IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 193 of 2003

Paresh Chandra Ganguly (since deceased),
represented by legal heirs
-Vs-
Central Bureau of Investigation

For the Appellant	: Mr. Debabrata Roy Mr. Prabir Majumder Ms. Sarbani Mukhopadhyay Mr. Debraj Shil Mr. Snehanshu Mukhopadhyay Mr. Soumik Mondal
For the C.B.I.	: Ms. Chandreyi Alam Ms. Oisani Mukherjee
Heard on	: 05.04.2023, 14.06.2023, 21.06.2023, 28.06.2023, 04.07.2023, 13.07.2023, 18.07.2023, 25.07.2023 07.12.2023
Judgment on	: 11.12.2023

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against a judgment and order of conviction dated 28th March, 2003 and sentence dated 29th March, 2003 passed by Learned Additional Sessions Judge, 4th Court, Nadia and Judge, Special Court Prevention of Corruption Act, Nadia in Special Court Case No. 1 of 1997 convicting the appellant under Section 7 and 13(1)(d) of Prevention of Corruption Act and sentencing him to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to suffer rigorous imprisonment

for one month for the offence punishable under Section 7 of the Prevention of Corruption Act and further sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for two months for the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act. Both sentences to run concurrently.

2. The prosecution case originated on the basis of a complaint filed by the complainant Sukanta Chatterjee, inter alia, stating that his deceased father during his lifetime along with his mother maintained certain monthly income scheme on recurring accounts in the Kalyani Vidhan Park Sub-Office. The death of the father of the complainant on 22nd February, 1997 was intimated to the Post Master of the aforesaid post office. The complainant visited the aforesaid post office to pursue the application filed by his mother for including his name in the aforesaid accounts. Shri Ganguly, the dealing assistant, demanded a sum of Rs. 600/- in order to process the said application for inclusion of his name and eventually a sum of Rs. 300 was agreed to be paid by the complainant as a bribe. It was further stated that the complainant did not want to pay a sum of Rs. 300/- to the aforesaid dealing assistant who insisted on his visit either on 17th March or 18th March, 1997. The complainant demanded appropriate legal action to be instituted against the dealing assistant who demanded a bribe of Rs. 300/- from him.

3. Based on the aforesaid complaint, Crime No. R.C. – 16/97 – Cal dated 18.03.1997 was instituted.

4. Investigation ensued and on completion of the same, charge-sheet was filed against the appellant. Subsequently charge was framed against the appellant under Section 7 of the Prevention of Corruption Act, 1988 along with Section 13(1) and 13(2) of the Prevention of Corruption Act.

5. In order to prove its case, the Investigating Agency C.B.I. cited 8 prosecution witnesses and exhibited certain documents.

6. Learned Advocate for the appellant submitted that:-

   i. There was a delay in recording the FIR.

   ii. Nothing transpired from the evidence of the prosecution witnesses that there was any positive act on the part of the appellant which constituted the offence under Section 7 of the Prevention of Corruption Act and under Section 13(1)(d) of the Prevention of Corruption Act.

   iii. The Learned Special Judge, Nadia while convicting the appellant did not consider the complainant Sukanta Chatterjee went to deposit the passbooks and papers to the Sub-Postmaster Mr. Biswanath Bharati, PW – 6, who was busy and asked him to place the passbooks and papers before the appellant and the cash of Rs. 300/- as paid by the complainant to the appellant was not as bribe but it was towards the Recurring Account which was to be deposited.

   iv. The appellant was neither a dealing assistant nor authorized to transfer or include the name in the accounts in question and as such, the question of demanding any illegal gratification for such

act from the side of the appellant cannot be believed under any circumstances.

v. The Learned Special Judge, Nadia ought to have accepted the defence case that payment of Rs. 300/- was made towards the recurring deposit and not for any gratification.

vi. The evidence of PW-6, Biswanath Bharati, the Sub-Postmaster did not support the prosecution case at all, though he was the most important witness of the prosecution.

vii. PW-6, Biswanath Bharati, in his cross-examination stated that he was informed by the appellant that Sukanta Chatterjee had given him book and the money (Exhibit-5/1) but did not deposit submit slip, when PW-6 told the appellant to keep the same with him.

viii. The appellant categorically stated in his examination under Section 313 of the Code of Criminal Procedure that as per instruction of the post master he accepted passbooks, some papers and Rs. 300/-. He further stated that the post master told that Rs. 300/- would be deposited against the recurring account and whenever he would be free from work he would be accepting the same from the appellant.

ix. It being a well settled principle of law that to constitute an offence under the Prevention of Corruption Act both offer and acceptance have to be proved, the conviction of the appellant is liable to be set aside.

x. The Learned Special Judge, Nadia ought to have disbelieved the evidence of the prosecution witnesses namely PW-1, Nipendra Nath Kundu, PW-3, Biswanath Sarkhel, PW-5, Asit Baran Majumder, PW-7, A.K. Sahay, PW-8, Manik Lal Sharma who claimed themselves as independent eyewitnesses to the occurrence.

xi. Non-observations and non-compliance with the required formalities under the Prevention of Corruption Act, the conviction of the appellant illegal.

7. The Learned Advocate for the appellant placed reliance upon the following judgments which are mentioned hereinbelow:

a. In the case of ***Jafarudheen v. State of Kerala***[1]**,** the Hon'ble Supreme Court observed as follows :

> ***31.****Rajeevan v. State of Kerala [Rajeevan v. State of Kerala, (2003) 3 SCC 355 : 2003 SCC (Cri) 751] as hereunder : (SCC pp. 360-61, paras 12, 14 & 15)*
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> > *"12. Another doubtful factor is the delayed lodging of FIR. The learned counsel for the appellants highlights this factor. Here it is worthwhile to refer Thulia Kali v. State of T.N. [Thulia Kali v. State of T.N., (1972) 3 SCC 393 : 1972 SCC (Cri) 543] wherein the delayed filing of FIR and its consequences are discussed. At para 12 this Court says : (SCC p. 397)*
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> > > *'12. … First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report*

[1] 2022 (8) SCC 440

to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained.'

