RAJASTHAN HIGH COURT
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# HIGH COURT OF JUDICATURE FOR RAJASTHAN
# BENCH AT JAIPUR

S.B. Criminal Appeal (Sb) No. 28/2020
CNR: RJHC020007812020 | URN: CRLAS / 70U / 2020

Rajasthan High Court
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Noratmal Nolkha S/o Shri Bhuralal, R/o Devli Village Police Station Devli Distt. Tonk The Then Assistant Sub Inspector Police Station Sop Distt. Tonk Raj.

----Appellant

Versus

State Of Rajasthan, Through P.P.

----Respondent

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For Appellant(s) : Mr. Mahendra Sharma, Adv.
For Respondent(s) : Mr. Manvendra Singh, PP

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**HON'BLE MR. JUSTICE PRAVEER BHATNAGAR**

**Judgment**

1. **Date of conclusion of arguments** **08/10/2026**

2. **Date on which the judgment was reserved** **08/10/2026**

3. **Whether the full judgment or only the operative part is pronounced** **Full Judgment**

4. **Date of pronouncement** **04/11/2026**

For convenience of exposition, the judgment is divided into the following parts:-


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**The Appeal:**

1. By way of filing the present criminal appeal, the appellant has challenged the judgment of conviction dated 24.12.2019 and the order on sentence passed by the learned Special Judge, Prevention of Corruption Act, Ajmer, in Sessions Case No.14/2016, whereby the appellant has been convicted for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988[1] (hereinafter referred to as 'the PC Act') and sentenced to undergo:

**Under Section 7 of the PC Act:**

Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for three months.

**Under Section 13(1)(d) read with Section 13(2) of the PC Act:**

Rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, and in default of payment of fine, to further undergo simple imprisonment for three months.

(Both the sentences to be run concurrently)

**Factual Matrix:**

2. The facts of the case are that, the complainant- Om Prakash Bairwa (PW-2), submitted a written complaint (Exhibit P-2) before Pradeep Monga (PW-9), Deputy Superintendent of Police, Anti-

1 Hereinafter, referred to as the 'PC Act'.

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Corruption Bureau ('ACB'), alleging inter alia that on 21.03.2007, he had gone to the Uniara Court in connection with some work, where he met the appellant, Nauratmal Nolkha, who was posted as an Assistant Sub-Inspector at Police Station Saup, District Tonk. He informed the appellant that his maternal uncle, Laddu Lal, resident of Rahim Nagar (Naiyaon Ka Tapra), had accused him and his father of setting fire to mustard crops in his field. The appellant allegedly asked him to meet him at the police station on the following day. It was further alleged that on 23.03.2007, when the complainant visited the police station and met the appellant, the latter showed him the relevant file and stated that he would register a negative final report (FR) only if a sum of Rs.1,000/- was paid. The appellant further demanded illegal gratification, stating: *"If you want to submit the FR, bring one thousand rupees and I'll do it for you."* The complainant, being unwilling to pay the bribe, decided to approach the ACB with the intention of apprehending the appellant red-handed.

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2.1. Thereafter, Pradeep Monga (PW-9) used the digital voice recorder available in the office to verify the demand alleged in the complaint (Exhibit P-2). For this purpose, the complainant, PW-2 Om Prakash Bairwa, was sent along with Constable Kamal Singh, who subsequently died during the course of trial and therefore, could not be examined. During the verification proceedings, the appellant allegedly accepted Rs.300/- and agreed to accept the remaining amount of Rs.700/-. The recorded conversation was transcribed in the presence of Rajesh Yadav (PW-10) and Nand Singh (PW-7), in the presence of the complainant- Om Prakash

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Bairwa (PW-2), by preparing a transcript memo (Exhibit P-3) and a compact disc containing the conversation was also prepared, signed and sealed as (Article 22).

2.2. After verification of the demand, PW-9 Pradeep Monga decided to arrange a trap and on 24.03.2007, two independent witnesses, namely Anoop Singh Rathod (PW-5) and Mukesh Gurjar (PW-6), both junior clerks at the Tonk Tehsil Office, were summoned and directed to remain present at 6:00 a.m. on 25.03.2007. The complainant was also instructed to remain present on the said date for the trap proceedings.

2.3. On 25.03.2007, the independent witnesses, Anoop Singh Rathod (PW-5) and Mukesh Gurjar (PW-6), appeared before Pradeep Monga (PW-9) and the complainant, Om Prakash Bairwa (PW-2), was introduced to them and his complaint and the transcript of the conversation were read over to verify the demand of illegal gratification. On the instructions of Pradeep Monga (PW-9), the complainant produced Rs.700/- comprising five currency notes of Rs.100/- each and four currency notes of Rs.50/- each. The notes were marked and initialled by Pradeep Monga (PW-9) and Rajesh Yadav (PW-10), Shyamlal (PW-1), Nand Singh (PW-7) and Govind Singh (PW-3) were also present during the proceedings. The procedure to be followed and the precautions to be observed before, during and after the trap were explained to the members of the team. The complainant was instructed to hand over the treated currency notes to the appellant only upon demand and thereafter give the agreed signal by waving his hand over his head. A digital recorder was also provided to him to

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record the conversation and thereafter, the trap party, led by Pradeep Monga (PW-9) and accompanied by the independent witnesses and the other members of the team, proceeded from Tonk in Government Jeep No.RJ 14-2C 5745, carrying the trap box. Upon reaching the spot, Om Prakash Bairwa (PW-2) entered the premises and gave the agreed signal.

