

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 20TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.101560 OF 2023



BETWEEN:

SRI. SHRIKANT

... PETITIONER

(BY SMT. BHARATI G.BHAT, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY LOKAYUKTA POLICE,
REPRESENTED BY ITS
DEPUTY SUPERINTENDENT OF POLICE,
GADAG DISTRICT, GADAG,
NOW REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR,
LOKAYUKTA,
HIGH COURT BUILDING,
DHARWAD - 580 011.

... RESPONDENT

(BY SRI ANIL KALE, SPL.PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE IMPUGNED CHARGE SHEET AND ALL FURTHER PROCEEDINGS IN SPL. (SVC) NO. 09/2021 PENDING ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, GADAG, ARISING OUT OF CR.NO. 17/2019 REGISTERED BY THE RESPONDENT LOKAYUKTA POLICE STATION GADAG FOR THE OFFENCE P/U/SEC. 7(a), 7(A), 12, 13(2) OF THE P.C. ACT AGAINST PETITIONER/A-1.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.10.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings in Special (SVC) No.9 of 2021 arising out of Crime No.17 of 2019 registered for offences punishable under Sections 7(a), 7A, 12 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short). The petitioner is accused No.1.

2. Facts adumbrated are as follows:-

An anonymous complaint emerges against the functioning of the Sub-Registrar's office at Gadag. The allegation was that all the staff in the office is in the habit of demanding bribe and, therefore,

a request was made to personally visit the Sub-Registrar's office, look at the truth and initiate proceedings. The complaint was made to the Deputy Superintendent of Police of the Anti-Corruption Bureau. Based upon this, a crime is registered in Crime No.17 of 2019, a search warrant was secured and office of the Sub-Registrar, Gadag was searched. What was found, according to the search so conducted, from the hands of the petitioner was allegedly Rs.9390/- and all others who were in the office of the Sub-Registrar at the time of search were either licensed deed writers or private parties who had come to get the documents registered. Based upon the search, alleging that there was demand and acceptance against the staff of the Sub-Registrar's office and private persons, an investigation is taken up. The investigation leads to filing of charge sheet and filing of charge sheet leads to securing sanction from the hands of the competent authority to prosecute the petitioner as obtaining under Section 19 of the Act. After the sanction being placed before the concerned Court, the concerned Court takes cognizance of the offence and registers Special case No.9 of 2021. It is at that point in time the petitioner knocks at the doors of this Court in Criminal Petition No.100368 of 2022 in which

an interim order of stay of further proceedings was granted. The said criminal petition comes to be disposed of by an order of the coordinate Bench on 06-07-2023 on the score that the office of Anti Corruption Bureau by then stood abolished by a judicial order and liberty was reserved to file a fresh petition by arraigning the Lokayukta as a party respondent. It is, therefore, the present petition has emerged. This Court, in the light of the earlier interim order subsisting till the disposal of the petition, granted an interim order of stay of all further proceedings in the subject petition as well. Therefore, further proceedings have not taken place in Special case No.9 of 2021 *qua* the petitioner/accused No.1.

3. Heard Smt G. Bharati, learned counsel appearing for the petitioner and Sri Anil Kale, learned Special Public Prosecutor appearing for the respondent.

4. The learned counsel appearing for the petitioner would vehemently contend that there is no ingredient of demand and acceptance for an allegation under Section 7 or 7A of the Act, be it under un-amended or amended Act. The learned counsel would further submit that an anonymous complaint emerges, a search

warrant is taken on that strength and the office of the Sub-Registrar, Gadag is searched. There are no trap proceedings conducted, there is no bait money, no test was conducted for the notes being the same and all that the Police of the ACB would do is search the office, found totally Rs.27,000/- and attribute it to the petitioner and other staff of the office. She would further emphasise that without there being any demand or acceptance Section 7 or Section 7A of the Act cannot be laid against the petitioner.

5. Per-contra, the learned Special Public Prosecutor Sri Anil Kale who has filed a statement of objections would submit that certain amount was recovered from the hands of the petitioner which was beyond Rs.100/- and from the hands of several private parties. Therefore, it was a case where Section 7 (a) or Section 7A of the Act would clearly get attracted. He would submit that all these factors are a matter of trial and, therefore, the trial should be permitted to continue, as the office of the Sub-Registrar at Gadag had been brooding rampant corruption.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. Before embarking upon consideration of the issue on merits of the matter, I deem it appropriate to notice the provisions of the Act that are alleged against the petitioner and their interpretation by the Apex Court and then proceed to make the facts applicable to the law as declared by the Apex Court.

8. The provisions of the Act that are alleged are as follows:

"7. Offence relating to public servant being bribed.—Any public servant who,—

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or**
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in*

consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

- (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;*
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.]*

7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a

term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

...
12. Punishment for abetment of offences.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.

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

- (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
- (b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression "known sources of income" means income received from any lawful sources.

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

(Emphasis supplied)

Section 7 directs that any public servant who accepts or attempts to obtain from any person undue advantage with an intention to

perform or cause performance of public duty or to forbear such performance either by himself or by another public servant is said to have committed the offence of bribe. Therefore the soul of Section 7(a) is demand and acceptance for the performance of public duty or forbearance of such performance. Section 7A deals with taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence. The section mandates that whoever accepts or obtains or attempts to obtain from another person for himself or for any other person undue advantage for performance of a public duty or its forbearance is amenable for punishment. Here again it should be demand and acceptance by himself or through some other person. Section 12 deals with abatement of offence which cannot be applicable to the petitioner. Section 13(2) deals with punishment for criminal misconduct. Criminal misconduct is defined in Section 13(1)(a) that whoever dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or enriches himself illicitly during the period of his office. These are the offences alleged against the petitioner. Since the soul is Section 7 either under the un-amended Act or under the amended Act, the

interpretation of Section 7(a) or Section 7A by the Apex Court *qua* un-amended Act or the amended Act is germane to be noticed.

INTERPRETATION UNDER THE UN-AMENDED ACT:

9. The Apex Court in the case of **B.JAYARAJ v. STATE OF ANDHRA PRADESH**¹ interprets Section 7 of the Act and holds as follows:

"7. Insofar 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 v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779: (2009) 2 SCC (Cri) 1]."

(Emphasis supplied)

In the case of **N.VIJAYAKUMAR v. STATE OF TAMILNADU**² the Apex Court holds as follows:

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against

¹ (2014) 13 SCC 55

² (2021) 3 SCC 687

the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27. The relevant paras 7, 8 and 9 of the judgment in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] read as under: (SCC pp. 58-59)

"7. Insofar 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 v. State of A.P. [C.M. Sharma v. State of A.P., (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar 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 (Ext. 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 Ext. 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 insofar as the offence under Sections 13(1)(d)(i) and (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. Insofar 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 Sections 13(1)(d)(i) and (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."