14. As feared by the learned counsel for the appellants, the possibility of subsequent implication of the appellants as a result of afterthought, may be due to political bitterness, cannot be ruled out. This fact is further buttressed by the delayed placing of FIR before the Magistrate, non-satisfactory explanation given by the police officer regarding the blank sheets in Ext. P-30, counterfoil of the FIR and also by the closely written bottom part of Ext. P-1, statement by PW 1. All these factual circumstances read with the aforementioned decisions of this Court lead to the conclusion that it is not safe to rely upon the FIR in the instant case. The delay of 12 hours in filing FIR in the instant case irrespective of the fact that the police station is situated only at a distance of 100 metres from the spot of incident is another factor sufficient to doubt the genuineness of the FIR. Moreover, the prosecution did

not satisfactorily explain the delayed lodging of the FIR with the Magistrate.

15. This Court in Marudanal Augusti v. State of Kerala [Marudanal Augusti v. State of Kerala, (1980) 4 SCC 425 : 1980 SCC (Cri) 985] while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on the prosecution case, whereas in Arjun Marik v. State of Bihar [Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] it was reminded by this Court that : (SCC p. 382, para 24)

> *'24. … [T]he forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word "forthwith" occurring in Section 157CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.'"*

32. *State of Rajasthan v. Om Prakash [State of Rajasthan v. Om Prakash, (2002) 5 SCC 745 : 2002 SCC (Cri) 1210] as hereunder : (SCC pp. 751-52, para 9)*

> *"9. There was delay of nearly 26 hours in lodging the FIR. The offence is alleged to have taken place at about 9 a.m. The FIR was registered at about 11.30 a.m. on the next day. It was*

contended by Mr Bachawat, learned counsel for the respondent, that this delay had assumed importance and was fatal particularly when the brother of the prosecutrix, namely, Mam Raj (PW 6) was admittedly at the house. The delay, according to the counsel, has resulted in embellishments. Reliance has been placed on the decision in Thulia Kali v. State of T.N. [Thulia Kali v. State of T.N., (1972) 3 SCC 393 : 1972 SCC (Cri) 543] holding that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of an afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. There can be no dispute about these principles relied upon by Mr Bachawat but the real question in the present case is about the explanation for the delay. It is not at all unnatural for the family members to await the arrival of the elders in the family when an offence of this nature is committed before taking a decision to lodge a report with the police. The reputation and prestige of the family and the career and life of a young child is involved in such cases. Therefore, the presence of the brother of the prosecutrix at home is not of much consequence. It has been

established that the father of the girl along with his brother came back to their house at 7 o'clock in the evening. The girl was unconscious during the day. PW 2 told her husband as to what had happened to their daughter. The police station was at a distance of 15 km. According to the testimony of PW 1 no mode of conveyance was available. The police was reported to the next day morning and FIR was recorded at 11.30 a.m. The delay in reporting the matter to the police has thus been fully explained."

b. In the case of ***Lalita Kumari v. Govt. of U.P***[2] the Hon'ble Supreme Court observed as follows :-

*"**44.** It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.*

***54.** Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the*

[2] (2014) 2 SCC 1

statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

78. *In Lallan Chaudhary [Lallan Chaudhary v. State of Bihar, (2006) 12 SCC 229 : (2007) 1 SCC (Cri) 684] , this Court held as under : (SCC p. 231, paras 8-10)*

"8. Section 154 of the Code thus casts a statutory duty upon the police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information.

9. In Ramesh Kumari v. State (NCT of Delhi) [Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678] this Court has held that the provision of Section 154 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence. Genuineness or credibility of the information is not a condition precedent for registration of a case. That can only be considered after registration of the case.

10. The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the

conditions precedent for registering a case under Section 154 of the Code."

79. *A perusal of the abovereferred judgments clarify that the reasonableness or creditability of the information is not a condition precedent for the registration of a case.*

96. *The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith". Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary."*

c. In the case of ***Rakesh Kapoor vs State of Himachal Pradesh[3] the Hon'ble Supreme Court observed as follows :-***

"Coming to the next argument that there was absolutely no demand for bribe and in the absence of such claim by the accused duly established by the prosecution, the conviction cannot be sustained. In support of the above claim, learned counsel for the appellant relied on the decision of this Court in Banarsi Dass vs. State of Haryana, (2010) 4 SCC 450. It was an appeal under Article 136 of the Constitution of India filed against the judgment and order of conviction dated 20.11.2002 passed by the learned single Judge of the High Court of Punjab and Haryana at Chandigarh. In that case, it was contended before this Court that there is no evidence to prove demand and voluntary acceptance of the alleged bribe so as to attract the offence under Section 5(2) of the Prevention of Corruption Act, 1947. The other contentions were also raised regarding merits

3 2013 (2) C.CR.LR (SC) 73

with which we are not concerned. The accused was charged for the offence punishable under Section 5(2) of the 1947 Act as well as Section 161 (since repealed) of the IPC. In para 23, this Court held that "to constitute an offence under Section 161 IPC, it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused". It was further held that "similarly in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused". In para 25, this Court quoted the decision rendered in C.M. Girish Babu vs. CBI, (2009) 3 SCC 779 and held that mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance. In the sama para, a reference was also made to Suraj Mal vs. State (Delhi Admn.) (1979) 4 SCC 725 wherein this Court took the view that mere recovery of tainted money from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. This Court further held that mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. After underlying the above principles, and noting that 2 prosecution witnesses turned hostile, while giving the benefit of doubt on technical ground to the accused, this Court, set aside the judgment of the High Court and acquitted the accused of both the charges i.e. under Section 161 IPC and under Section 5(2) of the 1947 Act.