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2.4. Upon receiving the signal, Pradeep Monga (PW-9), accompanied by the independent witnesses and the other members of the trap party, entered the premises and found the appellant seated on a chair, wearing a tracksuit. Pradeep Monga (PW-9) introduced himself and the accompanying witnesses and staff and asked the appellant whether he had accepted illegal gratification from Om Prakash Bairwa (PW-2). The appellant appeared nervous and remained silent despite being reassured and questioned again. Shyamlal (PW-1) caught hold of the appellant's right hand while Constable Kamal Singh caught hold of his left hand. Upon further questioning and reassurance, the appellant stated that he had received Rs.700/- from Om Prakash Bairwa (PW-2). The complainant then voluntarily narrated that upon entering the room at the police station, the appellant had asked whether he had brought the money and the complainant replied that he had already paid Rs.300/- on the previous day and would pay Rs.200/- less. The appellant insisted that the full amount was due but subsequently agreed to accept Rs.100/- less. The complainant further stated that he retained Rs.100/- of the treated currency and placed Rs.600/- on the cot as instructed by the appellant. He thereafter handed over Rs.100/- to the

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appellant, who accepted the amount in his left hand and asked him to leave. The complainant then left the room and gave the agreed signal from outside the police station premises. The appellant initially remained silent but, upon being reassured, confirmed the complainant's account and stated that after Om Prakash Bairwa (PW-2) had left, he had placed the money in his shaving box.

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2.5. Thereafter, clean water was brought in two clean glasses and a sodium carbonate solution was prepared and in accordance with the prescribed procedure, the fingers of both hands of Om Prakash Bairwa (PW-2) were washed separately. The solution containing the wash of his right hand turned muddy while the solution containing the wash of his left hand turned light pink and each solution was divided into two bottles, sealed and marked as (R-1, R-2, L-1 and L-2). The persons concerned signed the labels and the cloth and the appellant then brought his shaving box from the adjoining toilet and Mukesh Gurjar (PW-6) opened the box and recovered currency notes from it. The prosecution account describes the recovered currency as five notes of Rs.100/- each and four notes of Rs.50/- each, though the total is stated to be Rs.700/-. The numbers of the recovered notes were compared with those of the currency notes supplied by the complainant, Om Prakash Bairwa (PW-2). The recovered notes were wrapped in a white paper slip bearing the signatures of the persons concerned and taken into custody.

2.6. Thereafter, a sodium carbonate solution was prepared in two clean glasses and the solution in one glass was poured into the

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shaving box for washing it and turned muddy. It was divided between two clean bottles, which were sealed and marked as SB-1 and SB-2. The bedsheet on which the money had allegedly been placed was dipped in the solution contained in the second glass. The solution turned light pink and was divided between two clean bottles marked (BS-1 and BS-2). The persons concerned signed the labels and cloth and the bottles were taken into custody. The shaving box was sealed in a white cloth marked 'A' bearing the signatures of the persons concerned. The bedsheet was similarly sealed in a white cloth marked 'B' and taken into police custody.

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2.7. Then, Pradeep Monga (PW-9) asked the appellant- Nauratmal Nolkha, Assistant Sub-Inspector, to produce the file relating to the case registered against Om Prakash Bairwa. The appellant selected a file from those lying on his table and the file bore Case No.28/2007 dated 21.03.2007, registered under Sections 447, 435 and 427 Indian Penal Code, 1860 against Om Prakash Bairwa S/o of Madholal and Madholal S/o of Ramlal Bairwa. The trap party prepared the proceedings report, which was signed by the persons concerned, and also prepared a site plan bearing the signatures of the relevant persons and the appellant was then arrested.

2.8. After completion of the trap proceedings, Pradeep Monga (PW-9), the members of the trap party and the appellant left Police Station Sop with the seized articles and proceeded to the office of the Anti-Corruption Bureau. The Head Constable, Nand Singh (PW-7), deposited the seized bottles, currency notes and packets in the storeroom; transcripts of the conversations recorded during verification of the demand and the trap

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proceedings were prepared and both compact discs were deposited in the storeroom. The witnesses and the complainant signed the respective transcripts, which were sent to the Anti-Corruption Bureau, Jaipur. An unnumbered First Information Report relating to the incident was also sent to the Bureau for registration. The appellant, accompanied by an Assistant Sub-Inspector, was produced before the learned Special Judge, Sessions Court, Prevention of Corruption Act, Jaipur and was released on bail.

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2.9. Thereafter, a Case No.92/07 dated 26.03.2007 was registered at the headquarters against the appellant- Nauratmal Nolkha, Assistant Sub-Inspector, for offences under Sections 7, 13(1)(d) and 13(2) of the PC Act at Police Station SOP, District Tonk and forwarded to the CBI, Tonk, for investigation. The Superintendent of Police, Tonk, accorded sanction for prosecution of the appellant vide letter No.29947-50 dated 12.12.2007 and subsequently, Charge-sheet No.269 dated 29.12.2007 was filed against the appellant for offences under Sections 7 and 13 of the PC Act.