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

(Emphasis supplied)

The Apex Court, later, in the case of **K.SHANTHAMMA v. STATE OF TELANGANA**³ has held as follows:

"10. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. **The proof of demand of bribe by a public servant and its acceptance by him is sine qua non for establishing the offence under Section 7 of the PC Act.**

11. In *P. Satyanarayana Murthy v. State of A.P.* [*P. Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152 ; (2016) 1 SCC (Cri) 11] , this Court has summarised the well-

³ (2022) 4 SCC 574

settled law on the subject in para 23 which reads thus : (SCC p. 159)

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (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. 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 Section 7 or 13 of the Act would not entail his conviction thereunder."

(emphasis supplied)

12. *The prosecution's case is that the appellant had kept pending the return of commercial tax filed by the said Society for the year 1996-97. The appellant had issued a notice dated 14-2-2000 to the said Society calling upon the said Society to produce the record. Accordingly, the necessary books were produced by the said Society. The case made out by PW 1 is that when he repeatedly visited the office of the appellant in February 2020, the demand of Rs 3000 by way of illegal gratification was made by the appellant for passing the assessment order. However, PW 1, in his cross-examination, accepted that the notice dated 26-2-2000 issued by the appellant was received by the said Society on 15-3-2000 in which it was mentioned that after verification of the books of accounts of the said Society, exemption from payment of commercial tax as claimed by the said Society was allowed. PW 1 accepted that it was stated in the said notice that there was no necessity for the said Society to pay any commercial tax for Assessment Year 1996-97.*

13. *According to the case of PW 1, on 23-3-2000, he visited the appellant's office to request her to issue final assessment order. According to his case, at that time, initially, the appellant reiterated her demand of Rs 3000. But she scaled it down to Rs 2000. Admittedly, on 15-3-2000, the said Society*

was served with a notice informing the said Society that an exemption has been granted from payment of commercial tax to the said Society. Therefore, the said Society was not liable to pay any tax for the year 1996-97. The issue of the final assessment order was only a procedural formality. Therefore, the prosecution's case about the demand of bribe made on 23-3-2000 by the appellant appears to be highly doubtful.

14. *PW 1 described how the trap was laid. In the pre-trap mediator report, it has been recorded that LW 8, Shri R. Hari Kishan, was to accompany PW 1 — complainant at the time of offering the bribe. PW 7 Shri P.V.S.S.P. Raju deposed that PW 8 Shri U.V.S. Raju, the Deputy Superintendent of Police, ACB, had instructed LW 8 to accompany PW 1 — complainant inside the chamber of the appellant. PW 8 has accepted this fact by stating in the examination-in-chief that LW 8 was asked to accompany PW 1 and observe what transpires between the appellant and PW 1. PW 8, in his evidence, accepted that only PW 1 entered the chamber of the appellant and LW 8 waited outside the chamber. Even PW 7 admitted in the cross-examination that when PW 1 entered the appellant's chamber, LW 8 remained outside in the corridor. Thus, LW 8 was supposed to be an independent witness accompanying PW 1. In breach of the directions issued to him by PW 8, he did not accompany PW 1 inside the chamber of the appellant, and he waited outside the chamber in the corridor. The prosecution offered no explanation why LW 8 did not accompany PW 1 inside the chamber of the appellant at the time of the trap.*

15. *Therefore, PW 1 is the only witness to the alleged demand and acceptance. According to PW 1, firstly, the demand was made of Rs 3000 by the appellant on 24-2-2000. Thereafter, continuously for three days, she reiterated the demand when he visited the appellant's office. Lastly, the appellant made the demand on 29-2-2000 and 23-3-2000. On this aspect, he was cross-examined in detail by the learned Senior Counsel appearing for the appellant. His version about the demand and acceptance is relevant which reads thus:*

"In the vicinity of office of AO the jeep, in which we went there was stopped and I was asked to go into the office of AO and the trap party took vantage positions. Accordingly, I went inside the office of AO. I

wished AO. At that time apart from AO some other person was found in the office room of AO and he was talking to the AO. AO offered me a chair. After discussion with the AO the said other person left the room of AO. I informed AO that I brought the bribe amount as demanded by her and also asked her to issue the final assessment orders. Then I took the said tainted currency notes from my shirt pocket and I was about to give the same to the AO and on which instead of taking the same amount directly by her with her hands she took out a diary from her table drawer, opened the diary and asked me to keep the said amount in the diary. Accordingly, I kept the amount in the said diary. She closed the said diary and again kept the same in her table drawer and locked the drawer and kept the keys in her hand bag which was hanging to her seat. She pressed the calling bell and a lady attender came into the room of AO, then she instructed the lady attender to call ACTO concerned to her along with the society records concerned.

Accordingly, ACTO came to AO along with record. After going through the ledger and cash book, etc. AO signed on the last page of the said ledger and cash book mentioning 26-2-2000 below her signature in the said register though she signed on 27-3-2000 in my presence. AO directed her attender to affix official rubber stamp below her signature in the ledger and cash book and accordingly attender affixed the same. AO also signed on the office note of final assessment orders at that time. Thereafter, I collected the general ledger and cash book from the attender after affixing the said rubber stamp thereon and came out of the office of AO and relayed the pre-arranged signal to the trap party."

(emphasis supplied)

16. Thus, PW 1 did not state that the appellant reiterated her demand at the time of trap. His version is that on his own, he told her that he had brought the amount. What is material is the cross-examination on this aspect. In the cross-examination, PW 1 accepted that his version regarding the demand made by the appellant on various dates was an improvement. The relevant part of the cross-examination of the appellant reads thus:

"I did not state to ACB Inspector in Section 161 CrPC statement that on the evening of 24-2-2000 I met the AO and that she demanded the bribe. I did not mention in Ext. P-3 complaint that continuously for 3 days after 24-2-2000 I met the AO and the AO reiterated her demand. I did not mention in Ext. P-3 complaint that on 29-2-2000 I approached the AO and the AO demanded bribe of Rs 3000 and that unless I pay the said bribe amount she will not issue final assessment orders. I did not state in my Section 164 statement before the Magistrate that 13-3-2000 to 16-3-2000 I was on leave and from 1-3-2000 to 12-3-2000, I was engaged in recovering the dues of the society. It is not true to suggest that I did not meet the AO continuously 3 days i.e. on 25-2-2000, 26-2-2000 and 27-2-2000 and that 27-2-2000 is Sunday. It is not true to suggest that I did not meet the AO in the evening of 24-2-2000 and that AO did not demand any money from me. I did not state in my Section 161 CrPC statement to Inspector of ACB that before I left the office of DSP on the date of trap I made a phone call enquiring about the availability of AO and the AO was in the office and informed me that she should be available in the office from 6.00 to 7.00 p.m. on that day so also in my Section 164 CrPC. I made such a phone call from the office of the DSP, ACB. I do not remember as to from which phone number I made phone call on that day. I cannot describe office telephone number of the AO. It is not true to suggest that I did not make any such phone call to AO and that she did not give any such reply to me. I did not state to ACB Inspector in my Section 161 CrPC statement or to the Magistrate in my Section 164 CrPC statement that I went inside the office of AO and I wished AO and at that time apart from AO some other person was found in the office room of AO and that he was talking to the AO and that the AO offered me a chair and that after discussion with the AO the said person left the room of AO and then I informed the AO that I brought the bribe amount. I did not state that said aspects to DSP during the post trap proceedings also."

