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

Reserved on: 10.09.2020

Pronounced on: 30.09.2020

+ CRL.REV.P.1100/2019

CENTRAL BUREAU OF INVESTIGATION Petitioner
Through: Mr.Anil Grover, SPP with
Mr.Shivesh Pal Singh & Mr.Mishal
Vij, Advs.

versus

RAM SWAROOP CHANDEL & ORS. Respondents
Through: Respondent no.1 in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Present petition has been filed under section 397 read with section 401 Cr.P.C. on behalf of the petitioner (CBI) against the order dated 19.01.2019 passed by the learned Special Judge (PC Act), Tis Hazari Courts, New Delhi in case titled as "***CBI vs. Ram Swaroop Chandel & Ors.***" in R.C. No.RC DAI 2018-A-0008, C.C. No.06/2018.

2. The present case bearing no. RC-DAI-2018-A-0008 was registered on the basis of a source information against Sh. Ram Swaroop Chandel (A-1), DGM (Technical), Delhi Milk Scheme, Delhi; Sh.Sudhir Khara (A-2) of

M/s Tasty Dairy Specialities Ltd.; Sh. Ashok Kumar (A-3) of M/s Aman Dairy and unknown others under Sections 120-B IPC read with Section 7 and 12 of the Prevention of Corruption Act 1988. As per the allegations, Ram Swaroop Chandel (A-1) who was as DGM (Technical)/Manager Procurement, Delhi Milk Scheme, Delhi and used to supervise the procurement of milk through various agencies/ federations in U.P., Punjab, Haryana & Rajasthan besides local co-operative societies. The said accused was indulging in corrupt and illegal activities in connivance with various private parties to whom DMS has awarded contract supply of milk. Further, as per the allegations M/s. Tasty Dairy, Specialities Limited, owned/managed by Sh. Arpit Mehra, located at D-3, UPSIDC Industrial Area, Jainpur, Kanpur Dehat, U.P and Aman Dairy owned/ managed by Ashok Kumar (A-3) of Alwar are amongst two of the suppliers of milk to Delhi Milk Scheme (DMS). It is also alleged that Sudhir Khera (A-2) was associated with Tasty Dairy Specialities Limited and besides pursuing the matters of Tasty Dairy Specialities Limited, he has also been regularly liasioning on behalf of Sh. Ram Swaroop Chandel with other dairy owners including Sh. Ashok Kumar of Aman Dairy. Sudhir Khera (A-2) has been demanding illegal gratification for Ram Swaroop Chandel (A-1) in lieu of

acceptance of substandard milk, facilitating hassle free acceptance of milk in DMS, getting excess supply approved for passing the pending bills and for awarding further milk supply contract to Ashok Kumar (A-3) of M/s Aman Dairies in the upcoming tenders of March 2018. Further, Sudhir Khera (A-2) retained a portion of the illegal gratification so collected from the milk suppliers for himself and balance amount of bribe was kept for Ram Swaroop Chandel as per his demand who periodically collected the aforesaid illegal gratification from Sudhir Khera, with whom he had official dealings. In furtherance to the conspiracy, illegal gratification has been provided to Sudhir Khera (A-2) by Ashok Kumar (A-3) of Aman Dairy on 27.02.2018 for making further payment to Ram Swaroop Chandel (A-1) in Delhi. A source information was received that Sudhir Khera (A-2) is likely to further deliver the installment of the illegal gratification collected from Ashok Kumar (A-3) of M/s Aman Dairy to Ram Swaroop Chandel (A-1) on 27.02.2018 at evening in Moti Nagar area of Delhi.

3. After registration of the case, a team of CBI officials and independent witnesses was constituted for laying the trap on 27.02.2018. At about 5:00 PM the trap was laid and Ram Swaroop Chandel (A-1) and Sudhir Khera (A-2) were apprehended and arrested from Moti Nagar, New Delhi. From

the possession of Ram Swaroop Chandel (A-1), Rs.86,000/- (Rupees Eighty Six Thousand only) were recovered and Sudhir Khera (A-2) disclosed that he paid commission to accused Ram Swaroop Chandel after which the said amount was seized. During interrogation, Sudhir Khera (A-2) also disclosed that he was having some money with him as part of his commission which he had received from Ashok Kumar (A-3). Pursuant to his disclosure, a sum of Rs.26,500/- was recovered from his purse which amount was duly seized. Ashok Kumar (A-3) was thereafter apprehend and he admitted having paid Rs.1,12,500/- to Sudhir Khera (A-2) on 27.02.2018 near Naraina Industrial Area, Delhi for further payment to Ram Swaroop Chandel (A-1) as illegal gratification.

4. The case of the prosecution is that during the investigations, the telephonic conversations held between the accused persons i.e. Ram Swaroop Chandel (mobile nos. 9968275046, 9910554671 & 817635488), Sudhir Khera (mobile nos. 9810483843 and 7683059641) and Ashok Kumar (mobile no. 9928533501) were recorded and intercepted. According to the prosecution, the investigations conducted so far established that Ram Swaroop Chandel (A-1) was exerting undue pressure on Manager (Procurement) and other staff for showing undue favours to milk tankers of

M/s Aman Dairy. As per the allegations, the conversation between Ram Swaroop Chandel (A-1) and Ashok Kumar (A-3) shows that the former is found advising/guiding the latter how to fill up the upcoming tender and Ram Swaroop Chandel (A-1) has conveyed about the extension of milk supply contract for a period of ninety days w.e.f. 01.01.2018 to Sudhir Khera (A-2) before an order for the same was issued. Ram Swaroop Chandel (A-1), Sudhir Khera (A-2) and Ashok Kumar (A-3) entered into criminal conspiracy, in pursuance to which Ashok Kumar (A-3) delivered the bribe amount of Rs.1,12,500/- to Sudhir Khera (A-2) who retained his commission of Rs.26,500/- out of the said bribe amount and thereafter delivered the remaining bribe amount of Rs.86,000/- to Ram Swaroop Chandel (A-1), which was recovered during the trap proceedings from accused persons. The case of the prosecution is that the bribe amount was paid to Ram Swaroop Chandel (A-1) for showing undue favour to milk suppliers i.e. M/s Aman Dairy and M/s Tasty Dairy Specialities Limited for supply of milk to DMS and further extension of milk supply contract. Thus, registered the present case under Section 120-B IPC read with Section 7/12/13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 and substantive offences thereof.

5. Learned counsel appearing on behalf of the petitioner CBI submitted that the impugned judgment is contrary to law, evidence placed on record of the case and there is sufficient oral and documentary evidence which is cogent, reliable and consistent to establish the charge of offence punishable under section 120-B IPC and section 7, 12 and 13(2) r/w 13(1) (d) of PC Act, 1988 and substantive offences thereof against the Respondents/accused. However, the Ld. Special judge wrongly construed the provisions of section 13(2) r/w 13(1)(d) of PC Act, 1988, which pertain to criminal misconduct by a public servant wherein he, by corrupt or illegal means or by abusing his official position as a public servant or while hold office as a public servant, obtains for himself or for any person, any valuable thing/pecuniary advantage.