11) In the case on hand, though prosecution heavily relied on the evidence of PW-1, the complainant that the demand was made to him over mobile phone, admittedly the call details have not been summoned. No doubt, the statement of PW-1, according to the

prosecution is corroborated by Ashwani Bhatia (PW-3) who stated that he overheard PW-1 saying that he had brought the money, when the latter went to the office of the appellant in the evening of 05.05.2003. Interestingly, the I.O. who was examined as PW- 18 has mentioned that PW-1 received the demand from the accused over landline and, hence, he could not secure those call details. Whatever may be the reason, the fact remains that except the oral testimony of PWs 1 and 3, there is no other proof in respect of the demand of bribe money and the I.O. could not collect the call details as stated by PW-1 from the department concerned. Accordingly, learned senior counsel for the appellant is right in contending that there is no material/evidence for the demand of bribe. In the light of the categorical enunciation in Banarsi Dass (supra), in the absence of the demand and acceptance, the accused is entitled to the benefit of doubt. In addition to the same, in the case on hand, even the official witness, Shri Madan Singh-who helped in the search of the accused- Municipal Commissioner, was examined as PW-14 but did not support the prosecution case and turned hostile.

12) Another important aspect which is in favour of the appellant accused is that the order, namely, granting licence in favour of PW-1 – the complainant was made ready before the alleged occurrence i.e. on 02.05.2003. In fact, the original order was available on the table and the same was in the hands of PW-1. Admittedly, he did not hand over the original to the I.O. and his only explanation was that he kept it under his custody to continue his business. As rightly pointed out, when the order itself was ready and available that too in the hands of the complainant, the demand of the accused as claimed by the prosecution is highly improbable. This aspect has also not been properly explained.

13) In the light of the above discussion and in view of the lacunae in the prosecution case, by giving the benefit of doubt to the accused, we hereby set aside the judgment of the High Court and the trial Court and acquit the accused of the remaining offence under Section 13(2) of the P.C. Act. Since the appellant was ordered to be released on bail on 13.02.2012 by this Court, the bail bonds shall stand discharged. The appeal is allowed."

d. In the case of ***P. Satyanarayana Murthy v. State of A.P[4] the Hon'ble Supreme Court observed as follows :-***

*"**21.** In State of Kerala v. C.P. Rao [(2011) 6 SCC 450 : (2011) 2 SCC (Cri) 1010 : (2011) 2 SCC (L&S) 714] , this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.*

***22.** In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and*

4 (2015) 10 SCC 152

13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

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.*

24. *The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs 500 from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to*

co-relate this statement of PW 1 S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act against the appellant has been proved beyond reasonable doubt.

25. *In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(d)(i) and (ii) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(d)(i) and (ii) of the Act,*

thus, had been to underscore the indispensability of the proof of demand of illegal gratification.

26. *In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused."*

e. In the case of ***C.M. Girish Babu v. CBI***[5] the Hon'ble Supreme Court observed as follows :-

> *"**7.** In the present case, it may not be really necessary to discuss the entire evidence available on record for the simple reason that the High Court acquitted Accused 1 of all the charges and found no case against him. It is Accused 1 who is stated to have demanded the gratification for clearing and sending the wet grinder to Dubai. The High Court as well as the trial court found that there was no criminal conspiracy between the appellant and Accused 1 and therefore acquitted both of them of the charge under Section 120-B IPC.*
>
> ***8.*** *The High Court upon reappreciation of evidence came to the conclusion that the prosecution miserably failed to prove the charge against the appellant for the offence under Section 13(1)(d) read with Section 13(2) of the said Act.*

[5] (2009) 3 SCC 779

14. *An analysis of the evidence of PW 2, PW 10 and PW 11, the official witness reveals the following:*

(a) The prosecution miserably failed to establish the theory of criminal conspiracy hatched by the appellant along with Accused 1 to demand and receive gratification;

(b) The prosecution miserably failed to establish its theory that there was a demand of gratification by Accused 1 on 1-10-1999;

(c) There is no proof of any demand of gratification by the appellant on 2-10-1999;

(d) The evidence of PW 11, the official witness, Assistant Manager, Vigilance of FCI to the effect all that he heard was the appellant asking PW 10 "Is it ready?" to which PW 10 nodded his head. This evidence of the official witness present at the time of trap does not establish that there was any demand of gratification by the appellant. There is no reason to disbelieve the evidence of PW 11;

(e) Exhibit P-9 post-trap mahazar does not record the factum of any demand of gratification by the appellant.

The evidence on record suggests that PW 10 had given money to the appellant stating that it was a loan repayable by PW 2 to Accused 1. The appellant was lulled into that belief based on which he received the amount from PW 10.

16. *The crucial question would be whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid by PW 10 and received by the appellant as consideration for showing such official favour.*

17. *The only evidence available in this regard is that of PW 10 who did not support the case of the prosecution. The appellant at the earliest point of time explained that it was not the bribe amount received by him but the same was given to him by PW 10, saying that it was towards repayment of loan taken by his Manager, PW 2 from Accused 1. This is evident from the suggestion put to PW 2 even before PW 10 was examined. Similar suggestion was put to the investigating officer that he had not recorded the version given by the appellant correctly in the post-trap mahazar, Exhibit P-9 and no proper opportunity was given to explain the sequence of events.*

21. *It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification.*

22. *It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.*

> *"4. … It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused*

person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."