(emphasis supplied)

17. Thus, the version of PW 1 in his examination-in-chief about the demand made by the appellant from time to time is an improvement. As stated earlier, LW 8 did not enter the appellant's chamber at the time of trap. There is no other evidence of the alleged demand. Thus, the evidence of PW 1 about the demand for bribe by the appellant is not at all reliable. Hence, we conclude that the demand made by the appellant has not been conclusively proved.

18. PW 2, Shri B.D.V. Ramakrishna had no personal knowledge about the demand. However, he accepted that on 15-3-2000, the said Society received a communication informing that the said Society need not pay any tax for the year 1996-97. PW 3 Shri L. Madhusudhan was working as Godown Incharge with the said Society. He stated that on 15-3-2000, when he visited the appellant's office, ACTO served the original notice dated 26-2-2000 in which it was mentioned that the Society was not liable to pay any tax. It is his version that when he met the appellant on the same day, she enquired whether he had brought the demanded amount of Rs 3000. However, PW 3 did not state that the appellant demanded the said amount for granting any favour to the said society.

19. PW 4 Ahmed Moinuddin was ACTO at the relevant time. He deposed that on 27-3-2000, the appellant instructed him to prepare the final assessment order, which was kept ready in the morning. He stated that he was called at 6 p.m. to the chamber of the appellant along with books of the said Society. At that time, PW 1 was sitting there. He stated that the appellant subscribed her signature on a Register of the said Society and put the date as 26-2-2000 below it. He was not a witness to the alleged demand. However, in the cross-examination, he admitted that the appellant had served a memo dated 21-3-2000 to him alleging that he was careless in performing his duties."

The afore-quoted judgments were rendered interpreting Section 7 as it stood prior to amendment. The Apex Court holds that demand

and acceptance are *sine qua non* for an offence under Section 7 of the Act.

JUDGMENTS POST AMENDMENT:

10. The Apex Court has further interpreted Section 7(a) post amendment in the case of **NEERAJ DUTTA v. STATE (GOVT. OF N.C.T. OF DELHI**⁴ and holds as follows:

"8. Before we analyze the evidence, we must note that we are dealing with Sections 7 and 13 of the PC Act as they stood prior to the amendment made by the Act 16 of 2018 with effect from 26th July 2018. We are referring to Sections 7 and 13 as they stood on the date of commission of the offence. Section 7, as existed at the relevant time, reads thus:

"7. Public servant taking gratification other than legal remuneration in respect of an official act.—

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in

⁴ 2023 SCC OnLine SC 280

clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Explanations.-

- (a) "Expecting to be a public servant"- If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.
- (b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
- (c) "Legal remuneration"- The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
- (d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
- (e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

9. Section 13(1)(d), as existed at the relevant time, reads thus:

"13. Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct,-

- (a)
- (b)
- (c)
- (d) if he,-

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e)"

10. The demand for gratification and the acceptance thereof are sine qua non for the offence punishable under Section 7 of the PC Act.

11. The Constitution Bench⁴ was called upon to decide the question which we have quoted earlier. In paragraph 74, the conclusions of the Constitution have been summarised, which read thus:

"74. What emerges from the aforesaid discussion is summarised as under:

- (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 of the accused**

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

- (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.**
- (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.**
- (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 Section 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 Section 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 Section 13(1)(d) and (i) and (ii) of the Act.**

- (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.
- (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.
- (g) **In so far 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 Section 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point

(e) as the former is a mandatory presumption while the latter is discretionary in nature."

(emphasis added)

12. The referred question was answered in paragraph 76 of the aforesaid judgment, which reads thus:

"76. 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/ document-tary 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 added)

13. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj¹ and P. Satyanarayana Murthy². There is another

decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu⁵, which follows the view taken in the cases of B. Jayaraj¹ and P. Satyanarayana Murthy². In paragraph 9 of the decision in the case of B. Jayaraj¹, this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:

"9. Insofar 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 Sections 13(1)(d)(i) and (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."

(emphasis added)

14. The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.

15. In the case of N. Vijayakumar⁵, another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii)

Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in *C.M. Girish Babu v. CBI* [*C.M. Girish Babu v. CBI*, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in *B. Jayaraj v. State of A.P.* [*B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] **In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1) (d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe.** Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."

(emphasis added)

16. Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.

17. Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations

of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

18. *The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."*

Subsequent to **NEERAJ DUTTA'S** case the Apex Court in the case of **SOUNDARAJAN v. STATE**⁵ has held as follows:

"FINDING ON PROOF OF DEMAND

9. *We have considered the submissions. It is well settled that for establishing the commission of an offence punishable under Section 7 of the PC Act, proof of demand of gratification and acceptance of the gratification is a sine qua non. Moreover, the Constitution Bench in the case of Neeraj Dutta³ has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.*

10. *As stated earlier, complainant PW-2 has not supported the prosecution. He has not said anything in his examination-in-chief about the demand made by the appellant. The public prosecutor cross-examined PW-2. The witness stated that there was no demand of a bribe made by the appellant. According to him, he filed a complaint as the return of the sale deed was delayed. Though PW-2 accepted that he had filed the complaint, in the cross-examination, he was not confronted with the material portions of the complaint in which he had narrated how the alleged demand was made. The public prosecutor ought to have confronted the witness with his alleged prior statements in the complaint and proved that part of the complaint through the concerned police officer who had reduced the complaint into writing. However, that was not done.*

11. *Now, we turn to the evidence of the shadow witness (PW-3). In the examination-in-chief, he stated that the appellant asked the PW-2 whether he had brought the amount. PW-3 did not say that the appellant made a specific demand of gratification in his presence to PW-2. To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26th July 2018, is 'gratification'.*

⁵ (2023) SCC OnLine SC 424

There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused.

12. *There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved."*

The Apex Court in the case of **NEERAJ DUTTA** (*supra*) was clarifying and interpreting the judgment in the case of **NEERAJ DUTTA** which was rendered by a Constitution Bench and further holds that proof of demand and acceptance of gratification is *sine qua non* for any allegation under Section 7 of the Act, be it pre-amendment or post-amendment. This is reiterated in the case of **SOUNDARAJAN** (*supra*).