6. Further submitted that Ld. Special judge had failed to appreciate that the case was filed on the basis of source information and the bribe giver is also accused in the case. The recovery of the bribe amount, during trap from the accused public servant Ram Swaroop Chandel, DGM(T), DMS, is not doubtful as same is supported by the telephonic conversation produced in the form of transcription before the Court and in the form of electronic evidence. The reasoning of Ld. Special judge that no DA case was made out

after the house search of accused Shri Ram Swaroop Chandel, is not sustainable and is in fact irrelevant. The Court had wrongly rejected/disbelieved the evidence of LW-4 Shri Deepak Kumar Chaudhary, LW-5 Shri Jitender Kumar and LW-7 Dr. Chetan Prakash, regarding the influence exercised by Ram Swaroop Chandel (A-1) to give undue benefit to Ashok Kumar (A-3).

7. Learned counsel for the petitioner further submitted that the recovery of the bribe amount in presence of the independent witnesses was wrongly disbelieved by the Court without giving the prosecution any opportunity to produce these witnesses during trial. The disclosure and recovery of the bribe amount was at the same time and there was no time to get voluntarily disclosure from the accused person. The reasoning given by the Court that no recovery was made out from Ashok Kumar (A-3) is not sustainable on the facts and circumstances of the present case, due to the reason that he was the bribe giver and had handed over the bribe amount to Sudhir Khera (A-2), who was caught during the trap while delivering the bribe amount to Ram Swaroop Chandel (A-1). The circumstances which led to non-preparation of recovery memo on the spot have been properly explained by the Investigating Officer in recovery memo dated 27.02.2018 as

immediately after recovery of the bribe amount, Ram Swaroop Chandel (A-1) lost his control and started hurling abuses at the CBI team and used force in a bid to get himself free. He was appropriately controlled by using legal force. Since, it was a busy market place and large crowd started gathering, hence it was not conducive to remain there, and therefore, it was decided to leave the spot for the safety of CBI trap team and accused persons.

8. In addition to above, non-collection of CCTV footage, does not in any way cast any doubt on prosecution evidence. The CCTV footage is only supporting evidence. Moreover, the non-examination of known persons of Ram Swaroop Chandel (A-1) is not fatal to the case of prosecution. But the reasoning of the Court that no departmental enquiry/complaint was filed against the accused person, is not sustainable and is in fact irrelevant.

9. Learned counsel submitted, that it is settled law that the Court is not supposed to make roving enquiry at the stage of framing of charge. The judge is not to delve into detailed evidence but it is sufficient for framing of charge if there is strong suspicion of accused persons having committed the crime. The same has been decided by the Hon'ble Supreme Court, in the case of State of *Bihar v. Ramesh Singh: (1977) 4 SCC 39*, wherein it was observed that at the stage of framing of charge, it is not obligatory for the

Judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge. The aforesaid view was also followed in the case of *State of Orissa vs. Debendra Nath Padhi: AIR 2005 SC 359*.

10. While concluding arguments, learned counsel submitted that in the present case, the evidence on record as produced by the CBI, clearly makes out a case against the respondents under section 120-B IPC and section 7, 12 and 13(2) r/w 13(1) (d) of PC Act, 1988. However, the impugned order, to the extent assailed in the present revision, is contrary to law as having been passed in complete disregard of the settled legal principles and therefore, deserves to be set aside as such.

11. On the other hand, Ram Swaroop Chandel (A-1), who had moved an application before the Trial Court for discharge, appeared in person and submitted that the present F.I.R. was got registered under connivance and collusion with corrupt officials of Delhi Milk Scheme, against whom he had raised voice for their illegal activities and financial irregularities causing

thereby financial loss to the Government of India. He has been upright and dead honest person, at his end proceeded for appropriate actions against such corrupt officials by way of several representations and in-fact the accused paid price for acting as a whistle blower against ongoing misappropriate and malafide functioning of senior officials of Delhi Milk Scheme. Thus, he became victim of aforesaid collusion and got involved in the present FIR without any rhyme and reason, which resulted into his arrest and detention.

12. Regarding the allegation that respondent no.1 (A-1) was exerting undue pressure on Manager (Procurement) and other staff for showing undue favours to milk tankers of M/s Aman Dairy, is concerned, said respondent has argued that as per the guidelines of Organization and the duty assigned to him was to ensure hassle free and running of milk plant at its maximum capacity and supply of the milk and milk products to its end users. However, there is no incriminating evidence which would *prima facie* show the undue influence over staff of the DMS for malafide intentions of accused (A-1). Moreover, it was for the interest of the organization to get preference of milk tankers having higher fat because of its high profitability and that was only possible if all such tankers parked inside the central dairy

are in the knowledge of the Quality Control Staffs as well as the Weigh Bridge Staff.

13. Insofar as the allegation that the conversation between Sudhir Khera (A-2) and Ashok Kumar (A-3) dated 01.02.2018 shows that Sudhir Khera (A-2) discussed with Ashok Kumar (A-3) that the two firms i.e. Tasty Dairy and Aman Dairy had the blessings of the accused public servant. Mr.Chandel (A-1) has argued that in the commercial organizations like DMS and more particularly the nature of job, the accused is assigned for required higher degree of proficiency and efficiency to evaluate the purchases of raw materials like milk, milk products, etc. from cost point of view and further feedback from the market and for that purpose, there is a need of cordial relations with the suppliers/ stake holders/ vendors. He had maintained cordial relation with all the existing milk suppliers including Tasty Dairy and Aman Dairy without having any point of partiality within the suppliers. He has not given any undue benefits more particularly in context of financial benefits to M/s. Tasty Dairy and M/s. Aman Dairy thereby causing any single loss of penny to the organization/ Government of India. Rather, the organization (DMS) has earned more profit by way of getting additional fat as well as saving of handling/ processing losses.

14. Insofar as the allegation that in the conversation between respondent no.1, Ram Swaroop Chandel (A-1) and Ashok Kumar (A-3), the former is found advising/ guiding the latter how to fill up the upcoming tender, is concerned, Mr.Chandel argued that being in a government department, it is essential as well as mandatory for the officer (s), who have been associated with decision making process to guide the vendors/stake holders/suppliers to supply milk and to actively participate in the tender process so that the organization could get the required milk vendors/ suppliers as per the requirement of quality milk having higher contents of Fat/SNF (Solid Not Fat). Such type of guidance are very common in the commercial organization(s) like DMS so that the vendors/suppliers could get opportunity to sell their quality products and on the other hand, the organization could get best possible quality raw materials as per its daily requirement.

15. With regard to the allegation that Ram Swaroop Chandel (A-1) has conveyed about the extension of milk supply contract for a period of ninety days w.e.f. 01.01.2018 to accused Sudhir Kherra before an order for the same was issued, it is argued that purchases of milk and other products in DMS, are through e-procurement tendering process and in the existing system,

there was no alternative except to extend the existing tender of milk suppliers since tender for the year 2018 (i.e. January to December) was not finalized due to administrative reasons and it was well known fact to every officials of DMS that extension shall be granted to all the existing milk suppliers for the year 2018 which was not a secret or confidential matter.

