IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 363 of 2012
Reserved on: 13.08.2026
Date of Decision: 19.08.2026

Suchi Dhawan ...Appellant

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Appellant : Mr Digvijay Singh, Advocate.

For the Respondent/State : Mr Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 07.08.2012 and order of sentence dated 09.08.2012 passed by learned Special Judge, Kullu (learned Trial Court) vide which the respondent (accused before learned Trial Court) was convicted and sentenced for the commission of offence punishable under Section 420 of Indian Penal Code (IPC) and Section 13(2) of the Prevention of Corruption Act (PC Act). *(The parties shall hereinafter be*

1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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referred to in the same manner as they were arrayed before the learned Trial Court for convenience)

2. Brief facts giving rise to the present appeal are that the police presented a challan against the accused before the learned Trial Court for the commission of offences punishable under Section 7, 13(1) (d) and Section 13(2) of the Prevention of Corruption Act (PC Act) and Section 420 of the Indian Penal Code (IPC). It was asserted that the informant Lal Singh (PW1) was running a school in the name and style of Great Himalayan Public School, Barshogi. Some of his students were studying in Class 10 and 10+2 and wanted to appear in the examinations being conducted by the National Institute of Open School (NIOS). He found out that Crescent Moon Public Senior Secondary School, Bajaura, was a centre of NIOS. Suchi Dhawan, the accused, was the coordinator. The informant talked to the accused and purchased 20 admission forms at the rate of ₹50/- per form. He submitted 15 forms to the accused. The informant went to the accused to obtain the roll numbers of the 15 students and submit 5 forms on 13.08.2009. The accused demanded ₹9,000/- at the rate of ₹450/- per form for 20 forms. The informant expressed his inability to pay ₹9,000/-, and the accused agreed to receive ₹6,000/-. The informant promised to pay the remaining ₹3,000/-

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afterwards. The informant did not want to pay the bribe to the accused. Hence, he reported the matter to the police. The police registered an FIR (Ext.PW1/A). Inspector Prem Singh (PW14) investigated the matter. He obtained the samples of phenolphthalein and sodium carbonate from the MHC. Bhushan Rajgeer (PW2) and Constable Sunil Kumar were joined as witnesses. Inspector Prem Singh put some phenolphthalein powder in one glass of water and some sodium carbonate in another glass of water. The water remained colourless. He mixed the contents of the two glasses, and the water became light pink. The sample of light pink water was put in a nip, and the nip was sealed with seal "A". Samples of sodium carbonate and phenolphthalein powder were obtained in two different match boxes. The match boxes were sealed with seal "A". Sample seal was obtained on a separate piece of cloth. The informant produced 4 currency notes of ₹1,000/- and 4 currency notes of ₹500/-. Their serial numbers were noted, and these were seized vide memo (Ext.PW1/C). The sample nip was also seized vide memo (Ext.PW1/B). The currency notes were treated with phenolphthalein powder and were handed over to the informant. The informant's hands were washed, and he was directed to hand over the currency notes to the accused on demand. Brij Bhuhsan was associated as a

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shadow witness and was told to signal the police after the receipt of money by the accused. The samples and phenolphthalein powder were deposited with the MHC. A raiding party consisting of Inspector Prem Singh, SI Tara Singh (PW3), Constable Mahinder Singh (PW6) and Constable Sunil Kumar was formed, and the police proceeded to the spot in the vehicle bearing registration No. HP-18A 2357. Lady Constable Poonam joined on the way. The police party reached the Crescent Moon Public School, Bajaura. Shakuntala Thakur and Dr Chand Kishore (PW4) joined as independent witnesses. The informant went to the accused with Bhushan Raj. He talked to the accused, and she demanded ₹6,000/-. The informant handed over the currency notes to the accused. Bhushan Raj gave the signal to the police as agreed. The police party went to the room. The accused was sitting on her chair. Inspector Prem Singh introduced himself, and he directed the accused to stand up. Lady constable and SI Tara Singh caught hold of the accused by her wrists. Mahinder Singh brought a container, and one jug of water and a glass. Inspector Prem Singh took sodium carbonate powder and showed the powder to the witnesses present on the spot. He prepared a solution of sodium carbonate in a glass bowl. The colour did not change. The hands of the accused were washed with a solution, and the colour of