11. On a coalesce of the judgments rendered by the Apex Court, as quoted *supra*, the soul of Section 7 is demand and acceptance. The unmistakable inference on the interpretation, in the considered view of the Court would be, if there is demand but

no acceptance it would not make an offence under Section 7. If there is acceptance but no demand, it would then also make no offence under Section 7. An act alleged under Section 7 should have the ingredients of demand and acceptance and it is for the performance of a public duty or forbearance from performance. Therefore, demand and acceptance should be for the purpose of performance of some duty. For such performance there should be work pending at the hands of the public servant against whom Section 7 is alleged.

APPLICABILITY OF THE LAW TO THE FACTS OF THE CASE:

12. What triggers registration of the crime is an anonymous complaint. The complaint is made to the Deputy Superintendent of Police of the then Anti Corruption Bureau. It reads as follows:

“ಗೆ,

ರವರಿಗೆ

ಡಿ.ಎಸ್.ಪಿ, ಎ.ಸಿ.ಪಿ

ಸರ್,

ವಿಷಯ: ಭ್ರಷ್ಟಾಚಾರ ಹತ್ತಿಕುವ ಕುರಿತು.

ಸರ್ ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾವುಗಳು ನೊಂದ ಲಕ್ಷ್ಮೀಶ್ವರ ಪಟ್ಟಣ ಹಾಗೂ ಪಟ್ಟಣದ ಸುತ್ತಮುತ್ತಲಿನ ಜನರ ಪರವಾಗಿ ತಮ್ಮಲ್ಲಿ ವಿನಂತಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ನಮ್ಮ ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಛೇರಿಯಲ್ಲಿ ದಲ್ಲಾಳಿಗಳ ಹಾವಳಿ ಮಿತಿಮೀರಿದ್ದು, ನಿಯಂತ್ರಣಕ್ಕೆ ಬರದ ಕಾರಣ ನಾನು ತಮ್ಮಲ್ಲಿ

ನಿವೇದಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ಸದರಿ ಕಛೇರಿಯಲ್ಲಿ ಹಣದ ಆಸೆಗೆ ಮೀತಿಗೆ ಪಾರವೇ ಇಲ್ಲಾ, ಇಲ್ಲಿರುವ ಅಧಿಕಾರಿ ವರ್ಗದವರಾಗಲಿ ಮತ್ತು ಸಿಬ್ಬಂದಿಗಳಾಗಲಿ ಹಾಗೂ ಅವರ ಬಾಂಡ್ ರೈಟರ್‌ಗಳಾಗಲಿ ಹಣ ಇಲ್ಲದೇ ಯಾವುದೇ ಕೆಲಸವನ್ನು ಮುಟ್ಟುವುದಿಲ್ಲಾ, ನಾವು ಈ ಬಗ್ಗೆ ಮಾನ್ಯ ಸಬ್ ರೆಜಿಸ್ಟ್ರಾರ್ ನವರಲ್ಲಿ ವಿನಂತಿಸಿದಾಗ ಅವರು ಸಿಸ್ಟಮ್ ಹೇಗಿದೆ ಅದೇ ರೀತಿ ಕೆಲಸವನ್ನು ಮಾಡಿಸಿಕೊಂಡು ಹೋಗಬೇಕು, ಯಾವುದೇ ರೀತಿಯ ವಾದವಿವಾದಕ್ಕೆ ದಾರಿ ಇಲ್ಲ ಅಂತಾ ನಮಗೆ ಬುದ್ಧಿ ಮಾತನ್ನು ಹೇಳಿ ಮತ್ತು ಕೇಳಿದಷ್ಟು ಹಣವನ್ನು ಕೊಟ್ಟು ಕೆಲಸವನ್ನು ಮಾಡಿಸಿಕೊಂಡು ಸರಳ ರೀತಿಯಿಂದ ಹೋಗಬೇಕೆಂದು ಹೇಳುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಇವರ ಮಾತಿನಿಂದ ನೊಂದ ನಾವು ನಿಮ್ಮಲ್ಲಿ ವಿನಂತಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ಇಲ್ಲಿ ಬಂದು ತಾವುಗಳು ಖುದ್ದಾಗಿ ಪರಿಶೀಲಿಸಿದರೆ ತಮಗೆ ಸದರಿ ಕಛೇರಿ ಬಗ್ಗೆ ಸತ್ಯಾ ಸತ್ಯತೆ ತಿಳಿಯುತ್ತದೆ, ಇದು ತಮ್ಮಿಂದ ಭ್ರಷ್ಟಾಚಾರ ತಗ್ಗುತ್ತದೆ ಎಂದು ನಾನು ಭಾವಿಸಿದ್ದೇನೆ; ಆದ್ದರಿಂದ ಮಾನ್ಯರವರು ಇದರ ಬಗ್ಗೆ ಕೂಲಂಕಷವಾಗಿ ಪರಿಶೀಲಿಸಿ ಕಾನೂನು ಕ್ರಮವನ್ನು ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ನಾನು ಈ ಮೂಲಕ ನೊಂದ ಪಟ್ಟಣ ಹಾಗೂ ಗ್ರಾಮ ನಿವಾಸಿಗಳ ಪರವಾಗಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ ಸರ್.”

Certain persons claiming to be aggrieved have made the complaint, but against whom is not clear and against what staff of the Sub-Registrar's office who are alleged to have indulged themselves in the act of demanding money for the purpose of registration of document is also not forthcoming. Post the said complaint, a Police Inspector makes a communication to the ACB. The communication reads as follows:

“ಇವರಿಗೆ,

ಪೊಲೀಸ್ ಉಪಾಧೀಕ್ಷಕರು,
ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ ಪೊಲೀಸ್ ಠಾಣೆ
ಗದಗ ಇವರಿಗೆ.

ಮಾನ್ಯರೆ,

ವಿಷಯ: ಲಕ್ಷ್ಮೇಶ್ವರ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿಯ ಭ್ರಷ್ಟಾಚಾರದ ವಿರುದ್ಧ
ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ಕಾಯ್ದೆ 1988 ರ ಅನ್ವಯ ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರಿ.