9. Insofar as the allegations of conspiracy and alleged telephonic conversation are concerned, he (A-1) argued that the search was conducted at the spot on 27.02.2018 near Milan Cinema, Moti Nagar during which only currency notes of Rs.4,630/- was found from his possession and the search memo was prepared accordingly which bear the signature of witnesses as well as the accused. However, the alleged recovery of Rs.86,000/- from the possession of the accused is false, manufactured and the improved version of the investigating agency since the documents showing alleged recovery of Rs.86,000/- does not bear signature of the accused whereas the search memo mentioning the details of Rs.4,630/- bear the signature of the accused. Thus, two distinct and different recovery memos for same search is negating each other more particularly for the reason that the subsequent recovery memo find no mention of recovery of Rs.4,630/- and the entire story false flat in the eyes of law.

10. Regarding the transcript of telephonic conversation filed along with the charge sheet is concerned, Mr.Chandel (A-1) has argued that there is no whisper of the demand and acceptance of money in the said transcripts. On reading of the transcripts do not provide remote apprehension that alleged demand and acceptance of money ever taken place and has fairly conceded that he requested to provide good quality Milk Cake and *mawa* to be used in upcoming festival of Holi at his own cost.

16. Finally argued that the present FIR along with charge sheet does not have sufficient evidence to substantiate the offence as alleged and the present case is based upon suspicion which miserably failed to cast reasonable doubt against the integrity as well as alleged corrupt practice on part of the accused R.S. Chandel (A-1). Thus, the evidence filed along with the charge sheet, if treated as authentic, does not corroborate the alleged offence and is insufficient for the purpose to conduct further trial.

17. I have heard arguments on behalf of the learned SPP for the CBI and respondent in person at length and perused the impugned order and material available on record.

18. It is not in dispute that the demand of illegal gratification is sine qua non to constitute the offence under Section 7 of the Prevention of

Corruption Act and mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence under Section 7 of the Prevention of Corruption Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. The demand of illegal gratification has to be specific and the proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Prevention of Corruption Act, 1988 and in absence of the same the charge under the said provisions would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, *ipso facto*, would thus not be sufficient to bring home the charge under these two sections of the Act.

19. In the case of ***B. Jayaraj vs. State of A.P.: (2014) 13 SCC 55***, the Hon'ble Supreme Court has observed as under:

“.....7. In so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P. and C.M. Girish Babu Vs. C.B.I.”

8. *In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.*

9. *In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal*

gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.....”

20. In the case of ***P. Satyanarayana Murthy vs. Distt. Insp. of Police & Anr.*** in ***Criminal Appeal No.31 of 2009 decided on 14.09.2015***, the Hon'ble Supreme Court has observed as under:

“.....19. In State of Kerala and another vs. C.P. Rao (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is

contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

21. In the case of **A. Subair vs. State of Kerala**, the Hon'ble Supreme Court has discussed that *"while dwelling on the purport, the section 7 and 13 of the Act ruled that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to proof a conviction."*

22. In addition, in the case of **N.Sunkanna vs. State of A.P.: (2016) 1 SCC 713**, the Hon'ble Supreme Court has held as under:

“5.....It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj vs. State of Andhra Pradesh [(2014) 13 SCC 55] and P. Satyanarayana Murthy vs. The District Inspector of Police and another [(2015 (9) SCALE 724).”

23. In ***Sujit Biswas vs. State of Assam: (2013) 12 SCC 406***, the Court has held as under:

"The reiteration of the golden principle runs through the web of the administration of justice in criminal cases has been done. It has further been held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmises or conjectures. Thus, on the material on record when judged on the touch stone of legal principles adumbrated hereinabove, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification."

24. Undisputedly, when there is no demand by accused, mere recovery itself could not be a ground for conviction. As far as the recovery of treated note is concerned, if the demand is not proved beyond all reasonable doubt recovery would be of no consequence. However, mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove the payment of bribe or to show that the accused voluntarily accepted the money knowing it to be illegal gratification.

25. Section 20 of the Prevention of Corruption Act, which reads as under:

“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 interference of corruption may fairly be drawn.”

26. In view of above settled principles of law, coming first to the aspect of recorded telephonic conversations, in the case in hand, the words Mawa/ Milk Cake are being used pseudonymously for demand. The relevant portions of the recorded conversations on which the prosecution is placing its reliance are reproduced as under:

Call no. 1 dated 14.09.2017 at 10:33:58 hrs:

रामस्वरूप चन्देल मॉनिंग जी मॉनिंग क्या हाल है

सुधीर खेड़ा

बस सर मैं ये कह रहा था वो जो कल बात हुई थी तो अगर वो तीन तीन अरेंज हो जाए तो कितने बजे तक आप निकलोगे मतलब शाम को कितने बजे तक लेट से लेट मैं दे सकता हूँ

रामस्वरूप चन्देल छह: सात सात बजे तक दे दो

27. Learned Trial Court has opined that the said call cannot be read in isolation. There is no evidence to show that the words, "... तीन तीन !..” were being used in the context of money/demand.

Call no. 76 dated 10.02.2018 at 18:42:22 hrs:

रामस्वरूप चन्देल हैलो मिल्क केक मिल जाएगा कल
सुधीर खेड़ा मैं बोल देता हूं राजस्थान से आना होता है ना
रामस्वरूप चन्देल दूर से आता है कहीं से । अच्छा । तो कल नहीं
सुधीर खेड़ा अस्पष्ट
रामस्वरूप चन्देल ऐं
सुधीर खेड़ा यहां का चाहिए हो तो मिल जाएगा
रामस्वरूप चन्देल नहीं यहां का कौन बढ़िया बनाता होगा तो है
सुधीर खेड़ा हां बढ़िया बनाता है
रामस्वरूप चन्देल यहां पे
सुधीर खेड़ा हां हां कल कल सन डे कल एक बार दिन में बात
कर लीजिएगा तो कल दिन में ही कर लेंगे
रामस्वरूप चन्देल हां ठीक है ऐसा करते है नहीं
सुधीर खेड़ा क्योंकि दो बजे के बाद मुझे कहीं जाना है तो
मोरनिंग
रामस्वरूप चन्देल ठीक है कल दिन में ही जो है
सुधीर खेड़ा ग्यारह बारह बजे कोई
रामस्वरूप चन्देल हां तो मिल्क केक पूछना जरा दो किलो अलग
अलग है
सुधीर खेड़ा हां पूछता हूं
रामस्वरूप चन्देल बढ़िया सा बना बना दे तो
सुधीर खेड़ा हां हां पूछता हूं

28. Accordingly, learned Trial Court was of the view that the case of the

prosecution is that the word "*Milk Cake*" is being pseudonymously used for money is totally unfounded since R.S. Chandel (A-1) has specifically asked to Sudhir Khera (A-2) in the context of milk-cake as to who is the person who prepares the same well after which Sudhir Khera (A-2) has explained that it has to come from Rajasthan. He further says that the demand for milk cake is of 2 kg. It cannot, under any circumstances, be assumed to be used pseudonymously for demand of money.