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the hand wash turned pink. The hand wash was preserved in a nip (Ext.P4), and the nip was sealed with seal 'B'. Memo (Ext.PW1/B) was prepared. The currency notes were produced by the accused. Their Serial numbers were tallied with the serial numbers noted in the memo. The police put the currency notes in an envelope, sealed the envelope with seal 'P', and seized it vide memo (Ext.PW1/E). Seal impression (Ext.PW4/A) was taken on a separate piece of cloth, and the seal was handed over to witness Chand Kishore after use. Inspector Prem Singh prepared the spot map (Ext.PW14/A) and recorded the statements of witnesses as per their version. The case property along with the sodium carbonate powder was deposited with the MHC Hans Raj (PW5), who deposited them in Malkhana and made an entry in the register No. 19. He sent the case property to RFSL Gutkar vide RC No. 25 of 2008 through Constable Mahinder Singh, who deposited the case property at RFSL Gutkar and handed over the receipt to the MHC on his return. Keshav Thakur (PW12) produced the documents which were seized vide memos (Ext.PW3/A, Ext.PW12/G, and Ext.PW12/L). The report of chemical analysis (Ext.PW8/A) was issued, in which it was mentioned that traces of sodium carbonate and phenolphthalein were detected in the nips; phenolphthalein was detected in the sample of phenolphthalein

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powder and sodium carbonate was detected in the sample of sodium carbonate. The statements of witnesses were recorded as per the version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, she was charged with the commission of offences punishable under Section 420 of the IPC and Section 13(1)(d)(ii) punishable under Section 13(2) of the P.C. Act, to which she pleaded not guilty and claimed to be tried.

4. The prosecution examined 14 witnesses to prove its case. Lal Singh (PW1) is the informant. Bhushan Raj (PW2), Govind (PW7), Gunmal (PW9) and Bhagi Ram (PW10) did not support the prosecution case. SI Tara Singh (PW3) and Constable Mahinder Singh (PW6) are members of the raiding party. Dr Chand Kishore (PW4) witnessed the recovery of the currency note from the accused. HC Hans Raj (PW5) was working as MHC, with whom the case property was deposited. Dr V.S. Jamwal (PW8) is the forensic expert who analysed the sample. Amar Nath (PW11) prepared the challan. Keshav Thakur (PW12) is the Principal of Crescent Moon Public Senior Secondary School, who produced the record. Shiv Chand

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(PW13) proved the record of the bank. Inspector Prem Singh (PW14) investigated the matter.

5. The accused, in her statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that she was present in her office, the police had arrested her, and the key to the office was handed over to Poonam Kapoor. She denied the rest of the prosecution case. She stated that the witnesses deposed falsely to implicate her. She was innocent and had not taken any bribe. She did not produce any evidence in her defence.

6. Learned Trial Court held that the informant's testimony was corroborated by the members of the raiding party. It was proved that the accused had demanded a bribe and accepted the money from the informant. Minor contradictions in the statements of witnesses were not sufficient to discard the prosecution’s version. Non-joining of Poonam was also not material, and the accused could have examined her to prove that the prosecution version was not correct. The accused could not be acquitted because some of the witnesses had been declared hostile. Therefore, the learned Trial Court convicted the accused of the commission of offences punishable under Section 420 of the IPC and Section 13(2) of the P.C. Act and sentenced her as under:

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Sections	*Sentences*
420 of the Indian Penal Code	The accused was sentenced to undergo rigorous imprisonment for two years, pay a fine of ₹5000/-, and, in default of payment of fine, to undergo further simple imprisonment for four months.
13(2) of Prevention of Corruption Act	The accused was sentenced to undergo rigorous imprisonment for two years, pay a fine of ₹5000/-, and, in default of payment of fine, to undergo further simple imprisonment for four months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal asserting that the accused was not proved to be a public servant, and she could not have been prosecuted under the provisions of the P.C Act. There was no evidence that the accused had dishonestly or fraudulently deceived any person or induced any person to deliver any property to anyone. The statements of prosecution witnesses contradicted each other. The informant's testimony was not sufficient to prove demand and acceptance. Learned Trial Court erred in convicting the accused. Hence, it was prayed that the

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present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr Digvijay Singh, learned counsel for the appellant and Mr Lokender Kutlehria, Additional Advocate General for the respondent/State.

9. Mr Digvijay Singh, learned counsel for the appellant/accused, submitted that the statements of prosecution witnesses contradicted each other on material particulars. It was specifically mentioned in the charge sheet that the police had applied for prosecution sanction, but the National Institute of Open School refused to grant the sanction. The accused had left the job, and the prosecution sanction was not required. It is impermissible to prosecute a person after the sanction has been refused by the competent authority. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by learned Trial Court be set aside.