ಉಲ್ಲೇಖ: ತಮ್ಮ ಆದೇಶ ದಿನಾಂಕ: 06.12.2019.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ನಾನು, ವಿಶ್ವನಾಥ.ಹೆಚ್. ಪೊಲೀಸ್ ಇನ್‌ಸ್‌ಪೆಕ್ಟರ್ ಭ್ರಷ್ಟಾಚಾರ ನಿಗ್ರಹ ದಳ, ಪೊಲೀಸ್ ಠಾಣೆ ಗದಗ, ಈ ಮೂಲಕ ಈ ದಿನ ಸಲ್ಲಿಸುತ್ತಿರುವ ವರದಿ ಏನೆಂದರೆ,

ಗದಗ ಜಿಲ್ಲೆಯ ಲಕ್ಷ್ಮೇಶ್ವರ ಪಟ್ಟಣದಲ್ಲಿಯ ಉಪನೋಂದಣಾಧಿಕಾರಿ ಕಛೇರಿಯ ಅಧಿಕಾರಿ ಮತ್ತು ಸಿಬ್ಬಂದಿಗಳು ಹಾಗೂ ದಸ್ತು ಬರಹಗಾರರು, ದಲ್ಲಾಳಿಗಳು ಸಾರ್ವಜನಿಕರ ಸರ್ಕಾರಿ ಕೆಲಸ ಕಾರ್ಯ ಮಾಡಿಕೊಡಲು ಅಕ್ರಮವಾಗಿ ಸಾಕಷ್ಟು ಲಂಚದ ಹಣ ಪಡೆದು, ಕೆಲಸ ಮಾಡಿ ಕೊಡುತ್ತಿದ್ದು, ಇದನ್ನು ಪ್ರಶ್ನಿಸಿದವರಿಗೆ ವ್ಯವಸ್ಥೆಯೊಂದಿಗೆ ಹೊಂದಿಕೊಂಡು ಹೋಗಬೇಕೆಂದು ತಿಳಿಸುತ್ತಿರುವವರ ವಿರುದ್ಧ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಅಂಚೆ ಮೂಲಕ ಬಂದ ಅರ್ಜಿಯ ಬಗ್ಗೆ ದಿನಾಂಕ:06.12.2019ರಂದು ನನಗೆ ಸೂಚನೆ ನೀಡಿ, ಅರ್ಜಿಯಲ್ಲಿಯ ವಿಷಯದ ಬಗ್ಗೆ ಲಕ್ಷ್ಮೇಶ್ವರ ಪಟ್ಟಣದಲ್ಲಿಯ ಉಪನೋಂದಣಾಧಿಕಾರಿ ಕಛೇರಿಯ ಹಾಗೂ ಸುತ್ತಮುತ್ತಲಿನ ದಸ್ತು ಬರಹಗಾರರ ಕೇಂದ್ರಗಳು ಮತ್ತು ಜೆರಾಕ್ಸ್ ಸೆಂಟರ್‌ಗಳ ಕಾರ್ಯ ಚಟುವಟಿಕೆಗಳ ಬಗ್ಗೆ ಗೌಪ್ಯವಾಗಿ ಮಾಹಿತಿ ಸಂಗ್ರಹಿಸಲು ಸೂಚಿಸಿದ್ದು ಇರುತ್ತದೆ.

ನಿಮ್ಮ ಸೂಚನೆಯಂತೆ ನಾನು ದಿನಾಂಕ:07.12.2019 ಮತ್ತು 10.12.2019 ರಂದು ಸಿಬ್ಬಂದಿ, ಎಂ.ಎನ್.ಕರಿಗಾರ, ಸಿಪಿಸಿ ಇವರೊಂದಿಗೆ ಲಕ್ಷ್ಮೇಶ್ವರಕ್ಕೆ ಭೇಟಿ ನೀಡಿ, ಲಕ್ಷ್ಮೇಶ್ವರ ಕೋರ್ಟ್ ಹತ್ತಿರ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿ ಹಾಗೂ ಅದರಲಿರುವ ದಸ್ತು ಬರಹಗಾರರ ಕೇಂದ್ರದಲ್ಲಿ ಜರುಗುವ ವ್ಯವಹಾರಗಳ ಬಗ್ಗೆ ಗೌಪ್ಯವಾಗಿ ಪರಿಶೀಲನೆ ಮಾಡಿ ಮಾಹಿತಿ ಸಂಗ್ರಹಿಸಿದೆನು.

ಉಪನೋಂದಣಾಧಿಗಳ ಕಛೇರಿಗೆ ಬರುವ ಸಾರ್ವಜನಿಕರ ಕೆಲಸ ಮಾಡಿಕೊಡಲು ಕೆಲವು ದಲ್ಲಾಳಿಗಳು, ದಸ್ತುಬರಹಗಾರರು ಹಾಗೂ ಜೆರಾಕ್ಸ್ ಸೆಂಟರ್‌ನವರು ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ಅಧಿಕಾರಿ ಹಾಗೂ ಸಿಬ್ಬಂದಿಯ ಪರವಾಗಿ ಸರ್ಕಾರದ ನಿಗದಿತ ಶುಲ್ಕಕ್ಕಿಂತ ಹೆಚ್ಚಿನ ಹಣ ವಸೂಲಿ ಮಾಡುತ್ತಿರುವ ಆಂಶ ಗಮನಕ್ಕೆ ಬಂದಿರುತ್ತದೆ. ಲಂಚದ ಹಣ ನೀಡಿದಲ್ಲಿ ಸಾರ್ವಜನಿಕರ ಕೆಲಸ ಬೇಗ ಆಗುತ್ತದೆ ಎಂದು ಪುಸಲಾಯಿಸುತ್ತಿದ್ದು, ವೆಂಕಣ್ಣ ಗುಡಿ ಎಂಬ ದಸ್ತು ಬರಹಗಾರ ಪ್ರಭಾವಿ ವ್ಯಕ್ತಿಯಾಗಿದ್ದು, ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಛೇರಿಯ ಪ್ರಮುಖ ಮಧ್ಯವರ್ತಿಯಾಗಿರುತ್ತಾನೆ ಎಂದು ತಿಳಿದು ಬಂದಿದೆ. ಇವರ ಮನೆಯು ಸಬ್ ರಿಜಿಸ್ಟ್ರಾರ್ ಕಛೇರಿ ಹತ್ತಿರದ ವೆಂಕಟೇಶ್ವರ ದೇವಸ್ಥಾನದ ಆವರಣದಲ್ಲಿರುತ್ತದೆ. ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಾರ್ಯವೈಖರಿಯ ಬಗ್ಗೆಯೂ ಸಹ ಸಾರ್ವಜನಿಕರಲ್ಲಿ ಒಳ್ಳೆಯ ಅಭಿಪ್ರಾಯ ಇರುವುದಿಲ್ಲ. ಸಾರ್ವಜನಿಕರು ಅತ್ಯುತ್ತಮವನ್ನು ವ್ಯಕ್ತಪಡಿಸುತ್ತಿದ್ದನ್ನು ಗೌಪ್ಯವಾಗಿ ಗಮನಿಸಲಾಗಿರುತ್ತದೆ.