2.10. During the course of trial, the prosecution examined 10 witnesses including: Shyamlal (PW-1), Om Prakash Bairwa (PW-2), Govind Singh (PW-3), Dr. Giriraj Lal Meena (PW-4), Anoop Singh Rathod (PW-5), Mukesh Gurjar (PW-6), Nand Singh (PW-7), Hazari Lal (PW-8), Pradeep Monga (PW-9) and Rajesh Yadav (PW-10). The witness Govind Singh (PW-3) registered the FIR while Pradeep Monga (PW-9) was the Trap Laying Officer. The appellant’s statement under Section 313 Code of Criminal

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Procedure, 1973 was recorded, wherein he denied knowing the complainant or having any knowledge of the complainant's application and in defence, the appellant examined Gopilal (DW-1) and Ramsahay as (DW-2).

2.11. Upon appreciation of the evidence on record, the trial Court held that the prosecution had established the essential ingredients of demand and acceptance of illegal gratification beyond reasonable doubt. It was observed that the complainant turning hostile did not by itself warrant rejection of the prosecution case, particularly when he had admitted his signatures on the documents prepared during the proceedings. It further held that the audio recording of the conversation established the demand made after the complaint was lodged and that the recovery of the money was supported by sufficient evidence. Therefore, the trial Court invoked the presumption under Section 20 of the PC Act and drew an adverse inference against the appellant and convicted the appellant for the aforesaid charge.

**Arguments Advanced by Appellant:**

3. Learned counsel for the appellant contended that the prosecution had failed to prove the demand and acceptance of illegal gratification beyond reasonable doubt. It was submitted that the complainant- Om Prakash Bairwa (PW-2), had turned hostile and denied that the appellant had demanded Rs.1,000/- for submitting a negative final report in the case registered against him and his maternal uncle. The complainant had also denied authorship of the written report (Exhibit P-2), although the person who scribed it was not examined. It was further argued

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that the complainant had stated that certain persons had advised him to lodge the report against the appellant and had admitted in cross-examination that the money was placed in the shaving box at the instance of the ACB officials. On these grounds, learned counsel submitted that the appellant had been falsely implicated.

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3.1. Learned counsel further challenged the admissibility of the recorded conversations contained in CD (Articles 22 and 23), contending that the certificate under Section 65-B of the Indian Evidence Act, 1872, had not been filed along with the charge-sheet and was produced only during trial. It was argued that the subsequent production of the certificate could not cure the defect or justify the exhibition of the said compact discs. It was also submitted that Anoop Singh Rathod (PW-5) and Mukesh Gurjar (PW-6) had stated in their cross-examination that they neither heard the conversation nor were present at the time of the alleged demand and payment of the bribe. Their testimony, therefore, could not establish the alleged acceptance of illegal gratification.

3.2. It was further contended that the appellant was not authorised to submit a negative final report and that the allegation of demanding Rs.1,000/- for that purpose was consequently untenable. It was also argued that the prosecution had failed to establish the authenticity of the recorded conversation, as no voice sample of the appellant was obtained during investigation and the alleged audio recording was not exhibited in evidence. It was submitted that the learned trial Court erred in relying upon the transcript alone to conclude that the conversation had taken place between the appellant and Om Prakash Bairwa (PW-2).

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3.3. Lastly, it was submitted that the sanction for prosecution had been granted mechanically, without due application of mind, and that the defence evidence adduced through DW-1 and DW-2 had not been properly appreciated. Therefore, it was prayed that the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted for the aforesaid offences.

**Arguments Advanced by Respondent:**

4. Per contra, learned Public Prosecutor supported the impugned judgment and submitted that the prosecution had established the demand and acceptance of illegal gratification through circumstantial and corroborative evidence. It was contended that the appellant had demanded illegal gratification from Om Prakash Bairwa (PW-2) for submitting a negative final report and had received Rs.300/- on 24.03.2007, followed by the remaining amount of Rs.700/- received on 25.03.2007 and the recovery of Rs.700/- from the appellant was also relied upon in support of the prosecution case. It was submitted that the mere fact that complainant- Om Prakash Bairwa (PW-2) had turned hostile was not sufficient to discard the other evidence substantiating the demand and acceptance of the bribe.

4.1. It was further submitted that complainant- Om Prakash Bairwa (PW-2) had admitted in his deposition that the written report (Exhibit P-2) bore his signature and that he had visited the police station where the appellant was posted as an Assistant Sub-Inspector on 24.03.2007 and had failed to establish that the report was lodged at the instance of any other person. It was contended that there was no plausible reason for the complainant

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to submit a written complaint before the ACB at the instance of unidentified persons and the complainant's denial of the prosecution case was not worthy of reliance, particularly in view of the other circumstantial evidence and the recorded conversation between the complainant and the appellant. It was also contended that the FIR against the complainant and his maternal uncle had been registered at the police station where the appellant was posted and that the investigation had been entrusted to the appellant. Consequently, the contention that the appellant was not competent to submit a negative final report was stated to be untenable.