Call no. 84 dated 16.02.2018 at 18:59:51 hrs:

राम स्वरूप चंदेल	हां क्या हुआ उसका मिल्क केक का
सुधीर खेरा	उसका अभी एक.दो दिन और लग रहा है उसको
राम स्वरूप चंदेल	क्या यार 2 दिन कौन सा यार
सुधीर खेरा	अभी क्या बताऊं साहब अभी आज सुबह उसे बहुत गर्मी से बात की है एक्झुअली गांव से आना है ना
राम स्वरूप चंदेल	हां हां हां
सुधीर खेरा	थोड़ा सा टाइम लग रहा है
राम स्वरूप चंदेल	तो
सुधीर खेरा	हेलो
राम स्वरूप चंदेल	हां हां हां हां हां
सुधीर खेरा	हां जी बाकी एक.दो दिन में हो जाएगा
राम स्वरूप चंदेल	हां
सुधीर खेरा	जी एक.दो दिन में अस्पष्ट
राम स्वरूप चंदेल	अच्छा
राम स्वरूप चंदेल	कल देखो यदि वह आ सकता है तो नहीं छोड़ो नहीं तो मना कर दो साला और क्या
सुधीर खेरा	नई.नई मना किस लिए कर दो नहीं वह गांव के लोग हैं ना साहब
राम स्वरूप चंदेल	तभी तो कह रहा हूं छोड़ो ना फिर काहे को ऐसे ही मना कर दो कल बोल रहा है तो ठीक है

29. The Court recorded that in this conversation also the word milk-cake cannot be assumed to be used pseudonymously for demand of money since the accused Sudhir Khera (A-2) says that because of summer season there is a delay of milk cake since the said milk cake has to come from village.

Call no. 91 dated 25.02.2018 at 14:49:10 hrs:

रामस्वरूप चन्देल अरे वो क्या हुआ उसका था वो था **मिल्क केक का**
सुधीर खेड़ा वो सर सब चीज में एक दिन का टाईम मैं इसलिए
आप से ले रहा हूँ

रामस्वरूप चन्देल वो
सुधीर खेड़ा सारी चीज एक साथ

रामस्वरूप चन्देल कहे तो वो पूछ तो, नहीं है तो छोडो फिर

सुधीर खेड़ा नहीं नहीं हैलो

रामस्वरूप चन्देल हां

सुधीर खेड़ा आपको बहुत फेंकली बताउं कि परसो का डेड
लाईन रख लीजिए कल का मत रखिए

रामस्वरूप चन्देल अच्छा

सुधीर खेड़ा हां

रामस्वरूप चन्देल हां तो पूछ लो ना कि --

सुधीर खेड़ा मैं आपको बोल दिया न परसो का, डेड लाइन रख
लीजिए सारे काम परसो हो जाएगे

रामस्वरूप चन्देल नहीं पूछ लो पहले उनसे क्या पता मावा 1 --
गाली -- ऐसा नहीं कि आजकल, होली की
वजह से गडबड हिसाब बना दे

सुधीर खेड़ा ना ना ना ना

रामस्वरूप चन्देल नहीं

सुधीर खेड़ा ना ना ना ना

रामस्वरूप चन्देल मावा उसके लिए भी चाहिए न, वो मावा भी दो
किलो मावा पूछ लेना

सुधीर खेड़ा अच्छा अच्छा

रामस्वरूप चन्देल नहीं

सुधीर खेड़ा ठीक है

रामस्वरूप चन्देल मिल्क केक तो है ही मावा पूछ लेना जरा क्या है

सुधीर खेड़ा ओ०के० ओ०के०

रामस्वरूप चन्देल और बढिया बनाये मावा तब की बात है यार

30. The Trial Court was of the view that again the word milk-cake cannot be used for demand of money. The case of R.S. Chandel (A-1) that the milk-cake was required on account of Holi festival, stand established from the above conversation where R.S. Chandel (A-1) has not only asked for milk-cake but also for Mawa (both milk products) and has stated that because of Holi there should be no compromise with the same and later on he reiterated that apart from the milk-cake he required mawa. R.S. Chandel (A-1) further says that he needs 2 kg of mawa along with Milk Cake and Sudhir Khera (A-2) should ensure about the availability of Mawa (milk product) in addition of the milk-cake which should be of prepared well (Badhiya Banaye Mawa). The court observed that how the prosecution can link this with a demand for money.

Call no. 99 dated 27.02.2018 at 18:58:01 hrs:

सुधीर खेड़ा अच्छा रूट क्या ले रहे हो आप? चलिए फिर स सवा आठ में मोती नगर मिलू मैं फिर

रामस्वरूप चन्देल हां जी

सुधीर खेड़ा एक बारी घर जाइएगा या डायरेक्ट आ जाओगे

रामस्वरूप चन्देल नहीं नहीं ठीक है देखते है मैं आउं सवा आठ तक तो । आ ही जाएंगे फिर

सुधीर खेड़ा नहीं मतलब आप दुबारा फोन करोगे

रामस्वरूप चन्देल यार वो सवा आठ तक सवा आठ तक तो आ जाएंगे

सुधीर खेड़ा तो सवा आठ बजे मैं वहीं मोती नगर मिलू जो

31. Learned Trial Court observed that no demand of any kind is reflected from the above conversation likewise other conversations are also of the same nature.

32. The only incriminating words attributed to R.S. Chandel (A-1) are in call No.19 dated 23.12.2017 at 18:21:49 hours as under:

Call No.19 dated 23.12.2017 at 18:21:49 hrs:

सुधीर खेरा - मैं ऐसा है ना कि मैं कुछ काम पर हूँ मैं अभी घर आते ही ना पवन को दिखाने के बाद मुझे जाना पड़ेगा चंदेल के पास
महिमा - अच्छा
सुधीर खेरा - उसको आगे पीछे तो कर सकता हूँ लेकिन जाना पड़ेगा नहीं तो कल संडे को ऐसी तैसी करेगा यह
महिमा - अच्छा वह हर हफ्ते इसने सैंटरडे संडे का उसने नियम ही बना लिया है
सुधीर खेरा - हां
महिमा - बुलाते हैं
सुधीर खेरा - मना कर दूँ तो मेरे यही तो एक-दो काम हैं जिसके पीछे यह डिपेंड हो रहे हैं
महिमा - हां हां हां
सुधीर खेरा - चालीस- पचास हजार आते हैं इसके पास से मेरे अपने

33. The Trial Court interpreted the above conversation that Sudhir Khera (A-2) is telling his wife that R.S. Chandel (A-1) was owing Rs.40,000/- to Rs.50,000/- to him (Sudhir Khera) (not vice-versa). However, there was a normal business transaction between Sudhir Khera (A-2) with Delhi Milk

Scheme where R.S. Chandel (A-1) was the concerned officer. Accordingly observed, under what circumstances, this amount was being paid is not clear. Hence, if read in context of earlier conversation it is evidence that R.S. Chandel (A-1) has been placing the order for milk cake and mawa of small quantity for quite some time. This explains the background under which R.S. Chandel (A-1) owes Rs.40,000/- to Rs.50,000/- to Sudhir Khera (A-2). In the entire conversation Sudhir Khera (A-2) does not say that he has paid any amount to R.S. Chandel (A-1) pursuant to any demand. Rather, he is very clear that it is R.S. Chandel (A-1) who owes Rs.40,000/- to Rs.50,000/- to him. Thus, there is no demand of illegal gratification by accused R.S. Chandel (A-1) as alleged by the prosecution when as per Sudhir Khera himself it is accused R.S. Chandel who owes him money and not him.