ಅರ್ಜಿಯಲ್ಲಿ ನಮೂದಿಸಿದ ಮಲ್ಲಿಕಾರ್ಜುನ ಹಾಗೂ ಇತರೇ ವ್ಯಕ್ತಿಗಳ ಬಗ್ಗೆ ಪರಿಶೀಲಿಸಲಾಗಿ ಹಾಗೂ ಫೋನ್ ಮಾಡಲಾಗಿ ಸಂಪರ್ಕಕ್ಕೆ ದೊರೆತಿರುವುದಿಲ್ಲ. ಗೌಪ್ಯ ಸ್ಥಾನಿಕ ಪರಿಶೀಲನೆಯ ಸಂದರ್ಭದಲ್ಲಿ ಅರ್ಜಿಯ ವಿಷಯದಲ್ಲಿ ನೈಜತೆ ಇರುವುದು ಮನವರಿಕೆಯಾಗಿರುತ್ತದೆ. ಈ ರೀತಿಯಾದ ಭ್ರಷ್ಟಾಚಾರವನ್ನು ತಡೆಗಟ್ಟಿ ಸಾರ್ವಜನಿಕರು ನಿರಾತಂಕವಾಗಿ ತಮ್ಮ ವ್ಯವಹಾರವನ್ನು ಪೂರೈಸಿಕೊಳ್ಳುವುದಕ್ಕೆ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ಅಧಿಕಾರಿ ಹಾಗೂ ಸಿಬ್ಬಂದಿ, ದಸ್ತು ಬರಹಗಾರರು, ಮಧ್ಯವರ್ತಿಗಳ ವಿರುದ್ಧ ಭ್ರಷ್ಟಾಚಾರ ಪ್ರತಿಬಂಧಕ ಕಾಯ್ದೆ 1988 ರಡಿ ಪ್ರಕರಣ ದಾಖಲಿಸಿ, ಲಕ್ಷ್ಮೇಶ್ವರ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿ, ದಸ್ತು ಬರಹಗಾರರ ಕೇಂದ್ರ, ವೆಂಕಣ್ಣ ಗುಡಿ ಇವರ ಮನೆಯನ್ನು ಶೋಧನೆ ಮಾಡಿದಲ್ಲಿ ಸಾರ್ವಜನಿಕರಿಂದ ಅಕ್ರಮವಾಗಿ ಸಂಗ್ರಹಿಸಿದ ಹಣ, ಸಾರ್ವಜನಿಕರ ಹಾಗೂ ಸರ್ಕಾರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ದಾಖಲಾತಿಗಳು ದೊರೆಯುವ ಸಾಧ್ಯತೆ ಇರುತ್ತದೆ. ಕಾರಣ ಈ ಬಗ್ಗೆ ಕಾನೂನು ಕ್ರಮಕೈಗೊಳ್ಳುವುದು ಅವಶ್ಯವಿರುತ್ತದೆ ಎಂದು ಮಾನ್ಯರಿಗೆ ವರದಿಯನ್ನು ನಿವೇದಿಸಿಕೊಂಡಿರುತ್ತೇನೆ.

ಗದಗ
ದಿನಾಂಕ:12.12.2019

ತಮ್ಮ ವಿಶ್ವಾಸಿ
ಸಹಿ/
(ವಿಶ್ವನಾಥ.ಹೆಚ್)
ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್-2, ಎ.ಸಿ.ಬಿ.ಗದಗ

It appears that on 07-12-2019 and 10-12-2019 the Police Inspector of ACB, Gadag along with his staff appears to have watched the functioning of the office of sub-registrar and comes to know that there was corruption on those two days. The petitioner has produced documents to demonstrate that he was not even present on 07-12-2019. But, the communication records that he was present and was in the habit of demanding bribe. This results in registration of crime in Crime No.17 of 2019 for the aforesaid offences. Pursuant to registration of crime, a search is conducted in the office of the Sub-Registrar on 12-12-2019. The search report depicts that search was conducted on 12-12-2019 and certain amount was recovered from several persons including the petitioner. A search panchanama is drawn. In terms of search panchanama what could be gathered against the petitioner is as follows:

“ ”

ಲಕ್ಷ್ಮೇಶ್ವರ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿರುವ ಎಲ್ಲ ಲಾಕರ್‌ಗಳನ್ನು, ಸಬ್ ರಜಿಸ್ಟ್ರಾರ್ ಮತ್ತು ಇನ್ನೂಳಿದ ಕೆಲಸಗಾರರು ಕುಳಿತು ಕೆಲಸ ಮಾಡುವ ಸ್ಥಳಗಳನ್ನು ಪರಿಶೀಲನೆ ಮಾಡಲಾಗಿದ್ದು, ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ದಾಖಲಾತಿಗಳನ್ನು ಹೊರತುಪಡಿಸಿ, ಅನುಮಾನಾಸ್ಪದ ದಾಖಲಾತಿಗಳು, ನಗದು ಹಣ ದೊರೆತಿರುವುದಿಲ್ಲ.

ದಸ್ತು ಬರಹಗಾರ ಶ್ರೀ ವೆಂಕಟೇಶ ಗುಡಿ ಇವರ ಮನೆಯ ಶೋಧನಾ ಕಾರ್ಯಕ್ಕೆ ಹೋಗಿದ್ದ ಧಾರವಾಡ ಎ.ಸಿ.ಬಿ.ಪಿ.ಐ. ರವರು ಸಾಯಂಕಾಲ 6-30 ಗಂಟೆಗೆ ದಸ್ತು ಬರಹಗಾರ ಶ್ರೀ ವೆಂಕಟೇಶ ಗುಡಿ ಇವರೊಂದಿಗೆ ಮರಳಿ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಗೆ ಬಂದು ಡಿ.ಎಸ್.ಪಿ. ರವರಿಗೆ ಭೇಟಿಯಾಗಿ, ವೆಂಕಟೇಶ ಇವರ ಮನೆಯ ಶೋಧನಾ ಕಾಲಕ್ಕೆ ದೊರೆತ ನಗದು ಹಣ 55360 ರೂ ಹಾಗೂ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿ ಕಛೇರಿಗೆ ಸಂಬಂಧಿಸಿದ ದಾಖಲಾತಿಗಳು ದೊರೆತಿರುವ ಬಗ್ಗೆ ವರದಿ ಮಾಡಿ, ಸದರಿ ನಗದು ಹಣ ಹಾಗೂ ದಾಖಲಾತಿಗಳನ್ನು ಶೋಧನಾ ಪಂಚನಾಮೆಯ ಕಾಲಕ್ಕೆ ಜಪ್ತು ಮಾಡಿರುವುದಾಗಿ ತಿಳಿಸಿ ಹಾಜರಪಡಿಸಿದರು. ಡಿ.ಎಸ್.ಪಿ. ರವರು ಸದರಿ ದಾಖಲಾತಿಗಳನ್ನು ಮತ್ತು ನಗದು ಹಣವನ್ನು ತಮ್ಮ ವಶಕ್ಕೆ ಪಡೆದುಕೊಂಡರು.