24. *It was argued by Shri U.U. Lalit, Senior Counsel, that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs 1500 as gratification. Having examined the findings of both the courts, we are satisfied that the appellant has proved his case by the test of preponderance of probability and we accordingly reach the conclusion that the amount was not taken by the appellant as gratification. He was made to believe that the amount paid to him was towards the repayment of loan taken by PW 2 from Accused 1."*

f. In the case of ***Panalal Damodar Rathi v. State of Maharashtra***[6]**,** the Hon'ble Supreme Court observed as follows :-

*"**6.** Mr Wadekar (PW 6), the Sub-Inspector attached to the Anti-Corruption Branch went to the village with two panchas and on taking down the complaint and on completing the formalities, laid the trap in the verandah of the court room on November 21 at 12*

[6] (1979) 4 SCC 526

noon. The complainants version is that at about 1 p.m. he and the panchas stood near the eastern side of the verandah of the court building, the appellant came near him and inquired if he had come. The complainant told him to relieve him from the case and to see he was given a lesser sentence. The appellant asked him if he had brought the money and the complainant told him that he had. The second accused Dalvi was standing there. Appellant asked him to pay the money to constable Dalvi. Appellant asked Dalvi to receive the money from him and then went inside the court. According to the complainant, when this conversation took place between him and the appellant the panchas were standing at a distance of 2 to 3 feet from him. After the appellant returned to the court the second accused took the complainant to the southern side of the verandah and asked him to pay to the Sahib. The complainant did not pay the money on the ground that his father had not arrived as he wanted to pay the amount in his presence to the appellant. Subsequently, after the court recess the appellant came out to the verandah and asked him if he had paid the amount to Dalvi. The complainant told him that he had not and solicited permission to give it to him by that time. The second accused came and the appellant told Dalvi to accept the money from the complainant. Dalvi and the complainant entered the court room and the panchas were standing nearby. Dalvi asked complainant to pay the money, as agreed between the complainant and the appellant. The complainant took the notes to which powder was applied and gave those notes in hand. As to what happened subsequently there is not much dispute. The marked notes were recovered from the second accused.

7. *The courts below accepted the testimony of the complainant and the evidence of PW 3, the panch witness who spoke to the*

conversation between complainant and the first accused when they met for the first time.

8. *There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Penal Code, 1860 making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. It has to be borne in mind that the marked notes were recovered from the possession of the second accused and not the appellant. It is the case of the prosecution that the marked notes were paid to the second accused for the purpose of being handed over to the appellant. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of complainant has been corroborated. The prosecution relies on the testimony of PW 3, the panch witness, as corroborating the evidence of the complainant on this aspect. It may be reiterated that according to the complainant when he asked the appellant to relieve him from the case and to see that he was given a lesser sentence, the appellant asked him if he had brought the money and the complainant told him that he had and the appellant asked the complainant to pay the money to Dalvi, the second accused, and asked the second accused to receive the money from the complainant. On this aspect the evidence of PW 3 is as follows:*

"They saw the appellant coming out of the court hall and the complainant informed them that he was the Police Prosecutor. Then there was a talk between the complainant and the appellant in the verandah. The witness was at a distance of 3 to 4 feet from them and was in a position to overhear the conversation. According to the witness he heard the appellant asking the complainant 'Have you come', the complainant then said 'Yes'. The witness further heard the appellant saying that he would see that heavy punishment is not inflicted and the case as it is, was difficult. The complainant had then asked the appellant whether his work will be achieved. The appellant assured him in the affirmative. The appellant told the complainant to give what was to be given to the second accused."

9. *It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and that the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to by the panch witness PW 3. According to panch witness on the complainant asking the appellant whether his work will be achieved, the appellant assured him in the affirmative and the appellant told the complainant what was to be given to the second accused. It is significant that PW 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW 3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not*

corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on.

10. *Finding that the version of the complainant is lacking corroboration, the learned counsel appearing for the State sought to support the conviction on the testimony of PW 3 the panch witness. It is unnecessary for us to set out in detail the attack made against the witness by Mr Lalit, the learned counsel appearing for the appellant except mentioning that the case of the panch witness that he heard the talk between the complainant and the appellant, is not mentioned either in the complaint or in the first information report. It cannot be denied that the account of conversation as spoken to by the panch witness, PW 3, is not in conformity with the version given by the complainant. According to PW 3 the complainant asked the appellant whether his work will be achieved and the appellant assured him in the affirmative and then the appellant asked the complainant what was to be given to Dalvi. There is no mention of any demand by the appellant for payment of the money or the direction by the appellant to the complainant to pay the money to the second accused. In the circumstances, we feel it is unsafe to base a conviction on the sole testimony of the panch witness. We have found that the evidence of the complainant is not corroborated on these material particulars."*

g. In the case of **Soundaranjan Vs State**[7] the Hon'ble Supreme Court observed as follows :

"10. As stated earlier, complainant PW2 has not supported the prosecution. He has not said anything in his examinationin-chief about the demand made by the appellant. The public prosecutor crossexamined PW2. The witness stated that there

[7] 2023 Cri L.J. 2123

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 PW2 accepted that he had filed the complaint, in the cross examination, he was not confronted with the material Criminal Appeal No.1592 of 2022 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 PW2 whether he had brought the amount. PW3 did not say that the appellant made a specific demand of gratification in his presence to PW2. 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 26 th July 2018, is 'gratification'. 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.

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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.

EFFECT OF THE FAILURE TO FRAME A PROPER CHARGE

13. We must deal with another argument made by the learned senior counsel appearing for the appellant. That is about the failure to frame a proper charge for the offence punishable under Section 7. The relevant portion of the charge reads thus:

"You, working as the Sub Registrar at Kannivadi, Dindigul District from 27.10.2003 to 27.10.2003 and as such you are a public servant you registered the sale deed of 16.05 cents of land purchased by Sundaramoorthy on 12.07.2004 and demanded a sum of Rs.500/ from Sundaramoorthy as gratification other than legal remuneration for returning the registered document and also received Rs.500/ as bribe, hence you disclosed the offences punishable u/s. 7 of Prevention of Corruption Act 1988 and triable by this Court."

h. In the case of ***K. Shanthamma v. State of Telangana[8],*** *the Hon'ble Supreme Court observed 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-*

[8] (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."

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."

i. In the case of ***Sujit Biswas v. State of Assam***[9] *the Hon'ble Supreme Court observed as follows :-*

*"**13.** Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an*

[9] (2013) 12 SCC 406

imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] , State v. Mahender Singh Dahiya [(2011) 3 SCC 109 : (2011) 1 SCC (Cri) 821 : AIR 2011 SC 1017] and Ramesh Harijan v. State of U.P. [(2012) 5 SCC 777 : (2012) 2 SCC (Cri) 905])

14. *In Kali Ram v. State of H.P. [(1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : AIR 1973 SC 2773] this Court observed as under : (SCC p. 820, para 25)*

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

15. *In Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] this Court held as under : (SCC p. 185, para 153)*

"153. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused … they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion

consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

16. *In M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 1 Cri LJ 235] this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused, and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.*

17. *Similarly, in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] this Court held as under : (SCC pp. 127-28)*

Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence.