4.2. Learned Public Prosecutor further submitted that the conversation between Om Prakash Bairwa (PW-2) and the appellant had been recorded and duly exhibited after the certificate under Section 65-B of the Indian Evidence Act was produced. The transcripts relating to the verification of the demand and the subsequent receipt of the remaining amount had been proved by the prosecution witnesses and bore the complainant's signatures. It was also argued that the appellant had failed to establish any prior enmity with the ACB officials to substantiate his allegation of false implication. The defence evidence adduced through DW-1 and DW-2 was stated to be improbable and insufficient to discredit the prosecution case.

4.3. Lastly, it was contended that the learned trial Court had rightly convicted and sentenced the appellant under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act and the present appeal deserves dismissal.

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**Analysis by this Court:**

5. Heard learned counsel for the parties and perused the material available on the record.

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6. Before adverting to the factual aspect of the case, the following questions arise for determination by this Court namely: (a) whether the demand and acceptance of illegal gratification can be established notwithstanding the complainant having turned hostile; and (b) whether (Articles 22 and 23) and the transcripts of the recorded conversations are admissible in evidence in the absence of the primary audio recordings, having regard to the requirements of Section 65-B of the Evidence Act.

**A. Proof of Demand Despite Complainant Turned Hostile:**

7. At the outset, it would be apposite to refer to the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **Neeraj Dutta v. State (NCT of Delhi)**[2] wherein while considering the provisions of Sections 7 and 13 of the PC Act, it was held that even where the complainant turns hostile or is unavailable due to death or otherwise, the demand and acceptance of illegal gratification may be established on the basis of other oral, documentary and circumstantial evidence available on record. The relevant part is reproduced hereinunder for ready reference:

> **"88. What emerges from the aforesaid discussion is summarised as under**:
>
> **88.1.** (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt

2 (2023) 4 SCC 731.

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of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

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

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

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

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

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. **Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act**.

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

**88.6.** (f) **In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant**.

**88.7**. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

**88.8**. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

**90**. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

> In the **absence of evidence of the complainant** (direct/primary, oral/documentary evidence) **it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution**."
>
> (Emphasis Supplied)

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7.1. Upon perusal of the aforesaid judgment, it emerges that the demand and acceptance of illegal gratification may be established through other oral, documentary and circumstantial evidence, notwithstanding the complainant having turned hostile, provided the evidence as a whole proves the essential ingredients of the offence beyond reasonable doubt. The Court is, therefore, required to assess the entire evidence on record and determine whether the demand and acceptance of illegal gratification stand proved, notwithstanding the complainant having resiled from his earlier version.

**B. Admissibility and Evidentiary Value of Electronic Evidence:**

8. Now, coming to the second question concerning the admissibility and evidentiary value of the electronic evidence, it is not disputed that the certificate under Section 65-B of the Evidence Act was produced during the course of trial. The present case is not one where secondary electronic evidence was relied upon in the absence of such certification. The order sheets of the trial court reveal that Pradeep Monga (PW-9) submitted the certificate under Section 65-B of the Act, which was exhibited as Exhibit P-20.

8.1. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka v. T. Naseer @ Nasir @ Thandiantavida Naseer @ Umarhazi @ Hazi**,[3] wherein it was held that non-production of a certificate under Section 65-B of the Indian Evidence Act, 1872, is a curable

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defect and that the requisite certificate may be produced at any stage before the conclusion of the trial. The relevant extract is reproduced hereinbelow:-

> "**10.** In **State of Karnataka v. M.R. Hiremath, 2019 (7) SCC 515**, this Court after referring to the earlier judgment in **Anwar's case (supra)** held that the **non-production of the Certificate under Section 65B of the Act is a curable defect**…"
>
> **11.** Coming to the issue as to the stage of production of the certificate under Section 65-B of the Act is concerned, this Court in **Arjun Panditrao Khotkar's case (supra)** held that the certificate under 65-B of the Act can be produced at any stage if the trial is not over. Relevant paragraphs are extracted below:
>
> > "56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. **Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused**. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 CrPC or Section 165 of the Evidence Act. **Depending on the facts of each case, and the court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the court may in appropriate cases allow the prosecution to produce such certificate at a later point in time**. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case — discretion to be exercised by the court in accordance with law.
> >
> > 59. Subject to the caveat laid down in paras 52 and 56 above, the law laid down by these two High Courts has our concurrence. **So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted and relied upon in evidence**."
>
> (Emphasis Supplied)

## Appraisal of Evidence and Findings:

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9. In the light of the aforesaid legal principles, this Court is required to examine whether the prosecution has established the demand of illegal gratification by the appellant. The prosecution case, in this regard, rests upon the testimony of Om Prakash Bairwa (PW-2), Pradeep Monga (PW-9), the trap laying officer, Rajesh Yadav (PW-10), who was posted as CI, ACB, at the relevant time and Nand Singh (PW-7), who was posted as Head Constable in the ACB.