10. Mr Lokender Kutlehria, Additional Advocate General for the respondent/State conceded that the prosecution had sought the sanction to prosecute the appellant/accused, which was refused. However, he submitted that the prosecution's sanction applies only

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to a public servant. The accused had ceased to be a public servant and no prosecution sanction is required in her case. The plea of lack of sanction was not taken before the learned Trial Court, and this plea cannot be taken before this Court. The minor contradictions were bound to come with time. The witnesses who have not supported the prosecution case are the parents of the children, but the demand was not made from them but from the informant. Therefore, the fact that the parents have not supported the prosecution case will not make it doubtful. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was stated in the charge sheet that NIOS Authority had deliberately not given the prosecution sanction to prosecute the accused. However, the accused had left NIOS Crescent Moon Public School, Bajaura in the year 2010. Therefore, the prosecution sanction is not required. These averments in the charge sheet clearly show that the competent authority had not given the prosecution sanction and the charge sheet was filed before the Court on the premise that the accused had left the job and prosecution sanction was not required. In ***Chittaranjan Das v. State of Orissa, (2011) 7 SCC 167: (2011) 3 SCC (Cri) 78: (2011) 2 SCC (L&S) 757: 2011 SCC OnLine SC 849***, the

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sanction was refused by the competent authority and the police filed the charge sheet after his retirement. Hon'ble Supreme Court held that it was not permissible and the accused could not have been prosecuted after his retirement. It was observed at page 170:

> **14.** We are of the opinion that in a case in which sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the public servant. Any other view will render the protection illusory. The situation may be different when sanction is refused by the competent authority after the retirement of the public servant, as in that case sanction is not at all necessary and any exercise in this regard would be an action in futility.

13. This position was reiterated in ***D.L. Rangotha v. State of M.P., (2015) 12 SCC 733: (2016) 1 SCC (Cri) 338: 2013 SCC OnLine SC 1215,*** wherein it was held at page 734:

> **6.** Ms Aishwarya Bhati, learned counsel appearing on behalf of the respondent State, accepts that the case of the appellant is covered by the decision of this Court in ***Chittaranjan Das [Chittaranjan Das v. State of Orissa, (2011) 7 SCC 167: (2011) 3 SCC (Cri) 78: (2011) 2 SCC (L&S) 757]*** having regard to the fact that while the appellant was in service, the competent authority had rejected the request for sanction and now the appellant has retired from services of the State.
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> **7.** In view of the judgment rendered by this Court in ***Chittaranjan Das [Chittaranjan Das v. State of Orissa, (2011) 7 SCC 167: (2011) 3 SCC (Cri) 78: (2011) 2 SCC (L&S) 757]***, we are of the view that the respondent cannot prosecute the appellant.

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14. A similar view was taken in ***M.P. v. Ram Manohar Pandey*, *(2015) 12 SCC 726: (2016) 1 SCC (Cri) 332: 2014 SCC OnLine SC 1195*** and it was observed at page 730:

> **14.** When the respondent and others were in service, the Municipal Corporation, Ujjain, by Resolutions Nos. 343 and 344 dated 23-9-2004 refused to grant sanction for prosecuting the respondent and others. In spite of the same, the charge-sheet was filed on the next day, i.e. 24-9-2004, before the trial court.
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> **15.** It is pertinent to note that the appellant State also, by letter dated 22-8-2006, refused to grant sanction to prosecute the respondent who was Accused 4. One of the grounds taken was that the respondent is not an employee of the State Government but was an employee of the Municipal Corporation. We have noticed that the Municipal Corporation had already refused to grant sanction by resolution dated 23-9-2004.
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> **xxxxx**
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> **17.** In the case of the respondent, the Special Judge, Prevention of Corruption Act, by order dated 9-9-2009 discharged the respondent. The appellant had failed to make it clear as to how a fresh challan was filed against the respondent on 8-12-2009, which is contrary to the order of discharge dated 9-9-2009 passed by the Special Judge, Prevention of Corruption Act, Ujjain.
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> **xxxxxx**
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> **19.** In ***Subramanian Swamy v. Manmohan Singh [Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666]***, while dealing with the question of grant of sanction for prosecution of a public servant, this Court observed as follows: (SCC pp. 102-03, paras 75-76 & 79)
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> > "75. Therefore, in every case where an application is made to an appropriate authority for grant of

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prosecution in connection with an offence under the PC Act it is the bounden duty of such authority to apply its mind urgently to the situation and decide the issue without being influenced by any extraneous consideration. In doing so, the authority must make a conscious effort to ensure the Rule of Law and that the cause of justice is advanced. In considering the question of granting or refusing such sanction, the authority is answerable to law and law alone. Therefore, the requirement to take the decision with a reasonable dispatch is of the essence in such a situation. Delay in granting sanction proposal thwarts a very valid social purpose, namely, the purpose of a speedy trial with the requirement to bring the culprit to book. Therefore, in this case the right of the sanctioning authority, while either sanctioning or refusing to grant sanction, is coupled with a duty.