18. *Thus, in view of the above, the court must consider a case of circumstantial evidence in the light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the*

judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

19. *This Court in Babu v. State of Kerala [(2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] has dealt with the doctrine of innocence elaborately, and held as under : (SCC p. 201, paras 27-28)*

> *"27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are*

established by the prosecution. There may be difficulty in proving a negative fact.

28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden of proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution."

Mere recovery of tainted money in absence of any proof of demand and acceptance cannot be said sufficient to convict accused

j. In the case of ***N. Vijayakumar v. State of T.N[10].*** *the Hon'ble Supreme Court observed as follows*

*"**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*

[10] (2021) 3 SCC 687

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."

k. In the case of ***Raj Kumar Singh v. State of Rajasthan***[11] *the Hon'ble Supreme Court observed as follows :-*

17. *The appellant after his arrest on 27-5-2001 was medically examined by Dr Laxman Singh (PW 12) on 28-5-2001 and vide his medical examination report (Ext. P-22), an abrasion of the size of 0.2 cm × 0.2 cm on the corona of the penis was found. The body of the penis and glands therein were swollen and tenderness and inflammation was present. There was nothing*

[11] (2013) 5 SCC 722

to suggest that the appellant was incapable of indulging in intercourse.

25. *In M.G. Agarwal v. State of Maharashtra [AIR 1963 SC 200 : (1963) 1 Cri LJ 235] this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.*

26. *Similarly, in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] this Court held as under : (SCC pp. 127-28) :*

> *Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence.*

Pesumption against public servant when can be drawn of applicable as per section 20 of the prevention of corruption act"

l. In the case of **from *B. Jayaraj v. State of A.P*[12]** *the Hon'ble Supreme Court observed 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] .*
>
> ***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*

[12] (2014) 13 SCC 55

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."*

8. The Learned Advocate for the CBI submitted that :-

   i. Evidence of demand and acceptance was proved by the Complainant and other competent witnesses.

   ii. Over whelming evidence that money was kept in the shirt pocket of accused proves the ulterior motive of the appellant.

   iii. Once acceptance and recovery are proved, presumption as to receipt of bribe can be made.

      a. Reliance was placed in the case of ***Dhanvantrai Balwantrai Desai Vs. State of Maharashtra***[13]**,** wherein the Hon'ble Supreme Court held as follows:-

         "10. Thus the receipt of Rs. 1,000/- was admitted by the appellant. This was admittedly not the appellant's 'legal remuneration'. The first question, therefore, is whether a presumption under sub-sec. 1 of S. 4 of the Prevention of Corruption Act arises in this case. That provision runs thus:

[13] AIR 1964 SC 575

"Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

It was contended that the use of the word "gratification" in sub-section (1) of Section 4 emphasises that the mere receipt of any money does not justify the raising of a presumption thereunder and that something more than the mere receipt of money has to be proved. A similar argument was raised before this Court in C.I. Emden v. State of Uttar Pradesh [AIR 1960 SC 548] . Dealing with it this Court has pointed out that what the prosecution has to prove is that the accused person has received "gratification other than legal remuneration" and that when it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by this section is satisfied. This Court then proceeded to observe:

> *"If the word 'gratification' is construed to mean money paid by way of a bribe then it would be futile or superfluous to prescribe for the raising of the presumption. Technically it may no doubt be suggested that the object which the statutory presumption serves on this construction is that the court may then presume that the money was paid by way of a bribe as a motive or reward as required by Section 161 of the Code. In our opinion this could not have been the intention of the legislature in prescribing the statutory presumption under Section 4(1)."*

This Court further said that there is yet another consideration which supports the construction placed by

it. In this connection a reference was made to Section 165 of the Code and it was observed:

> *"It cannot be suggested that the relevant clause in Section 4(1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of Section 4(1) it would be unreasonable to hold that the word 'gratification' in the same clause imports the necessity to prove not only the payment of money but the incriminating character of the said payment. It is true that the legislature might have used the word 'money' or 'consideration' as has been done by the relevant section of the English statute;…."*

That being the legal position it must be held that the requirements of sub-section (1) of Section 4 have been fulfilled in the present case and the presumption thereunder must be raised.

…

12. Mr Chari contends that upon the view taken by the High Court it would mean that an accused person is required to discharge more or less the same burden for proving his innocence which the prosecution has to discharge for proving the guilt of an accused person. He referred us to the decision in Otto Georgr Gfeller v. King [AIR 1943 PC 211] and contended that whether a presumption arises from the common course of human affairs or from a statute there is no difference as to the manner in which that presumption could be rebutted. In the decision referred to above the Privy Council, when dealing with a case from Nigeria, held that if an explanation was given which the jury think might reasonably be true and which is consistent with innocence, although they were not convinced of its truth, the accused person would be entitled to acquittal inasmuch as the

prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused. That, however, was a case where the question before the jury was whether a presumption of the kind which in India may be raised under Section 114 of the Evidence Act could be raised from the fact of possession of goods recently stolen, that the possessor of the goods was either a thief or receiver of stolen property. In the case before us, however, the presumption arises not under Section 114 of the Evidence Act but under Section 4(1) of the Prevention of Corruption Act. It is well to bear in mind that whereas under Section 114 of the Evidence Act it is open to the court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under sub-section (1) of Section 4, however, if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in Section 161 IPC. Therefore, the court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as a legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in this provision make it clear that the presumption has to be rebutted by "proof" and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted."

b. Reliance was further placed in the case of ***C.K. Damodaran Nair Vs. Govt. of India***[14], wherein the Hon'ble Supreme Court observed as follows:

> *"**12.** The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) — and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either "acceptance" or "obtainment".*
>
> ***13.** Keeping in view the above principles we may now consider the facts of the instant case to ascertain whether the High Court was justified in setting aside the order of acquittal recorded in favour of the appellant. As already noticed the appellant did not dispute the fact that the sum of Rs 1000 was recovered from his possession. While according to the prosecution the appellant "accepted" that amount, the appellant contended that the same was thrust into his trousers' pocket by PW 9. From the judgment of the trial court we find that the principal reason which weighed with it for accepting the case of the defence in preference to that of the prosecution was that PW 9 was an interested witness and PWs 3 and 4, the two independent witnesses, who were examined by the prosecution to prove the transaction did not speak about any demand made by the appellant. Having gone through the evidence of the above two witnesses, namely, PWs 3 and 4 we are in complete agreement with*

[14] AIR 1997 SC 551

the High Court that the finding recorded by the trial court in this regard is patently perverse. Both these witnesses, who at the material time were holding responsible positions in State Bank of India and Canara Bank respectively, categorically stated that they saw PW 9 taking out the notes from his shirt's pocket and handing over the same to Damodaran (the appellant), and the appellant, after counting those notes, putting them in the right front pocket of his trousers. The unimpeachable evidence of these two independent witnesses conclusively proves that the transaction was consensual. That necessarily means that the appellant "accepted" the money and the defence story that PW 9 thrust the money is patently untrue. Consequent upon such proof, the presumption under Section 4(1) of the Act would operate and since the appellant did not rebut that presumption the conviction of the appellant under Section 161 IPC has got to be upheld."

iv. In order to rebut the presumption it must be shown that the explanation is not only true but it must be proved.

a. Reliance was further placed upon in the case of ***Dhanvantrai Balwantrai Desai Vs. State of Maharashtra***[15] wherein the Hon'ble Supreme Court held as follows:

*"**13.** How the burden which has shifted to the accused under Section 4(1) of the Prevention of Corruption Act is to be discharged has been considered by this Court in State of Madras v. A. Vaidanatha Iyer [AIR 1958 SC 61] where it has been observed:*

"Therefore, where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on

[15] AIR 1964 SC 575

to the accused. It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume', the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but Section 4 of the Prevention of Corruption Act is in parimateria with the Evidence Act because it deals with a branch of law of evidence i.e. presumptions, and, therefore, should have the same meaning 'shall presume' has been defined in the Evidence Act as follows:

> *"Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.*
>
> *It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under Section 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a branch of jurisprudence."*

These observations were made by this Court while dealing with an appeal against an order of the Madras High Court setting aside the conviction of an accused person under Section 161 IPC. In that case the accused, an Income Tax Officer, was alleged to have received a sum of Rs 1000 as bribe from an assessee whose case was pending before him. His defence was that he had taken that money by way of loan. The High Court found as a fact that the accused was in need of Rs 1000 and had asked the assessee for a loan of that amount. It was of opinion that the versions given by the assessee and the accused were balanced, that the bribe seemed to tilt the scale in favour of the accused and that the evidence was not sufficient to show that the explanation offered cannot reasonably be rejected. This Court reversed the High Court's decision holding that the approach of the High Court was wrong. The basis of the decision of this Court evidently was that a presumption of law

cannot be successfully rebutted by merely raising a probability, however reasonable, that the actual fact is the reverse of the fact which is presumed. Something more than raising a reasonable probability is required for rebutting a presumption of law. The bare word of the appellant is not enough and it was necessary for him to show that upon the established practice his explanation was so probable that a prudent man ought, in the circumstances, to have accepted it. According to Mr Chari here, there is some material in addition to the explanation offered by the appellant which will go to rebut the presumption raised under Section 4(1) of the Act. He points out that there is the letter from D.S. Apte addressed to the appellant, Defence Ex. No. 32 collectively, which the appellant claims to have received on or after 13-3-1959 during his visit to Tolkeshwar. He says that this letter was produced by him immediately when the police official came to his cabin on 6-4-1959 and recovered from him a sum of Rs 1000 which the complainant had paid to him. He points out that this letter was in the same pocket in which the money was kept and says that it is conclusive to disprove that the money was received by way of bribe. He also relies upon the evidence of D.S. Apte. That evidence, however, does not go further than the latter. No evidence was, however, brought to our notice to show that the appellant had at any time asked the complainant to give any money by way of donation to the temple and indeed there is evidence to the contrary to the effect that none of the persons interested in the temple had authorised the appellant to collect any money for meeting the expenses of repairs to the temple. It is because of these circumstances and because it believed the statement of the complainant that the appellant had asked him for a bribe that the High Court did not accept the appellant's explanation that the money was paid by the complainant to him for being passed on to the temple trustee as true. The High Court disbelieved the evidence of Apte and held the letter to be worthless. In doing so it cannot be said that the High Court has acted unreasonably. It would therefore not be

appropriate for us to place our own assessment on these two pieces of evidence. Further the question whether a presumption of law or fact stands rebutted by the evidence or other material on record is one of fact and not of law and this Court is slow to interfere with the view of facts taken by the High Court. No doubt, it will be open to this Court to examine the evidence for itself where the High Court has proceeded upon an erroneous view as to the nature of the presumption or, again, where the assessment of facts made by the High Court is manifestly erroneous. The case before us does not suffer from either of these defects. In the circumstances we dismiss the appeal."

(b) Reliance was further placed upon in the case of ***Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi)***[16] the Hon'ble Supreme Court observed as follows :

16. *On the said aspect, we would now refer to Section 20 of the Act which reads as under:*

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

[16] (2020) 2 SCC 88

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

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

The statutory presumption under Section 20 of the Act can be confuted by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than for the motive or the reward under Section 7 of the Act. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.