**A. <u>Establishment of Demand and Acceptance of Bribe by the Prosecution Beyond Reasonable Doubt</u>:**

10. Upon consideration of the entire evidence available on record, this Court finds that the testimony of Om Prakash Bairwa (PW-2) read in conjunction with the depositions of Pradeep Monga (PW-9), Nand Singh (PW-7), Rajesh Yadav (PW-10) and Hazari Lal (PW-8), establishes the following facts:

10.1. On 24.03.2007, the complainant visited Police Station SOP and met the appellant, wherein a FIR registered against the complainant was pending at the said police station and the investigation thereof had been entrusted to the appellant and these facts are further corroborated by the depositions of Pradeep Monga (PW-9) and Hazari Lal (PW-8), who handed over the relevant case file to Pradeep Monga (PW-9). The said file, marked as (Article 24), contained FIR No.28/2007, registered against the complainant under Sections 447, 435 and 427 of the IPC.

10.2. The complainant- Om Prakash Bairwa (PW-2), in his testimony, has supported the prosecution case to the extent that, after submitting the written complaint (Exhibit P-2) at the ACB

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Chauki, Tonk, he was provided with a voice recorder and was accompanied by an ACB constable to Police Station Sop. He further stated that, upon returning from the police station, he handed over the voice recorder to an ACB official namely: Pradeep Monga (PW-9). Although, the complainant denied that the appellant had demanded or accepted illegal gratification of Rs.300/- or had demanded the remaining amount, he admitted having written and signed the complaint (Exhibit P-2), which contained the allegation of demand of illegal gratification. The complainant also admitted that he had visited the ACB office and submitted the said complaint before Pradeep Monga (PW-9) and has admitted his signatures on the transcript (Exhibit P-3) and on the compact disc prepared in connection with the recorded conversation between him and the appellant. The proceedings relating to the recording and preparation of the transcript were also spoken to by Pradeep Monga (PW-9), Nand Singh (PW-7) and Rajesh Yadav (PW-10).

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10.3. The complainant's denial of having met the appellant or of the appellant having demanded money for submitting a negative final report is required to be considered in the light of his own admissions, wherein the complainant has himself acknowledged having written and signed the complaint (Exhibit P-2), which specifically contained the allegation that the appellant had demanded illegal gratification for submitting a negative final report in the case registered against him and the subsequent proceedings also lend support to the prosecution version, particularly the recording of the conversation between the

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complainant and the appellant, the transcript whereof was prepared as Exhibit P-3 and the recording whereof was preserved in compact disc Article 22.

10.4. The testimony of the official witnesses, namely: Pradeep Monga (PW-9), Nand Singh (PW-7) and Rajesh Yadav (PW-10), corroborates the prosecution version that the conversation containing the alleged demand of illegal gratification was recorded through the voice recorder and subsequently transcribed in (Exhibit P-3) in the presence of Om Prakash Bairwa (PW-2). The constable Kamal Singh handed over the voice recorder to Pradeep Monga (PW-9) on 24.03.2007 and after listening to the recorded conversation, Pradeep Monga (PW-9) prepared its transcript (Exhibit P-3) and the recording was copied onto compact disc (Article 22). Thereafter, Nand Singh (PW-7) sealed the compact disc and deposited it in the Malkhana of the ACB Chauki and relevant entries in the Malkhana Register (Exhibit P-19) were maintained in the ordinary course of official duties. The sequence of these entries supports the prosecution's assertion regarding the preservation and safe custody of the seized articles. The compact discs (Articles 22 and 23) remained in the custody of the concerned officials until they were produced before the trial Court and at the time of their exhibition, the trial Court recorded that the seals on the articles were intact and that the paper slips affixed thereto bore the signatures of the complainant, the trap-laying officer and the witnesses who were present during the process of copying, packing and sealing the recordings.

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10.5. At this juncture, it is appropriate for this Court to conclude that the challenge to the admissibility of transcription (Exhibit P-3) and CD (Article 22) is without any merit. The requirements for certification of secondary evidence under Section 65B of the Evidence Act were substantially met and it was duly proved that the CD had been copied from a voice recorder in the official custody of Pradeep Monga (PW-9). The delay in filing of the Section 65B certificate is a curable defect and does not affect the admissibility of secondary electronic evidence, as held in **State of Karnataka v. T. Naseer @ Nasir** (supra). The relevant transcription (Exhibit P-3) is reproduced herein under for ready reference:-

"परिवादी औमप्रकाश बैरवा – अन्दर आ जाऊं सर
आरोपी श्री नौरतमल – आ जा
नौलखा सहायक उप
निरीक्षक पुलिस
परिवादी – हां जी सहजाद भाई
परिवादी – साहब वो पप्पू तो गयों और एक हजार की व्यवस्था होई कौनी
आरोपी – फैर क्सयानं आ गयों
परिवादी – तीन सौ रुपया छः अबार
आरोपी – कहां था न तेरे को पूरे
परिवादी – काल दे दूंगों साब
आरोपी – तू जा यहां से फालतू बाम मत कर, तू चला जा यहा से
परिवादी – अस्यानं काई करो साब, ये ही छः काल दे जाऊंगो
परिवादी – अबार कोई मिल जावेगो कोई तो लियाऊंगो
आरोपी – तो लिया
परिवादी – साब काल तक कह दो, साहब सुबह नौ बजे लियाउंगों, वो शाम तक देगा साब, वो पप्पू कौनी साहब, नहीं तो मैं लिया तो
आरोपी – अरे महेश रोटी तो लिया यार.....तेरे को कहा था ना XXXXX