34. Learned Trial Court further opined that it is evident from the telephonic conversations as above which cannot be read in isolation and have to be read in context inferred from the conversation preceding the use of said words and succeeding the same. When these conversations are in context as a whole, it is writ large that they do not suggest that the words Milk Cake/Mawa were being used pseudonymously for money, rather the

said words are used in context of milk products. It is an admitted case of the prosecution that there is a supply of milk products to the Delhi Milk Scheme and it is apparent from the said conversations that R.S. Chandel (A-1) wanted some milk product of 2 kg which Sudhir Khara (A-2) had to procure from the market. The words used in the conversations i.e. “..... यहां का चाहिए हो तो मिल जाएगा...”; “... नहीं यहां का कौन बढिया बनाता होगा ...”; “.... बढिया बनाये मांवा तब की बात है.....”; “....बढिया सा बना बना दे तो ...”; “... राजस्थान से आना होता है ना....”; “... वह गांव के लोग हैं ना साहब....”; “...ऐसा नहीं कि आजकल, होली की वजह से गडबड हिसाब बना दे.....”; “... मिल्क केक तो है ही मावा पूछ लेना.....” and “...वो मावा भी दो किलो मांवा पूछ लेना.....’

confirm that it is regarding the preparation of milk product and the demand is genuinely for milk cake/ Mawa. The argument of the Ld. Special PP (before Trial Court) that the words Milk cake/ Mawa were being pseudonymously used as money/ bribe is only a presumption. Neither any accused has disclosed that these words were used for consideration or money nor it has been alleged by any persons. The presumptions have solely been drawn by the Investigating Officer without any cogent material on record in this regard.

35. It is pertinent to mention here that search of the house of R.S. Chandel (A-1) was conducted and nothing incriminating was recovered. Further,

there are no allegations of disproportionate assets. Had it been a case where R.S. Chandel (A-1) was regularly receiving illegal gratification of Rs.40,000/- to Rs.50,000/- from his co-accused and others, as alleged by the prosecution, CBI would have unearthed his disproportionate assets and would have laid their hands on the unaccounted money which is not the present case.

36. In addition, none of the witnesses, including the independent witnesses Mukul and Shakti Singh and also the Trap Laying Officer have stated in their statements recorded under Section 161 Cr.P.C. about any demand of illegal gratification, exchange of illegal gratification and acceptance of alleged illegal gratification and there is absolutely no evidence on record to the effect that what transpired between R.S. Chandel (A-1) and Sudhir Khara (A-2) at the spot of alleged incident. Moreover, there is no witness who has alleged that the words Milk-Cake or Mawa were pseudonymously used for demand of money or that such a demand was made by R.S. Chandel (A-1) in lieu of favours.

37. It is also pertinent to mention here that there is no material on record whatsoever even to show *prima facie* that the accused R.S. Chandel had put any undue influence over the staff of Delhi Milk Scheme as alleged. In fact,

the present case is totally based upon the telephonic conversations between the accused persons. Further, the loss to the institution (Delhi Milk Scheme) has not been alleged nor quantified, nor it is the case of the prosecution that the Delhi Milk Scheme has suffered any loss on account of any act of the accused R.S. Chandel. In fact, there is nothing to even *prima facie* show that the accused R.S. Chandel has given any undue benefits more particularly in context of financial benefits to M/s. Tasty Dairy and M/s. Aman Dairy.

38. Case of the prosecution is that when R.S. Chandel (A-1) and Sudhir Khera (A-2) were apprehended, an amount of Rs.86,000/- was recovered from R.S. Chandel (A-1) and a sum of Rs.26,500/- was recovered from Sudhir Khera (A-2) which is highly incriminating qua them. The Recovery Memo dated 27.02.2018 (D-3) and the statements of witnesses Shakti Singh (PW-1), Mukul (PW-2) and TLO Inspector Harish Chander (PW23), the above evidence i.e. the alleged disclosure of Sudhir Khera (A-2) is inadmissible in evidence being hit by the provisions of Section 27 of Indian Evidence Act, having been made in police custody.

39. As per the provisions of Section 27 of Evidence Act, which is in the nature of a proviso to Section 26 of the Act, to the extent it is relevant, when any fact is deposed to as discovered in consequence of information received

from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Thus, the requirement of law is that before the fact discovered in consequence of an information received from an accused is allowed to be proved, he (accused) needs to be in the custody of a police officer.

40. Section 3 of the Indian Evidence Act explains the meaning of the word *Fact*. It provides that a fact means and includes:

- i. Anything, state of things, or relation of things, or capable of being perceived by the senses,
- ii. Any mental condition of which any person is conscious.

41. It further provides five illustrations as to what would constitute a fact which are as under:

- a. That there are certain objects arranged in a certain order in a certain place, is a fact;
- b. That a man heard or saw something, is a fact;
- c. That a man said certain words, is a fact;
- d. That a man holds a certain opinion, has a certain intention, acts in

good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact'

e. That a man has a certain reputation, is a fact.

42. Accordingly, learned Trial Court was of the view that a co-joint reading of Section 3 and Section 27 of Evidence Act would apply that as much of the statement as would relate to the discovery of fact connected with the accused would be admissible in evidence. The discovery of the fact is not only the discovery of the articles but also the discovery of the fact that the articles were kept by a particular accused at a particular place because in principle there is no difference between the statement made by the accused to the effect that "*I will show you the person to whom I have given the articles*" and the statement that "*I will show you the place where I have kept the articles*".

43. The Hon'ble Supreme Court in the case of ***K. Chinnaswamy Reddy vs. State of A.P.: AIR 1962 SC 1788*** had exhaustively discussed the scope and ambit of Section 27 of the Evidence Act and had considered the question as to whether the statement of the accused to the effect that "*he had hidden them (the ornaments)*" and "*would point out the place*", where they

were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments.

44. Now coming to the present case, it is not disputed that after registration of the case, a team of CBI officials was constituted for laying the trap on 27.02.2018 and pursuant to the information received from the source, the trap team reached near Milan Cinema, Moti Nagar, Delhi. R.S. Chandel (A-1) arrived there in his Maruti SX-4 bearing No. DL.8CQ-0899 and, Sudhir Khera (A-2) reached in a Swift Dzire bearing No. DL-1CS-8326. Both the accused then came out of their vehicles and after talking for some time they started walking towards car No. DL-8CQ-0899 and sat inside the car. After 10-15 minutes the said car started on and Sudhir Khera gestured to come out of the car on which TLO challenged Sudhir Khera (A-2) who disclosed that he had paid commission to R.S. Chandel (A-1). Thereafter R.S. Chandel (A-1) was directed to come out of the car and both the accused were apprehended and during the search of accused R.S. Chandel, a bunch of currency notes i.e. Rs.86,000/- were recovered from the left side pocket of Nehru Jacket worn by the accused R.S. Chandel. During interrogation Sudhir Khera (A-2) disclosed that he was also having some money with him

as part of his commission as received from Ashok Kumar (A-3) of Aman Dairy. Pursuant to the same, the search of Sudhir Khera (A-2) was conducted and from the right side back pocket of the worn pants of Sudhir Khera (A-2) a brown leather purse was recovered which was containing a sum of Rs.26,500/. which Sudhir Khera (A-2) disclosed as his commission. On the basis of the disclosure of Sudhir Khera (A-2), Ashok Kumar (A-3) was arrested from Alwar, Rajasthan.

45. Learned counsel for CBI has also placed his reliance upon the statements of the various witnesses recorded under Section 161 Cr.P.C. including the statements of independent witnesses namely Mukul and Shakti Singh; the recorded telephonic conversation of the accused persons and the recovery memos prepared by the Investigating Officer.