17. *In the case at hand, the condition precedent to drawing such a legal presumption that the accused has demanded and was paid the bribe money has been proved and established by the incriminating material on record. Thus, the presumption under Section 20 of the Act becomes applicable for the offence committed by the appellant under Section 7 of the Act. The appellant was found in possession of the bribe money and no reasonable explanation is forthcoming that*

may rebut the presumption. Further, the recovery of the money from the pocket of the appellant has also been proved without doubt. We, therefore, hold that money was demanded and accepted not as a legal remuneration but as a motive or reward to provide electricity connection to Nand Lal (PW 2) for the shed."

v. The decisions cited by the defence vary factually as the complainants were not examined or a conviction under Section 13 PC Act 1988 was not sustainable due to acquittal under Section 7 PC Act 1988.

vi. There has been no delay in lodging FIR. The date of incident is 11/3/1997. The Complaint is dated 17.03.1997. FIR registered on 17.03.1997 Trap and Recovery on 18.03.1997. Hence the decisions relied upon are not relevant in the facts circumstances of this case.

vii. Questions put in examination under Section 313 Cr.P.C. was comprehended and duly answered by the appellant. Thus no prejudice was caused as substance of allegation was to the accused put in the case of ***Nar Singh vs. State of Haryana***[17] the Hon'ble Supreme Court observes as follows :

> ***16.*** *Undoubtedly, the importance of a statement under Section 313 CrPC, insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 CrPC statement is taken at the earliest stage, the*

[17] (2015) 1 SCC 496

court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 CrPC statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 CrPC, failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as non-compliance with mandatory provisions of Section 313 CrPC is concerned it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the court, the same has to be corrected or rectified in the appeal.

17. *So far as Section 313 CrPC is concerned, undoubtedly, the attention of the accused must specifically be brought to inculpable pieces of evidence to give him an opportunity to offer an explanation, if he chooses to do so. A three-Judge Bench of this Court in Wasim Khan v. State of U.P. [AIR 1956 SC 400 : 1956 Cri LJ 790] and Bhoor Singh v. State of Punjab [(1974) 4 SCC 754 : 1974 SCC (Cri) 664 : AIR 1974 SC 1256] held that every error or omission in compliance with the provisions of Section 342 of the old CrPC does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to have been caused to him.*

18. *Observing that omission to put any material circumstance to the accused does not ipso facto vitiate the trial and that the accused must show prejudice and that miscarriage of justice had been sustained by him, this Court in Santosh Kumar*

Singh v. State [Santosh Kumar Singh v. State, (2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469] , has held as under: (SCC p. 779, para 92)

> *"92. … the facts of each case have to be examined but the broad principle is that all incriminating material circumstances must be put to an accused while recording his statement under Section 313 of the Code, but if any material circumstance has been left out that would not ipso facto result in the exclusion of that evidence from consideration unless it could further be shown by the accused that prejudice and miscarriage of justice had been sustained by him."*

19. *In Paramjeet Singh v. State of Uttarakhand [(2010) 10 SCC 439 : (2011) 1 SCC (Cri) 98] , this Court has held as under: (SCC p. 451, para 30)*

> *"30. Thus, it is evident from the above that the provisions of Section 313 CrPC make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court."*

9. A circumspection of the prosecution witnesses revealed as follows:

i. PW-1, serving as the in-charge of Branch Manager of U.B.I, Kalyani Branch, stated that, on 18.3.97, upon a request by C.B.I. officers, he consented to provide testimony in a certain case. Subsequently, he was requested to accompany them to Bidhan Park Post Office, Kalyani, along with PW-5. At the post office, PW-1 and PW-5 were instructed to observe a transaction involving offer and acceptance. PW-2, the complainant, entered the premises, and in a conversation conducted in Bengali, the appellant enquired if PW-2 had brought the agreed-upon items. This dialogue was overheard by PW-1, PW-3 and PW-5. Following this, PW-2 handed Rs. 300/- to the appellant, who placed it in the left side pocket of his T-shirt. Upon a signal from PW-2, C.B.I. officers intervened and apprehended the appellant, prompting them to retrieve the money from his pocket. This money comprised three 100-rupee notes, marked collectively as Mat. Ext. I series, with PW-1's signature on Mat. Ext. I/1.

ii. Then, further investigative steps were taken, where the C.B.I. introduced a mixture of plain water and soda, instructing PW-1 to immerse his hand in the solution. Following this action, no change in the color of the water occurred. The resultant solution was collected in a bottle, marked as Mat. Ext. II, with PW-1's signature marked as Mat. Ext. II/1 on the bottle. Another bottle containing water mixed with soda was used to test the notes and the appellant's T-shirt. When the T-shirt was immersed in the water, its color altered from

white to pink, leading to the creation of Mat. Ext. IV, with PW-1's signature on the bottle marked as Mat. Ext. IV/1 and the T-shirt as Mat. Ext. III, with PW-1's signatures noted as Mat. Ext. III/1 and Mat. Ext. III/2. Documents including a search list, post-trap memo, arrest memo, and physical inspection memo were produced and signed by PW-1 at the site. The documents were marked as Ext. 3 and 4.

iii. During cross-examination, PW-1 acknowledged previous visits to the post office and prior sightings of the appellant, who worked as a peon there. He affirmed being present at the post office with the C.B.I. officers on the day of the incident but confirmed no prior acquaintance with PW-2 before the occurrence.

iv. PW-2 mentioned having five joint monthly income scheme deposit accounts and one recurring deposit account under the names of his parents in the said post office. Hence, they have six passbooks which were marked as Ext. 5 series. He further mentioned that his father had died on 22.2.97. Therefore, his mother sought to withdraw funds from these accounts but faced resistance from the appellant, citing improper documentation under the father's name. Then PW-2 approached the Sub-postmaster regarding the issue, who advised the mother of PW-2 to apply for inclusion of PW-2’s name in the passbooks. Subsequently, PW-2 went to the dealing assistant who was the appellant and made efforts to include his name in the passbooks which were met with rejection, prompting a demand for

Rs. 600/-, eventually reduced to Rs. 300/- by the appellant, which PW-2 was reluctant to pay. The appellant had demanded the said money to be paid by 17.3.97 or 18.3.97.

