from the aforesaid facts and circumstances and punishable under any other provision of law and for taking cognizance of the said offences by the Court of Competent jurisdiction.

Sd/-

(Vibha Pandey)

Additional Controller General of Accounts

Central Bureau of Investigation, Anti Corruption Branch, 1st Floor, CBI HO, Bulding (sic), 5-B, CGO Complex, Lodhi Road, New Delhi-110003

27. No material has been placed before the court by the prosecution to show as to on which date sanction for prosecution of the accused was applied for by CBI before the Chief Controller of Accounts, Ministry of Home Affairs (see: testimony of PW15 Chandra Prakash). In fact no record has been called by the prosecution from the office of the sanctioning authority to establish the chronology of events that culminated in the grant of sanction for prosecution, purportedly by Ms. Vibha Pandey, Additional Controller General of Accounts; and PW15 Chandra Prakash and PW18 Inspector Harnam Singh have also not given the details regarding the dates involved in the process of the grant of sanction. From the contents of sanction order Ex.PW15/A it is evident that at the time of grant of the sanction by Ms. Vibha Pandey the CFSL reports were not put up before her. In fact, the report Ex.PW20/6 was not ready before 03.5.2019, and the other report

Ex.PW14/A dated 19.6.2018 was though ready, but was not placed before her. From the contents of the sanction order it also appears that the transcripts of the conversations that allegedly took place between the complainant and the accused on 21.5.2018 were not produced for her perusal, and in this regard, it appears, that she relied upon the contents of Transcription cum Voice Identification Memo Ex.PW7/F only. According to the prosecution, during the trap proceedings the pant (pants) that the accused was wearing was seized by CBI as it was an incriminating evidence against the accused. In the sanction order Ex.PW15/A, however, no reference has been made to 'Pant' or 'Pants', instead throughout the order Ex.PW15/A reference has been made to 'Paint' which makes no sense in the context. The purported sanction has been accorded to prosecute the accused for the commission of offences punishable U/s 7 & 13(2) r/w 13(1)(d) of P. C. Act, 1988, and thus, it is clear that the law which define the offences and prescribe punishment therefor has also not been mentioned by its short title or as per the provisions of the General Clauses Act, 1897.

28. Further, in respect of the sanction order Ex.PW15/A dated 13.7.2018 it is noteworthy that although the said order was purportedly passed on 13.7.2018 and bears the said date on its top, on each page of the said sanction order, beneath the signature of the sanctioning authority it bears date as 5.7.2018. No material has come on record to show as to why the said order was dated as 5.7.2018 beneath the purported signatures of Ms. Vibha Pandey, when the sanction order

was passed on 13.7.2018. In this connection it is submitted by the learned Public Prosecutor that may be the order was passed on 05.7.2018, but by mistake or otherwise the same was dated as 13.7.2018. I do not see force in this contention of the learned Public Prosecutor, for during examination-in-chief of PW15 Chandra Prakash the Public Prosecutor himself introduced date 13.7.2018 as the date of sanction order to the witness and got his answer. In view of sections 91 and 92 of the Indian Evidence Act, 1872 order Ex.PW15/A is to be read as such, unless any evidence were led by the prosecution to show that the things were otherwise. Further, this court is of the considered view that it need not to indulge in conjectures and surmises to find as to why two dates have been mentioned in Ex.PW15/A; and in the light of the law laid down by the Hon'ble Delhi High Court in Sudesh Kaushik's case (supra) nothing can be left on presumptions if document Ex.PW15/A, placed on record speaks and reveals otherwise. And document Ex.PW15/A speaks thus: it is dated 13.7.2018 indicating that order for sanction was passed on 13.7.2018; it bears purported signatures of Ms. Vibha Pandey on each page, including the foot of the document; and that on each page, beneath the purported signature of Ms. Vibha Pandey it bears date 5.7.2018, which do not correspond with the date of the document given at its beginning. In these circumstances, and the circumstances indicated in the preceding paragraph, in the absence of any plausible and credible explanation regarding the conduct of Ms. Vibha Pandey in putting different date

beneath her signatures on three pages of Ex.PW15/A, borne out of the record, it cannot be held that the sanction for prosecution of the accused, purportedly accorded by Ms. Vibha Pandey, was a valid sanction under Act 49 of 1988 which was accorded after considering all relevant material having bearing on the facts and circumstances of the case and after due application of mind. Therefore, it is held that due sanction under section 19 of the Prevention of Corruption Act, 1988 has not been accorded against the accused.