46. Insofar as Ashok Kumar (A-3) is concerned, it is not disputed that he was arrested from Alwar, Rajasthan and no recovery was effected from him. Regarding, R.S. Chandel (A-1), it is the case of the prosecution that search of R.S. Chandel (A-1) was conducted at the spot on 27.02.2018 near Milan Cinema, Moti Nagar and during the personal search only currency notes of Rs.4,630/- was recovered from his possession and accordingly a search memo was prepared which bears the signature of witnesses as well as R.S.

Chandel (A-1). However, the recovery memo relating to alleged recovery of Rs.86,000/- from R.S. Chandel (A-1) does not bear his signatures and admittedly this recovery memo was prepared by the Investigating Officer in his office but not at the spot. Two distinct and different recovery memos for same search which negates each other, particularly so because the subsequent recovery memo find no mention of recovery of Rs.4,630/- and the entire story falls flat in the eyes of law.

47. So far as Sudhir Khera (A-2) is concerned, it is the case of the prosecution that search of Sudhir Khera (A-2) was conducted at the spot on 27.02.2018 near Milan Cinema, Moti Nagar and during his personal search only Rs.140/- was recovered from his possession and accordingly a search memo was prepared which bears the signature of witnesses as well as Sudhir Khera (A-2). It is also the case of the prosecution that the alleged recovery of Rs.26,500/- was effected from the right side back pocket of the pants of Sudhir Khera (A-2). However, the recovery memo relating to alleged recovery of Rs.26,500/- from the Sudhir Khera (A-2) do not bear his signatures and only bear the signatures of the trap team.

48. The question which now arises is why the recovery memo was not prepared at the spot and explanation of the prosecution is that R.S. Chandel

(A-1) had become violent. If this was so, then under the given circumstances, the videography of the proceedings could have been conducted or some independent witnesses who gathered at the spot, should have been joined which is not the case of prosecution. Moreover, any CCTV Footage were not obtained by the Investigating Officer to prove the recovery proceedings.

49. Insofar as Ram Swaroop Chandel (A-1) is concerned, the case of the prosecution is based on the alleged recovery of Rs.86,000/- from his possession on 27.02.2018 at the spot in Moti Nagar area and the alleged disclosure of Sudhir Khera (A-2) that he had paid the said amount to R.S. Chandel (A-1) as commission which disclosure statement was admittedly recorded after the recovery of the said amount, in the CBI office after he had been taken into custody by the CBI. Insofar as Sudhir Khera (A-2) is concerned, the case of the CBI is based on the recovery of Rs.26,500/- from Sudhir Khera (A-2) which as per the disclosure statement of Sudhir Khera (A-2) was the commission retained by him.

50. In view of above case of prosecution, there is absolutely no evidence on record even *prima facie* about the demand of illegal gratification, acceptance of illegal gratification and even to say that the recovered

amounts were part of illegal gratification, if any. This being the background, assuming that there is a recovery of currency notes from R.S. Chandel (A-1) and Sudhir Khara (A-2), the only other evidence on record is the disclosure statements of the accused which were recorded later on and the only corroborative evidence is their recorded telephonic conversation. There is no identification of voice in respect of the accused but even if it is taken as truth, it does not show any demand of illegal gratification. The disclosure statements of accused which succeeds the recovery, are inadmissible in evidence and cannot be the basis of framing of charge. This Court in a similar case of ***Roshan Lai Saini vs. C.B.I.: 2011 (1) JCC 102*** has observed that the statement of accused after apprehension to the effect that he had accepted the money on the directions of the co-accused, was in-admissible in evidence being the confessional statement made in the presence of a police officer.

51. Moreover, the Hon'ble Supreme Court in the case of ***Vijay Thakur vs. State of Himachal Pradesh: 2014 STPL(Web) 624 SC*** held that "... what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused What is admissible u/s

27 of the Act (Evidence Act) is the information leading to discovery and not any opinion formed on it by the prosecution. It is settled position of law that Suspicion, however strong, cannot take the character of proof...".

52. It is evident from the record that R.S. Chandel (A-1) and Sudhir Khera (A-2) were apprehended at the spot whereas Ashok Kumar (A-3) was not apprehend from the spot. As per the case of the prosecution and allegations in the FIR, Ashok Kumar (A-3) is the person who gave money to Sudhir Khera (A-2) a private person and not a public servant. However, the Trial Court noted that there is no evidence of Ashok Kumar (A-3) having handed over the money to Sudhir Khera (A-2) or Sudhir Khera (A-2) handing over the same to R.S. Chandel (A-1). Further noted that there is no hand wash, or any recovery of any amount from the accused which is the normal procedure the CBI adopts in such cases and everything in the present case is attributed to an unknown "source" and according to that "source" Sudhir Khera (A-2) used to collect money for R.S. Chandel (A-1) and these persons were only apprehended at the alleged place of occurrence of the offence. Moreover, there is no investigations and evidence to even *prima facie* substantiate the allegations made by the unknown source and entire case is based upon assumptions.

53. The Trial Court further observed that there is no separate disclosure statement of the accused recorded. Rather, the recovery memo which is only signed by the member of the raiding team, do not bear the signatures of the accused or of any independent private persons and it is this recovery memo which contain a narrative paragraph with regard to the disclosure. Be that as it may, even if the narration of the recovery memo is taken to be correct, the said disclosure is pursuant to the alleged recovery of Rs.86,000/- from R.S. Chandel (A-1) and Rs.26,500/- from Sudhir Khera (A-2) which had already been effected. Therefore, even if the allegations and the averments of the prosecution are taken to be correct on their face value, the said disclosure statement made by the accused while in police custody which is subsequent to the alleged recovery, is hit by Section 27 of Evidence Act and is clearly inadmissible in evidence.

54. It is pertinent to mention here that as per the allegations, R.S. Chandel (A-1) being the DGM (Technical) was showing undue influence to show special favours to M/s. Aman Dairy causing loss to the organization (Delhi Milk Scheme). However, case of the prosecution is that there was a loss to the organisation on account of special favours shown by R.S. Chandel (A-1) to certain dairies. In this regard, it was necessary to the prosecution to *prima*

facie show, first that there were special favours shown by the accused R.S. Chandel; secondly to whom those special favours were shown and lastly that there was a financial loss caused to the organization i.e. Delhi Milk Scheme. However, it is nowhere alleged or shown in the entire charge-sheet that there was any loss to the organization (Delhi Milk Scheme). Assuming the allegations made by the prosecution that special favours were shown by R.S. Chandel (A-1) to certain handpicked Dairies, the Investigating Officer ought to have collected the evidence relating to loss to the organization which has not been done. Merely because there was interactions between certain officials of the organization and milk suppliers, there can be no presumption or assumption of any undue benefits. The said benefits, if any, to the detriment of other suppliers or to the interest of the organization ought to have been investigated and shown, which has not been done. On the contrary, as a DGM (Technical), it was necessary for R.S. Chandel (A-1) to maintain cordial relation with all the existing milk suppliers which would include Tasty Dairy and Aman Dairy. The aspect of partiality has neither been alleged nor *prima facie* brought on record. It is not disputed that as per the guidelines of Organization and the duty assigned to R.S. Chandel (A-1), he was required to ensure hassle free and running of milk plant at its

maximum capacity and supply of the milk and milk products to its end users. Admittedly, in a commercial organizations, more particularly an organization involved in supply of milk and milk products, a high degree of proficiency and efficiency to evaluate the purchases of raw materials like milk, milk products, etc. from cost point of view, the nature of job assigned to R.S. Chandel (A-1) required constant feedback from the market and a need of cordial relations with the suppliers/ stake holders/ vendors.