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परिवादी – नहीं हुये साहब, पर शाम तक करता हूॅ, मैं अगर हो जाती है, व्यवस्था, मेरे पिताजी से मत कहना आप, हजार की मत कहना आप सौ–दो सौ की कह देना

परिवादी – अजी साहब पूरी करना कोशिश, बाकी कर दूंगा साहब

आरोपी – फालतू बात मत कर

परिवादी – साहब आप भी जानते हो मैं मुलजिम कौनी

आरोपी – सब जानता हूॅ मैं

परिवादी – चिंता तो हैं न सर, इसलिये आप से मिल रहा हूॅ

आरोपी – कर देंगे न औबलाईज

परिवादी – वो तो करते हो आप औबलाईज ऐसी बात नहीं है। उनका जो काम हो साहब वो म्हांक नाम करार म्हांक के माथें आ जावें साब

आरोपी – अरे यार कौनी सब्जी या ले जा और या कटौरी साफ करदें नमक निकाल दे अलग

परिवादी – फिर साहब इस्तगासों भी इमही कर जिल्यों साहब, अलग नहीं दूंगों साहब हैं न, एक हजार कर दूंगो साहब

आरोपी – ठीक हैं।

परिवादी – म्हारों लाख को नुकसान हो गयो, आपने बताऊं कार्यवाही ढंग से हो जाती है, न साहब तो लफडा नहीं होगा, म्हानें आप पर विश्वास छः

आरोपी – बाकी सब तो ठीक छः पण काल कहीं छी न काल ही लियो तो फेर पहले ही कम माग्या छा, तेने कहा ना तेरे मुंह से कहां था न अभी मुंह से नहीं कहां, अभी (अन्य व्यक्ति से बातचीत)

परिवादी – तो फैर मैं चालु म काल तक आऊंगो मैं

आरोपी – कहां जायेगा रुक

परिवादी – घरां (अन्य व्यक्ति से बातचीत)

आरोपी – कतना ले आयो छें अबार

परिवादी – तीन सौ रुपया छः अबार ये छः

आरोपी – मेल दे उठें

परिवादी – राजाई के नीचे साहब

आरोपी – अभी शाम को आकर कर देना बाकी, कहां का है

परिवादी – महुवा मेरा गांव है, बापौती गांव हैं मेरे पिताजी भी वहीं थें बीवी बच्चें भी वहीं थे मां भी वहीं थी।

आरोपी – वहीं थें

पदिवादी – रात को मैंने चौरु से फोन मिलायो, स्वीच ऑफ छो

आरोपी – कसयो मोबाईल छः

परिवादी – म्हार तो नोकिया छः बैलेंस कौनी चालु साहब काल आऊॅ

आरोपी – ठीक हैं।"

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10.6. The conversation recorded in the transcript establishes that the appellant demanded a bribe from the complainant- Om Prakash Bairwa (PW-2) in connection with FIR No.28/2007 registered against him and considering the aforesaid aspect, the prosecution has established beyond reasonable doubt that the appellant demanded a bribe of Rs. 1,000 and accepted Rs. 300 from the complainant.

**B. Proof of Receipt and Recovery of the Trap Amount:**

11. The court will now proceed to determine whether, on 25.3.2007, the appellant received Rs.700. To prove the receipt of the bribe amount, the prosecution case rests again on the testimonies of Om Prakash Bairwa (PW-2), Anup Singh Rathore (PW-5), Mukesh Kumar Gurjar (PW-6), Nand Singh (PW-7) and Rajesh Yadav (PW-10).

11.1. The complainant- Om Prakash Bairwa (PW-2) acknowledged that on 25.3.2007, he left the ACB Chauki with the Deputy Superintendent of ACB, ACB staff, and other independent witnesses for the SOP police station. Before they left, he handed over five Rs. 100 notes and four Rs. 50 notes and applied a chemical powder to the notes, then placed them in his shirt pocket. He was instructed not to touch them until he entered the police station and handed them to the appellant. He further testified that, after the powder was applied to the notes, he washed his hands with clean water. The complainant also acknowledged receiving a voice recorder to record his

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conversation with the appellant. He stated that, before they reached the police station, everyone got out of the vehicle at Muhwa turn and as per the instructions, the ACB officials and other witnesses stayed outside the station at different locations, while he entered alone. He saw the appellant and placed Rs.600 beneath the bedsheet on the cot and Rs.100 in a box. He then left the station and signalled the ACB officials by moving his hand over his head, after which everyone involved entered the station. He further stated that the appellant's hands were washed separately in fresh water in two glasses, and the water in one glass turned pink. He also accepted that the bedsheet and a shaving box were washed in clean water, and the water turned pink; thereafter, the water was filled into separate bottles, sealed and paper slips were affixed to them. The police seized and sealed the currency notes and affixed paper slips bearing the signatures of the complainant and those present. The police also washed the box and collected the water in two separate bottles. The police sealed these and signed and marked the paper slips accordingly.