29. After holding that the sanction for prosecution against the accused is not valid, the next question is as to what further course of action should be taken in the matter.

30. In Nanjappa v. State of Karnataka, [2015] 8 S.C.R. 685 the Hon'ble Supreme Court declared the law where the sanction for prosecution is found not valid. In Najappa's case (supra) it has been held as follows:

The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in **Baij Nath Prasad Tripathi's** case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law.

18. To the same effect is the decision of this Court in **Mohammad Safi vs. The State of West Bengal (AIR 1966 SC 69)**. This Court observed:

“As regards the second contention of Mr. Mukherjee it is necessary to point out that a criminal court is precluded from determining the case before it in which a charge has been framed otherwise than by

making an order of acquittal or conviction only where the charge was framed by a court competent to frame it and by a court competent to try the case and make a valid order of acquittal or conviction. No doubt, here the charge was framed by Mr. Ganguly but on his own view he was not competent to take cognizance of the offence and, therefore, incompetent to frame a charge. For this reason the mere fact that a charge had been framed in this case does not help the appellant.

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12. In addition to the competent of the court, s. 403 of the Code speaks of there having been a trial and the trial having ended in an acquittal. From what we have said above, it will be clear that the fact that all the witnesses for the prosecution as well as for the defence had been examined before Mr. Ganguly and the further fact that the appellant was also examined under s. 342 cannot in law be deemed to be a trial at all. It would be only repetition to say that for proceedings to amount to a trial they must be held before a court which is in fact competent to hold them and which is not of opinion that it has no jurisdiction to hold them. A fortiori it would also follow that the ultimate order made by it by whatever name it is characterised cannot in law operate as an acquittal. In the Privy Council case it was interpreted by Sir John Beaumont who delivered the opinion of the Board to be an order of discharge. It is unnecessary for us to say whether such an order amounts to an order of discharge in the absence of any express provision governing the matter in the Code or it does not amount to an order of discharge. It is sufficient to say that it does not amount to an order of acquittal as contemplated by s. 403(1) and since the proceedings before the Special Judge ended with that order it would be enough to look upon it merely as an order putting a stop to the proceedings. For these reasons we hold that the trial and eventual conviction of the appellant by Mr. Bhattacharjee were valid in law and dismiss the appeal.”

19. In **Babu Thomas** (supra) also this Court after holding the order of sanction to be invalid, relegated the parties to a position, where the competent authority could issue a proper order sanctioning prosecution, having regard to the nature of the allegations made against accused in that case.

31. In the case in hand it has been found that at the relevant

time the accused was a public servant, who after being arrested for the commission of offences punishable under sections 7 and 13(2) read with section 13(1)(d) of Act 49 of 1988, in view of section 19 of Act 49 of 1988 could not have been prosecuted without previous sanction of the Central Government. The sanction Ex.PW15/A, on the basis of which the accused is being prosecuted is not valid, and the defect therein cannot be cured or overlooked by this court. Therefore, in the light of the law laid down by the Hon'ble Supreme Court in Nanjappa's case (supra) accused Rajender Kumar Garg @ R.K. Garg is discharged of offences punishable under sections 7 and 13(2) read with section 13(1)(a) of the Prevention of Corruption Act, 1988 for the commission of which he has been put on trial. His bond and bail bond executed under section 439 of Cr.P.C. are cancelled; the surety under section 439 of Cr.P.C. is discharged. His bond and bail bond executed and accepted under section 437A of Cr.P.C., however, shall remain in force for next six months.

32. File be sent to records.

Pronounced in the open court
on 29th of August, 2024.

(Manoj Kumar)
Special Judge (PC Act) (CBI)-17,
Rouse Avenue Courts Complex,
New Delhi

*(See: rule 4 of Part A of Chapter 24 of Volume III of the Rules framed by the Hon'ble Delhi High Court).