55. In addition to above, there is also nothing on record to show that R.S. Chandel (A-1) had given any undue financial benefits to M/s Tasty Dairy and M/s. Aman Dairy thereby causing any loss to the organization (Delhi Milk Scheme) or the Government.

56. It is pertinent to mention here that as per the case of CBI, R.S. Chandel (A-1) had put undue influence over the staff of Delhi Milk Scheme in order to favour the co-accused i.e. Sudhir Khara (A-2) and Ashok Kumar (A-3). In this regard, the CBI has placed his reliance upon the statements of Sh. Deepak Kumar Chaudhary, DGM (Admn. General Manager, Delhi Milk Scheme and Sh. Jitendra Kumar, IC Manager, Procurement/ Security Officer Delhi Milk Scheme, recorded on 23.03.2018 under Section 161 Cr.P.C. However, both these witnesses have cited an incident dated

29.01.2018 at 9:30 PM when the DGM (T) i.e. R.S. Chandel (A-1) had directed him to take the tankers of three milk suppliers i.e. MCC Renuwal Dairy, Shree Gopala Dairy and Aman Dairy, inside Central Dairy despite the fact that they were informed two days ago for not sending their milk tankers in Delhi Milk Scheme. The witness Jitendra Kumar further stated that he discussed the matter with General Manager, DMS telephonically who directed him not to do any undue favour to any milk supplier out of turn, after which he informed the same to DGM (T) i.e. R.S. Chandel (A-1) who threatened him (witness Jitendra Kumar) and forced him to take the tankers inside the Central Dairy. It is also alleged that R.S. Chandel (A-1) had communicated to Sudhir Khara (A-2) about the extension of contract even before its decision which reflects their malafidies and is incriminating qua them.

57. It is note out of place to observe that both these witnesses are the officials of Delhi Milk Scheme and the tone and tenor of their statements recorded by the Investigating Officer shows that they had certain differences with R.S. Chandel (A-1) on issues relating to supply. Firstly, assuming there were organizational issues relating to functioning of an officer and decisions taken thereof, unless there is cogent evidence of such decisions

being backed by financial considerations and illegal gains, then how criminality can be attached to the same. Secondly, assuming that an influence had been exerted upon them, these officials (one of whom is of an equivalent rank) would have certainly disclosed the same or at-least made a complaint before their senior officers, which is not the case. The Investigating Officer has failed to place on record any material to confirm that these officers had reported the incident dated 29.01.2018 to their senior officers in writing either at the relevant time or even later after the arrest of the accused. Obviously, they would not have waited till 23.03.2018 to make these kind of statements for the first time before the CBI. Hence, the said statements which were recorded by the Investigating Officer much after the incident and the possibility of the witnesses being tutored only to create evidence against the accused, is not all that unfounded. Thirdly, coming to the issue relating to extension of existing contract, it is evident from the statement of these witnesses that the contract in question had been finalized and awarded through an e-tendering process. There are no allegations whatsoever of any inequality in the same. It is admitted by all the departmental witnesses that till the finalization of fresh e-tender for procurement of mixed milk/cow milk/ concentrated skimmed milk for the

year 2018, the agreement with the existing supplier is bound to be extended as per the normal practice. Hence, the extension being a routine issue and having been given as per existing practice, nothing incriminating can be attributed to R.S. Chandel (A-1) having informed the suppliers of such extension.

58. With regard to the witnesses from Delhi Milk Scheme, certain favours being done by R.S. Chandel (A-1) to selected dairies, however, hardly any favours has been stated and for all the decisions taken by the DGM (T) i.e. R.S. Chandel with regard to the tankers being taken inside the central dairy were stopped by the Security officer on account of mismatch in registration number plate, R.S. Chandel (A-1) was fully competent to do so in his official capacity as DGM (T) to have directed their entry.

59. It is not in dispute that on 27.01.2017, R.S. Chandel (A-1) had issued a warning to M/s. Aman Dairy after which an undertaking was received for not repeating the said mistake regarding mismatch of registration number plates. These are small incidents which take place in routine and do not reflect any misconduct on behalf of R.S. Chandel (A-1). Rather, the decision taken by him on day to day basis is in the interest of the organization and he is competent to take such decisions. Even otherwise, Jitendra Kumar has

himself stated that R.S. Chandel directed him not only to take the tankers of M/s. Aman Dairy but also the milk tankers of MCC Renuwal Dairy and Shree Gopala Dairy. This reflects that there was no special treatment given to M/s. Aman Dairy as alleged by the prosecution.

60. It is evident from the statement of witness Dr. Chetan Prakash, Senior Analyst, Delhi Milk Scheme that he had objected to the acceptance of the milk tankers as the milk was not upto the mark. However, the said allegations are against Varun Kumar Nigam and Mohan Lal Biarwa and not directly against R.S. Chandel (A-1). He has shown these persons Varun Kumar and Mohan Lal Baira (both not arrayed as accused) as representatives of R.S. Chandel (A-1). On this aspect, learned Trial Court observed that the investigations are totally silent and there is nothing to show that Varun Kumar Nigam and Mohan Lal Bairwa were acting at the behest of R.S. Chandel. Rather, on the contrary there is a specific instruction in the handwriting of R.S. Chandel (A-1) dated 13.12.2016 wherein he has mentioned that *"the tanker if not as per the standard it must be re-checked by SM/ AM level officer in the night..."*. (Reference in this regard is made to the statement of Dr.Chetak Prakash recorded under Section 161 Cr.P.C.). This confirms that officially the officers of SM/ AM level were competent

to check the quality control. Even otherwise, this issue directly concerns departmental policy and cannot be termed as a misconduct as attributed to R.S. Chandel (A-1).

61. In addition, the witness Jitendra Kumar, Manager (Procurement) has clearly stated in his statement under Section 161 Cr.P.C. that he is not aware of the movement/ illegal activities of Sudhir Khara (A-2) of Tasty Dairy specialities Ltd. and Ashok Kumar (A-3) of Aman Dairy plant in DMS premises and their contact with R.S. Chandel (A-1) with them. Hence, his statement does not incriminate the accused persons.

62. Admittedly, there is no complaint against the R.S. Chandel (A-1) in the department nor any departmental inquiry has been initiated against him on the aspects discussed above. Assuming that all what has been stated by the officials of the Delhi Milk Scheme is correct, at the best these are allegations of irregularities where the department could have proceeded which the department has chosen not to do so. Then how these statements and allegations could incriminate R.S. Chandel (A-1) under the Prevention of Corruption Act that too when the demand of illegal gratification has not been proved.