ಲಕ್ಷ್ಮೇಶ್ವರ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ಕ್ಯಾಶ್ ಡಿಕ್ಲೇರೇಶನ್ ರಜಿಸ್ಟ್ರಾರ್‌ದಲ್ಲಿ ಸಬ್ ರಜಿಸ್ಟ್ರಾರ್ ರವರು ತಮ್ಮ ಬಳಿ 100/- ರೂ ಇರುವುದಾಗಿ ನಮೂದಿಸಿದ್ದು, ಶೋಧನೆಯ ಕಾಲಕ್ಕೆ ಅವರ ಬಳಿ 9390/- ರೂ ದೊರೆತಿರುತ್ತವೆ. ಅದರಂತೆ ಇಂದು ದಿನಾಂಕ:12.12.2019 ರಂದು ನೋಂದಣಿಯಾದ ಕಾಗದಗಳ ವಸೂಲಿ ಮಾಡಿದ ಒಟ್ಟು ಶುಲ್ಕ, ಸಬ್ ರಜಿಸ್ಟ್ರಾರ್ ಶ್ರೀ ಸುಬ್ರಾಯ ಭಟ್ ಹಾಗೂ ಅವರ ಕಛೇರಿಯ ಜವಾನ ಹಾಗೂ ಮಧ್ಯವರ್ತಿ ಶ್ರೀ ಗಣೇಶ ಅಂಗಡಿ ಇವರ ಬಳಿ ದೊರೆತ ರೂ.17200/- ಗಳಿಗೆ ತಾಳೆಯಾಗುವುದಿಲ್ಲ. ಅಲ್ಲದೇ ದಸ್ತು ಬರಹಗಾರ ವೆಂಕಟೇಶ ಗುಡಿ ಇವರ ಬಳಿ ದೊರೆತ ನಗದು ಹಣ ಮತ್ತು ಅವರ ವಾಸದ ಮನೆಯಲ್ಲಿ ದೊರೆತ ನಗದು ಹಣದ ಬಗ್ಗೆ ವೆಂಕಟೇಶ ಗುಡಿ ಇವರು ಯಾವದೇ ವಿವರಣೆ ನೀಡಿರುವುದಿಲ್ಲ ಹಾಗೂ ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ದಸ್ತಾವೇಜುಗಳು ಅವರ ಮನೆಯಲ್ಲಿ ದೊರೆತಿರುತ್ತವೆ. ಆದ್ದರಿಂದ 1)ಶ್ರೀಕಾಂತ್ ಸುಬ್ರಾಯ ಭಟ್, ಉಪ-ನೋಂದಣಾಧಿಕಾರಿ ಲಕ್ಷ್ಮೇಶ್ವರ, 2) ಗಣೇಶ ಸಿದ್ದಪ್ಪ ಅಂಗಡಿ, ಜವಾನ ಹಾಗೂ ಮಧ್ಯವರ್ತಿ, ವಾಸಠ : ಕೆಂಚಲಾಪೂರ ಲಕ್ಷ್ಮೇಶ್ವರ ಮತ್ತು ತಮ್ಮ ಬಳಿ ಹಾಗೂ ತಮ್ಮ ಮನೆಯಲ್ಲಿ ನಗದು ಹಣ ಮತ್ತು ಲಕ್ಷ್ಮೇಶ್ವರ ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ದಾಖಲಾತಿಗಳನ್ನು ಇಟ್ಟುಕೊಂಡ ದಸ್ತು ಬರಹಗಾರ ಹಾಗೂ ಮಧ್ಯವರ್ತಿಯಾದ 3) ಶ್ರೀ ವೆಂಕಟೇಶ ರಾಘವೇಂದ್ರ ಗುಡಿ, ವಾಸ : ಲಕ್ಷ್ಮೇಶ್ವರ ಇವರಿಗೆ ಈ ಪ್ರಕರಣದಲ್ಲಿ ದಸ್ತಗಿರಿ ಮಾಡುವುದಾಗಿ ಡಿ.ಎಸ್.ಪಿ.ರವರು ತಿಳಿಸಿದರು. ಆಗ ಸಮಯ ಸಂಜೆ 7 ಗಂಟೆಯಾಗಿರುತ್ತದೆ.

ಶ್ರೀಕಾಂತ್ ಸುಬ್ರಾಯ ಭಟ್, ಉಪ-ನೋಂದಣಾಧಿಕಾರಿ ಲಕ್ಷ್ಮೇಶ್ವರ ಇವರನ್ನು ದಸ್ತಗಿರಿ ಮಾಡಿದ ಬಗ್ಗೆ ಶ್ರೀ ಗೋಪಾಲ ರಾಮಪ್ಪ ಬಿಲಕೇರಿ, ಎಸ್.ಡಿ.ಎ. ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿ ಗದಗ ಇವರಿಗೆ, ಗಣೇಶ ಸಿದ್ದಪ್ಪ ಅಂಗಡಿ, ಜವಾನ ಹಾಗೂ ಮಧ್ಯವರ್ತಿ, ವಾಸ : ಕೆಂಚಲಾಪೂರ ಲಕ್ಷ್ಮೇಶ್ವರ ಇವರನ್ನು ದಸ್ತಗಿರಿ ಮಾಡಿದ ಬಗ್ಗೆ ಶ್ರೀ ರವಿ.ಹ.ಬೆಟಗೇರಿ, ಕಂಪ್ಯೂಟರ್ ಆಪರೇಟರ್, ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿ ಲಕ್ಷ್ಮೇಶ್ವರ ಹಾಗೂ ಶ್ರೀ ವೆಂಕಟೇಶ ರಾಘವೇಂದ್ರ ಗುಡಿ, ವಾಸ : ಲಕ್ಷ್ಮೇಶ್ವರ ಇವರನ್ನು ದಸ್ತಗಿರಿ ಮಾಡಿದ ಬಗ್ಗೆ ಶ್ರೀ ರಾಜಶೇಖರ.ಓ.ಮುಳಗುಂದ, ದಸ್ತು ಬರಹಗಾರ, ವಾಸ : ಶಿಗ್ಗಿ ಇವರಿಗೆ ಡಿ.ಎಸ್.ಪಿ.ರವರು ಲಿಖಿತ ಮಾಹಿತಿ ಒದಗಿಸಿ, ದಸ್ತಗಿರಿ ನಿಯಮಗಳನ್ನು ಪಾಲಿಸಿದರು.

ಉಪ-ನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿಯ ಶೋಧನೆ ಕಾಲಕ್ಕೆ ಸಾರ್ವಜನಿಕರಿಂದ ಯಾವುದೇ ತೊಂದರೆ ಆಗದಂತೆ ಕಛೇರಿಯ ಕಾರ್ಯಕಲಾಪಕ್ಕೆ ಅಡಚಣೆ ಆಗದಂತೆ

ನೋಡಿಕೊಳ್ಳಲಾಗಿರುತ್ತದೆ. ಉಪನೋಂದಣಾಧಿಕಾರಿಗಳ ಕಛೇರಿ ಹಾಗೂ ವಿಶೇಷ ತಹಶೀಲದಾರ ಕಛೇರಿಗಳು ಒಂದೆ ಕಟ್ಟಡದಲ್ಲಿ ಇರುತ್ತವೆ. ಸದರಿ ಕಛೇರಿಯ ಚಕ್ರ ಬಂಧಿ ವಿವರ ಈ ಕೆಳಗಿನಂತೆ ಇರುತ್ತದೆ.