76. The sanctioning authority must bear in mind that what is at stake is the public confidence in the maintenance of the Rule of Law which is fundamental in the administration of justice. Delay in granting such sanction has spoilt many valid prosecutions and is adversely viewed in public mind that in the name of considering a prayer for sanction, a protection is given to a corrupt public official as a quid pro quo for services rendered by the public official in the past or may be in the future and the sanctioning authority and the corrupt officials were or are partners in the same misdeeds. I may hasten to add that this may not be the factual position in this case, but the general demoralising effect of such a popular perception is profound and pernicious.

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79. Article 14 must be construed as a guarantee against uncanalised and arbitrary power. Therefore, the absence of any time-limit in granting sanction in Section 19 of the PC Act is not in consonance with the requirement of the due process of law which has been read into our

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> Constitution by the Constitution Bench decision of this Court in ***Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248].***
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> In view of the aforesaid observation, the Court was of the view that Parliament should consider the constitutional imperative of Article 14, enshrining the rule of law, wherein "due process of law" has been read in by introducing a time-limit in Section 19 of the Prevention of Corruption Act, 1988, for its working in a reasonable manner.
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> **20.** In ***State of M.P. v. Sheetla Sahai [State of M.P. v. Sheetla Sahai, (2009) 8 SCC 617: (2009) 3 SCC (Cri) 901],*** this Court deprecated the discrimination between the two sets of officials. In the said case, the prosecution had proceeded against the officials in a pick-and-choose manner. A few who held office only for a short period or who had retired before the process of the decision-making began were proceeded against, and a few who were connected with the decision were not proceeded against.
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> **21.** However, in view of the facts as noticed above including the fact that the State refused to grant sanction while the respondent was in service and he was discharged by the court of competent jurisdiction earlier and in view of the decision of this Court in ***Chittaranjan Das [Chittaranjan Das v. State of Orissa, (2011) 7 SCC 167: (2011) 3 SCC (Cri) 78: (2011) 2 SCC (L&S) 757]***, we are of the view that it is not a fit case to grant the relief claimed by the State. We find no merit in these appeals; these are accordingly dismissed.

15. Therefore, the police could not have filed the charge sheet after the accused had ceased to be a public servant when the sanction was refused by the competent authority during the service.

16. It was submitted that the plea of lack of sanction was not raised before the learned Trial Court and this plea cannot be raised

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before this Court. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***State of Karnataka v. C. Nagarajaswamy, (2005) 8 SCC 370: (2006) 1 SCC (Cri) 47: 2005 SCC OnLine SC 1488*** that the plea of lack of sanction can be taken for the first time before the Appellate Court. It was observed at page 375:

> **15.** Grant of proper sanction by a competent authority is a sine qua non for taking cognisance of the offence. It is desirable that the question as regards sanction may be determined at an early stage. (See ***Ashok Sahu v. Gokul Saikia [1990 Supp SCC 41: 1990 SCC (Cri) 611]*** and ***Birendra K. Singh v. State of Bihar [(2000) 8 SCC 498: 2001 SCC (Cri) 17: JT (2000) 8 SC 248]***.)
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> **16.** But, even if cognisance of the offence is taken erroneously and the same comes to the court's notice at a later stage, a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. (See ***B. Saha v. M.S. Kochar [(1979) 4 SCC 177: 1979 SCC (Cri) 939] SCC para 13*** and ***K. Kalimuthu v. State [(2005) 4 SCC 512: 2005 SCC (Cri) 1291]***.)

17. Thus, the plea of lack of sanction can be taken before this Court.

18. In the present case, the proceedings were conducted without the proper sanction. Therefore, the proceedings are *non est,* and the accused is discharged.

19. In view of the above, the present appeal is allowed, and the judgment and order passed by the learned Trial Court are set aside, and the accused is discharged. The fine, if deposited, be

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refunded to the appellant/accused after the expiry of the period of limitation, in case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

20. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the appellant/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellant/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

21. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

19th August, 2026
(Nikita)

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