63. The Hon'ble Supreme Court in the case of ***Manjeet Singh Khera Vs.***

State of Maharashtra: 2013 (9) SCC 276 held as under:

“.....8. The Court also noticed that seizure of large number of documents in the course of investigation of a criminal case is a common feature. After completion of the process of investigation and before submission of the report to the Court under Section 173 Cr.P.C, a fair amount of application of mind on the part of the investigating agency is inbuilt in the process. These documents would fall in two categories: one, which supports the prosecution case and other which supports the accused. At this stage, duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. However, many times it so happens that the investigating officer ignores the part of seized documents which favour the accused and forwards to the Court only those documents which supports the prosecution. If such a situation is pointed out by the accused and those documents which were supporting the accused and have not been forwarded and are not on the record of the Court, whether the prosecution would have to supply those documents when the accused person demands them? The Court did not answer this question specifically stating that the said question did not arise in the said case. In that case, the documents were forwarded to the Court under Section 173(5) Cr.P.C. but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would

like to reproduce the following portion of the said judgment discussing this aspect:

“21.The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 Cr.P.C. and would travel beyond the confines of the strict language of the provisions of Cr.P.C. and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.”

64. Emphasizing the need to place all the relevant documents i.e. the ones that favour the prosecution and those favouring the accused on record the Rajasthan High Court in the case of *Neelesh Jain vs. State of Rajasthan: 2006 CriLJ 2151* held that:

“15. At times, the prosecution has used the loophole in the law, in the garb of using the power and Section 173 of the Code, to withhold those documents, which weaken their case against the accused. However, such a free exercise of power is against the spirit of the Code. Once a person has been accused of the commission of an offence, it is for the investigating agency to discover if in fact the offence has been committed by the said offender or by someone else. Like an archeologist, the investigator must brush layers of evidence to reach the truth. But in his endeavor to book the accused, he cannot collect one-sided evidence and present it to the court. For the investigating agency has to be impartial in its investigation. Moreover, the prosecutor cannot convert himself into a persecutor by submitting one side of the investigation and by withholding relevant portion that would favor the accused person. Neither the investigating agency, nor the prosecution is supposed to merely claim, "Ashwatham maro," without informing the Court as to who has died, the Man or the elephant.

16. In case the prosecution is permitted to withhold vital evidence from the court, the unscrupulous prosecution would be permitted to keep the Court in the dark. The law does not permit the prosecution to play fowl with the Court. Like any party before the Court, the prosecution, too, must come to the court with clean hands. If information is withheld from the Court, then adverse inference should be drawn against the prosecution. Such an inference flows legally from Section 114 of the Evidence Act.”

65. Thus, it is settled law that the Investigating Officer cannot collect one sided evidence by withholding relevant evidence that would favour the accused.

66. Accordingly, learned Trial Court observed that there is nothing which could prompt the court from looking into the documents of the defence particularly when the said documents have not been collected by the investigating agency and the aspects so highlighted therein find confirmation from the statements of official witnesses recorded by the Investigating Officer under Section 161 Cr.P.C.

67. The Trial Court noted that R.S. Chandel (A-1) has placed his reliance upon the internal noting No.A-12001/1/2017/ Proc/ DMS) and also on the Office Order dated 24.03.2017 issued by Sh. D.K. Chaudhary. Copies of both these documents were supplied to the Ld. Senior Public Prosecutor and to the Investigating Officer despite which they neither admitted nor denied the same. Accordingly observed, it is evident from the internal noting No.A-12001/1/2017/ Proc/ DMS that various complaints were being received from different milk suppliers/ societies regarding irregularities during quality testing of milk tanker, acceptance of petty amount for rejecting or not rejecting any milk tanker, difference in measurement of FAT% and SNF%,

which were placed before the General Manager concerned who keeping in view the perishable nature of the time and in the public interest had tried his best to remedy the situation so that the interest of the organization does not suffer as that would directly impact on public health. The General Manager Sh. D.K. Chaudhary, had then issued an Office Order dated 24.03.2017 which reads as under:

“.....In supersession of above letter of even no. dated 23.03.2017, it is hereby order that the rejection of the milk tanker will be done by the Sr. regular staff of QCL instead of contractual staff. In order to ensure the fair and transparent testing procedures it has been decided that if the quality of the milk tanker is deviating from the acceptable norms/ standards in such cases the resampling of such milk tankers will be done by a team of 2-3 officers one each from Processing (Section Manager/ Shift Manager) & OCL under DGM (T) supervision and this team will take final decision of acceptance/ rejection of such milk tanker on the basis of testing report of re-sample of the concern milk tanker. The gate pass of rejected tanker will also be issued only by the regular employee of DMS on duty at that time.....”

68. The above Office Order which has not been disputed, confirms that R.S. Chandel (A-1) was specifically nominated officer to supervise and take a final decision of acceptance/ rejection of milk tankers. He was also well within his jurisdiction to decide as to which milk tanker is to be taken inside the Central Dairy and which is to be rejected. However, said Office Order

dated 24.03.2017 does not form a part of the record. Since the accused having placed his reliance on it and the prosecution not being disputed the same, the Court observed that fair investigation and a fair trial to the accused is a constitutional mandate and the same cannot be violated and it is open to the Court, in the interest of justice, to look into these documents at this stage.

69. Regarding the allegations that Ram Swaroop Chandel (A-1) has conveyed about the extension of milk supply contract for a period of ninety days w.e.f. 01.01.2018 to accused Sudhir Khara before an order for the same was issued. However, fact remains that the entire purchases of milk and milk products are through e-procurement tendering process to which there is no rebuttal. There is nothing on record to show that the fresh tender for the year 2018 (January to December) had been finalized and therefore, under the given circumstances, there was no alternative except to extend the existing tender of milk suppliers for the year 2018 a fact which would have been known to every officials of DMS not being a secret or confidential matter. In the past, extension of tenders has been granted in same manner many times so that the continuous supply of milk and milk products on daily basis as per the requirement of milk sellers is ensured and daily demand of

consumers is fulfilled without any fail. Thus, it was the responsibility of the accused to arrange the required quantity of raw milk from the milk suppliers/ vendors and hence, it was informed to the various milk suppliers including Sudhir Khera (A-2) about the extension after the approval of the General Manager, DMS.

70. As argued by R.S. Chandel (A-1) that he had been a whistle blower and had raised voice against the irregularities in the organization including embezzlement of funds causing loss to the organization by the senior officials of the organization including quality control Lab, procurement of raw milk and several correspondences were made by the accused wherein the information of misappropriation of funds of the organization by such officials were conveyed to the Joint Secretary/CVO, Animal Husbandry Commissioner and Secretary in connection of HRA, TPT Allowance, Milk Procurement, etc. for appropriate action and recovery of amount from such persons, admittedly complaints are still pending disposal before the superior authorities. In this regard, there is nothing on record to show that any departmental action had been initiated against R.S. Chandel (A-1).

71. In view of above facts discussed, the settled law is that if the prosecution witnesses presumed to be true, without any cross examination,

still conviction cannot be awarded to the accused, then deserves for discharge, as the case in hand is.

72. Accordingly, I am of the view that there is no illegality and perversity in the impugned order except the observation made by the Trial Court that if in the facts and circumstances, two views are possible, then the benefit of doubt must be given to the accused. Whereas, settled law is otherwise at the stage of discharge. The said view is applicable after full trial as held in *Sujit Biswas (supra)*, but not at the stage of charge.

73. Finding no merit in the present petition, the same is, accordingly, dismissed with no orders as to costs.

74. Pending application, if any, also stands disposed of.

75. The order be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 30, 2020

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