ಪೂರ್ವಕ್ಕೆ : ವಿಶೇಷ - ತಹಶೀಲದಾರ ಕಛೇರಿ ಅದರಾಚೆಗೆ ಖುಲ್ಲಾ ಜಾಗೆ ಇರುತ್ತದೆ.
 ಪಶ್ಚಿಮಕ್ಕೆ : ಖುಲ್ಲಾ ಜಾಗೆ ಇರುತ್ತದೆ ಅದರಾಚೆ ಸಾರ್ವಜನಿಕ ರಸ್ತೆ
 ಉತ್ತರಕ್ಕೆ : ಖುಲ್ಲಾ ಜಾಗೆ ಇರುತ್ತದೆ ಅದರಾಚೆ ಸಾರ್ವಜನಿಕ ರಸ್ತೆ
 ದಕ್ಷಿಣಕ್ಕೆ : ಖುಲ್ಲಾ ಜಾಗಾ ಹಾಗೂ ಹಳೆ ಕೋರ್ಟ್ ಬಿಲ್ಡಿಂಗ್

ಸದರಿ ಕಛೇರಿಯ ಶೋಧನೆ ನಂತರ ತನಿಖಾ ತಂಡದವರು ಮತ್ತು ನಾವುಗಳು ನಮ್ಮ ಬಳಿ ಇರುವ ವಸ್ತುಗಳ ಬಗ್ಗೆ ಪುನಃ ಅಂಗ ಶೋಧನೆ ಮಾಡಿಕೊಳ್ಳುವ ಮೂಲಕ ಉಪನೋಂದಣಾಧಿಕಾರಿ ಮತ್ತು ಕಛೇರಿ ಸಿಬ್ಬಂದಿಯವರಿಗೆ ಮನವರಿಕೆ ಮಾಡಿಕೊಟ್ಟು ಶೋಧನೆ ಕಾರ್ಯವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸಿದ್ದು ಇರುತ್ತದೆ.

ಲಕ್ಷ್ಮೇಶ್ವರ ಉಪನೋಂದಣಾಧಿಕಾರಿ ಕಛೇರಿಯ ಶೋಧನೆಯನ್ನು ಜರುಗಿಸಿದ ಬಗ್ಗೆ ದಿನಾಂಕ : 12.12.2019 ರಂದು 15-15 ಗಂಟೆಯಿಂದ 19-30 ಗಂಟೆಯವರೆಗೆ ಪಂಚಸಾಕ್ಷಿದಾರರಾದ ನಮ್ಮ ಸಮಕ್ಷಮದಲ್ಲಿ ತನಿಖಾಧಿಕಾರಿಯಾದ ಡಿವಾಯ್‌ಎಸ್‌ಪಿ ರವರ ಉಖ್ತಿಯಾದಂತೆ ಶೋಧನಾ ಪಂಚನಾಮೆಯನ್ನು ಎ.ಸಿ.ಬಿ.ಸಿಬ್ಬಂದಿ ಶ್ರೀ ಅಯ್ಯನಗೌಡರ, ಸಿಎಚ್‌ಸಿ ರವರು ಲ್ಯಾಪಟಾಪ್‌ನಲ್ಲಿ ಬೆರಳಚ್ಚು ಮಾಡಿರುತ್ತಾರೆ ಹಾಗೂ ಶೋಧನೆಯ ಕಾಲಕ್ಕೆ ಸಿಬ್ಬಂದಿ ಮಂಜುನಾಥ ಕರಿಗಾರ ಇವರಿಂದ ಎ.ಸಿ.ಬಿ.ಕಛೇರಿಯ ಕ್ಯಾಮರಾ ಮೂಲಕ ಪೋಟೋಗಳನ್ನು ತೆಗೆಯಿಸಲಾಗಿದೆ.”

The panchanama or the examination at the time of conduct of search of persons nowhere reveals that there was any demand from the hands of the petitioner nor he has accepted bribe. The amount that was recovered allegedly from the hands of the petitioner was Rs.9390/- and from his pocket Rs.50/-. The petitioner immediately at the time of search itself has explained about cash that cash was received for registration of document and which document was also shown to the search party. Even otherwise, from where does the demand and acceptance spring is a mystery. For an offence under

Section 7(a) of the Act which is now alleged against the petitioner, there must be demand and acceptance and if trap is to be laid nuances of trap must be present for which demand and acceptance is again a *sine qua non*. There must be work pending on the table of the petitioner for the complainant to be aggrieved of such demand. The concept of demand and acceptance cannot spring from air. There must be a complainant and there must be public servant; the public servant must have demanded from the complainant and accepted bribe from the complainant for performing a duty or forbearing such performance. These ingredients are necessary in any of the documents that the prosecution wants to rely on. If there is not even an iota of semblance of demand and acceptance in a given case, though the matter is still at the stage of preliminaries, permitting further proceedings would become an abuse of the process of law.

13. The learned counsel for the respondent would submit that Section 20 of the Act raises a presumption of guilt against the accused, though rebuttable. Section 20 of the Act reads as follows:

"20. Presumption where public servant accepts any undue advantage.—*Where, in any trial of an offence punishable under Section 7 or under Section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under Section 11."*

Section 20 has also borne interpretation by the Apex Court in the case of **NEERAJ DUTTA** (*supra*). The interpretation is that even for presumption to operate, basic ingredients of demand and acceptance must be present in a given case. I reiterate that the basic ingredients of demand and acceptance are not present in the case at hand. Therefore, the plea of presumption that the learned counsel for the respondent would urge would also tumble down due to lack of basic ingredients that are necessary to lay an offence under Section 7 or Section 7A of the Act.

14. A scrutiny of the documents appended to the petition, as analysed hereinabove, would clearly indicate that further

proceedings cannot be permitted to continue against the petitioner. It is one thing to contend that this Court in exercise of its jurisdiction under Section 482 of the Cr.P.C., should not interfere unless it would result in miscarriage of justice. It is another thing to say that if this Court would not interfere in certain cases despite there being clear documentary evidence for no offence being made out would by itself result in miscarriage of justice. Therefore, in a proceeding not to result in miscarriage of justice, I deem it appropriate to exercise my jurisdiction under Section 482 of the Cr.P.C., and obliterate the proceedings against the petitioner/accused No.1, failing which it would be permitting a process to become an abuse of the process of law.

15. For the aforesaid reasons, I pass the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Proceedings in Special (SVC) No.9 of 2021 pending before the Principal District and Sessions Judge, Gadag stand quashed *qua* the petitioner/accused No.1.

- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora*.

**Sd/-
JUDGE**

bkp
CT:MJ