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11.2. As to the appellant's further acceptance of Rs.700, independent witnesses Anup Singh Rathore (PW-5) and Mukesh Kumar Gurjar (PW-6) further support the prosecution's case. They testified that Pradeep Monga (PW-9) summoned them on 24.3.2007 and instructed them to be present on 25.3.2007 for the trap proceedings. They appeared on the appointed date and time and were introduced to the complainant, Om Prakash Bairwa (PW-2). Thereafter, PW-9 read the complaint to them and explained and demonstrated the established procedure before the trap

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began. This included washing the witnesses' and complainant's hands with clean water and sodium carbonate solution; applying phenolphthalein powder to the currency notes provided by the complainant; having the complainant wash his hands again after the powder was applied; and placing the notes in his shirt pocket. He was instructed not to touch the notes until the appellant demanded them, to record the conversation, and to signal by waving his hand after leaving the police station.

11.3. They have further confirmed the prosecution story by deposing that they left from ACB Chauki in a jeep, boarded at Muhava turn and as per instructions, the complainant entered into the police station and after some time, came outside the police station by waving his hand over his head. Upon receiving the signal, they, along with the trap party led by Pradeep Monga (PW-9), entered the premises and found the appellant seated on a chair, wearing a tracksuit. Pradeep Monga (PW-9) introduced himself and asked the appellant whether he had accepted illegal gratification from Om Prakash Bairwa (PW-2). The appellant appeared nervous and remained silent despite reassurance and further questioning. Two constables caught hold of the appellant's right hand and left hand from the wrists separately. Upon further questioning and reassurance, the appellant stated that he had received Rs. 700 from Om Prakash Bairwa (PW-2). The complainant then voluntarily narrated that, upon entering the room at the police station, the appellant asked whether he had brought the money, and the complainant replied that he had already paid Rs.300 the previous day and would pay Rs. 200 less.

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The appellant insisted that the full amount was due but subsequently agreed to accept Rs.100 less. The complainant further stated that he retained Rs.100 of the treated currency and placed Rs.600 on the cot as instructed by the appellant. He thereafter handed over Rs.100 to the appellant, who accepted the amount in his left hand and asked him to leave.

11.4. Thereafter, clean water was brought in two clean glasses, and a sodium carbonate solution was prepared, the fingers of both hands of Om Prakash Bairwa (PW-2) were washed separately. The solution containing the wash of his right hand turned muddy, while the solution containing the wash of his left hand turned light pink, and each solution was divided into two bottles, sealed, and marked as (R-1, R-2, L-1 and L-2). They signed the labels and the cloth, and the appellant then brought his shaving box from the adjoining toilet. Further, PW-6 Mukesh Kumar Gurjar deposed that he opened the box and recovered currency notes to the tune of Rs.700. They also stated that they compared the recovered notes with those supplied by the complainant, Om Prakash Bairwa (PW-2) and they matched. The recovered notes were wrapped in a white paper slip bearing their signatures. They also deposed that thereafter, they prepared a sodium carbonate solution in two clean glasses, poured the solution into one glass, and then poured it into the shaving box to wash it, turning it muddy. They divided it between two clean bottles, sealed them, and marked them as (SB-1 and SB-2). They dipped the bedsheet on which the money was allegedly placed in the solution in the second glass. The solution turned light pink and was divided between two clean

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bottles marked (BS-1 and BS-2). They signed the labels and cloth, and the bottles were taken into custody. The shaving box was sealed in a white cloth marked 'A', bearing their signatures. The bedsheet was similarly sealed in a white cloth marked 'B', which also bears their signatures. They also corroborated that the appellant submitted the file to the trap-laying officer. They also stated that after that they left the police station SOP along with the appellant for the ACB Chauki Tonk. After reaching there, they prepared a transcript of the conversation between the appellant and complainant recorded on an audio tape. Similarly, they also copied the audio conversation on a compact disc, which they sealed, covered, and signed after affixing paper slips over it.

11.5. PW-9 Pradeep Monga, PW-7 Nand Singh and PW-10 Rajesh Yadav have also reiterated the same version in their depositions. Nothing has surfaced in their depositions and the depositions of the aforesaid two recovery witnesses to disbelieve their testimony. The arguments that the witnesses and the other witnesses did not hear the conversation between the appellant and PW-2 Om Prakash are not tenable for the reasons that: Firstly, the recovery of the currency notes of Rs.700 was made from the shaving box at the instance of the appellant and the appellant's hand, the shaving box and the bedsheet lying over the cot, where the initial Rs. 600 were placed, when washed in the solution prepared, turned pink, further gets consolidated from the Forensic Analysis Report (Exhibit P-26) which notes that the traces of sodium carbonate and phenolphthalein were found in the water solutions. Secondly, the demand and receipt of Rs.300 gets validated from the

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conversation transpired between the appellant and the complainant through the transcript (Exhibit P-3) and the compact disc (Article 22) produced during trial. Thirdly, the transcription (Exhibit P-9) and the conversation copied in the compact disc, which reads as under:

"परिवादी औमप्रकाश बैरवा – साब
आरोपी श्री नौरतमल – आ गया
नौलखा सहायक उप
निरीक्षक पुलिस
परिवादी – हां साहब
परिवादी – जांच आप ही करला न साब
आरोपी – कोई जांच कौनी
परिवादी – हैनं म्हांको काम हो जानी चाहियें हैंन और एफ.आर. लाग जानी चाहिये हैं न, चाहें आप आज लगाओं, कद भी लगाओं हैंन थें जानो
आरोपी – कोई दिक्कत कौनी तू मत आबो कर बार–बार ठीक हैन शक कर छः
परिवादी – काई शक करेला, आता ही रेवें छः अठी न तो
आरोपी – ले आया क्या
परिवादी – हां साहब लायो छूं लेकिन गरीब आदमी छूॅ
आरोपी – रख द
परिवादी – थें थोडा बहुत कम कर लेता न साब, सौं दो सौं कम कर लेता न साब काई फर्क पड छः साहब
आरोपी – अं
परिवादी – भाई साहब म्हारे बताउ आप ने म्हारं पास ज्यादा से ज्यादा तीन चार बौरी चने होंगे और कोई पैदा नहीं है।
आरोपी – बोल मत बोल आवाज जाव छः बार।
परिवादी – आज साब कणा कस्या सू कर लेर आयो छू मल तो गया कस्यान कर करार
परिवादी – गवाह वगैरहा तो होगया न बांका म्हानें भी तो पतो चाल जाय
आरोपी – बो मैं मेरे हिसाब से ले लूंगा
परिवादी – म्हानें भी तो पतो चाल जाये
आरोपी – कर जां सों रुपयां कम देजा और बोल
परिवादी – सौं रुपयां कम दे जाऊं
आरोपी – हां रख दे, और जां
परिवादी – कोई दिक्कत कौनी आप गिनलो भली सं
आरोपी – विश्वास छः रख जा और जां

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परिवादी – सौ दो सौ रुपयां की बात कौनी बाद में करता रहंगा
आरोपी – ठीक है, तुम जाओं
परिवादी – काल तीन सौ तो आ ही गया न साब पहले ही ये कर लेता मैं तो या दिक्कत न आती साहब, सों बोरी तो नुकसान नहीं होतो साब, आपने सारी मौका स्थिति पतो छः साहब
आरोपी – अब मदद कर दयांगा न होव
परिवादी – अब बड़ा साहब थोड़ी तफतीश करे ला इकी
आरोपी – अरें नहीं म्हारें पास हैं तफतीश मेरी है। ये तो, देख फाईल मेरा नाम लिखा है।
परिवादी – नौरत मल ए.एस.आई.
आरोपी – देख लिखा हैं न
परिवादी – हां फाईल पे लिखा है, देखों कहीं ऐसा न हो आप के अलावा और कोई करें
आरोपी – नहीं, नहीं कोई जरूरत नहीं है, नो आप निश्चत रहो।
आरोपी – ठीक हो गयों नं चाल
परिवादी – ठीक है, बस साब"

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11.6. The transcription confirm unerringly, undoubtedly and without an iota of doubt that the appellant, being posted as ASI, Police Station Sop, demanded and received the bribe of Rs. 1,000 from PW-2 Om Prakash for submitting the final negative report in the FIR lodged against the complainant and its investigation assigned to the appellant. There is no probable reason for the court to disbelieve the testimonies of witnesses PW-5 to PW-10, including PW-7 Nand Singh, in the absence of any animosity among the aforesaid witnesses, mere aspersions, which are always spat out over the witnesses to defend, cannot brush aside their oral, documentary and other circumstantial evidence led by the prosecution. The admissibility and its mode of proof of the secondary electronic evidence placed on record have already been dealt with while concluding that the appellant demanded a bribe from the complainant and need no reiteration.

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11.7. In view of the aforesaid discussion, the testimonies of Om Prakash Bairwa (PW-2), the independent witnesses Anup Singh Rathore (PW-5) and Mukesh Kumar Gurjar (PW-6) and the other members of the trap party, read in conjunction with the recovery proceedings, the FSL report (Exhibit P-26) and the documentary evidence relating to the seizure, custody and transmission of the recovered articles, lend corroboration to the prosecution case and upon a cumulative appreciation of the aforesaid oral, documentary and scientific evidence, this Court is of the considered view that the prosecution has established beyond reasonable doubt that the appellant received the illegal gratification of Rs.700 from the complainant- Om Prakash Bairwa (PW-2) on 25.03.2007.

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**Conclusion & Sentence:**

12. Upshot of the above discussion, the present appeal being devoid of any merit is hereby **dismissed** and the judgment of conviction and order of sentence dated 24.12.2019 passed by the learned Special Judge, Prevention of Corruption Act, Ajmer, in Sessions Case No. 14/2016 (01/2008) are hereby upheld.

13. On the aspect of sentence awarded to the appellant, this Court finds no ground to interfere with the quantum of sentence imposed by the learned Trial Court and accordingly **affirms** the sentence so awarded.

14. The appellant is directed to surrender before the learned Trial Court forthwith to serve the remaining part of the sentence and his bail bonds, stand canceled and the learned Trial Court shall take necessary steps to secure his custody for execution of the sentence, in accordance with law. The period already undergone

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by the appellant shall be set off against the substantive sentence, in accordance with law.

15. All pending application(s), if any, also stand disposed of.

(PRAVEER BHATNAGAR),J

S-A/130/KESHAV GHIYA

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