v. After lodging a complaint against the appellant with the C.B.I. on the 17.3.1997, marked as Exhibit 6, PW-2 engaged with PW-7, who instructed him to return the following day, specifically on the 18.3.1997, with the requested sum of money. Accordingly, PW-2 arrived at the C.B.I. office on the specified date, where he was introduced to PW-5. Subsequently, PW-2 handed the designated sum of money to PW-7, comprising three 100 rupees denomination notes. PW-7 treated these notes with a chemical powder and passed them to PW-5. Later, PW-5 was instructed to wash his hands in a sodium powder and water solution, which initially appeared normal in color. However, upon contact with PW-5's hands, the solution changed to pink. The bottle containing this solution was marked as Exhibit V, with PW-2's signature on the bottle marked as Exhibit V/1.

vi. A pre-trap plan was formulated by C.B.I. officers, documented in a memorandum bearing PW-2's signature as Exhibits 7/1 and 7/2. They proceeded to Kalyani where they met another witness, PW-1, involved in this entrapment. Subsequently, PW-2 proceeded to the site of the incident, the aforementioned post office, where the appellant demanded the agreed-upon sum of Rs. 300/-. PW-2 handed over the money and also the passbooks and inclusion applications, marked as Exhibit 8 series. After receiving the money, the appellant

placed it in his T-shirt's book pocket, with PW-5 allegedly overhearing the conversation between PW-2 and the appellant.

vii. Upon completion of the transaction, PW-2 signaled the C.B.I. officers by rubbing his face with a handkerchief, prompting the apprehension of the appellant, who confessed to his wrongdoing. The appellant was directed to present the aforementioned notes and wash his hands, resulting in the solution turning pink. Subsequently, the solution was sealed in a bottle, along with the appellant's T-shirt, which also changed color and was sealed in another bottle, marked with PW-2's signature as Exhibit IV/2. The serial numbers of the recovered notes were cross-verified with those mentioned in the pre-trap memorandum, with PW-2's signature on the notes marked as Exhibit I/2. The passbooks and applications handed over by PW-2 were retrieved during a search and seizure, with PW-2's signature on the search list and post-trap memorandum marked as Exhibit 1/1 and Exhibit 2/3, respectively. (This testimony was corroborated by PW-3 and PW-5.)

viii. During cross-examination, PW-2 revealed his initial approach to PW-6, who directed him towards the appellant. When the appellant declined to accept the inclusion application, PW-2 reported this refusal to PW-6 verbally, who subsequently redirected him to the appellant, who again declined. PW-2 expressed uncertainty regarding the appellant's specific job role, whether he was a dealing assistant or a 4th-grade peon.

ix. PW-3, serving in the capacity of Inspector of Police within the Central Bureau of Investigation on the 17.3.1997, affirmed his role as a member of the entrapment team. He recounted that on the mentioned date, PW-2 lodged a formal complaint with the C.B.I., outlining specific details. The complaint detailed that the complainant's parents maintained multiple financial accounts including a total of five monthly income scheme accounts and one recurring deposit account at the aforementioned post office. It was further noted in the complaint that the complainant's father had deceased, leading to the need for the complainant to replace his father's name with his own in those account passbooks. During this process, the complainant approached the processing clerk, identified as the appellant, who allegedly demanded Rs. 600/- for the service, subsequently bargaining and reducing the amount to Rs. 300/-. The complainant refused to comply with this demand and proceeded to file the said complaint.

x. Following the complaint, PW-7 was assigned to investigate the matter. On the 18.3.1997 at 8:30 am, PW-2 arrived at the C.B.I. office and was accompanied by PW-5, an independent witness. PW-7 then disclosed the purpose of their gathering and reviewed the contents of the complaint filed by PW-2. Subsequently, PW-2 produced three 100 rupee notes, treated with phenoptholene powder by PW-7, initiating the trap demonstration. PW-5 was tasked with overseeing the conversation between PW-2 and the appellant. Additionally, an

Inspector, Rajib Debnath, was instructed to retain Rs. 200/- for incidental expenses. A kit comprising various items such as empty bottles, a clean bowl, a C.B.I. metal seal, etc., was prepared. They then proceeded to the location of the incident, arriving at 1:15 pm.

xi. PW-3 recalled that during the transaction as part of the entrapment process, both he and PW-8 overheard a conversation conducted in Bengali between the appellant and PW-2, witnessing the exchange of the bribe money. Following the conversation, the entrapment operation unfolded, leading to the apprehension of the appellant. PW-3 also noted that the post-trap formalities were observed by PW-6.

xii. PW-4, acting as the Superintendent of South Nadia at Kalyani Bidhan Park Post Office, affirmed his authority to approve the initiation of legal action against a staff member categorized as Group 'D' within the mentioned post office. The authorization document dated 27.3.1997, issued by PW-4, was presented and marked as Exhibit 9, with his signature specifically identified as Exhibit 9/1.

xiii. During the interrogation phase, PW-4 clarified that the accused individual served within the stated post office in a capacity designated as Group 'D' staff. Additionally, PW-4 emphasized the limitations inherent in the duties of a Group 'D' staff, stipulating their inability to process applications for the inclusion of names in a passbook.

xiv. On the 17.3.1997, PW-5, acting in the capacity of the Under District Clerk at the office of the Director of Quality Assurance in Calcutta,

reported that the Assistant Director, A.N. Chakraborty, expressed the need for PW-5 to convene with PW-7. Consequently, PW-5 adhered to the request and attended the meeting on the 18.3.1997 at 8 am, during which he was introduced to PW-2. It was communicated to PW-5 that he was designated as an impartial witness. Subsequently, PW-5 was briefed on the details outlined in the complaint, specifically pertaining to the appellant's alleged solicitation of funds from PW-2 for the purpose of updating the passbook and fulfilling other formalities. An elucidation regarding the process of entrapment was provided to PW-5. PW-5 confirmed his involvement in the demonstration process. Following this, at 9 am on the 18.3.1997, they departed for the location where the incident occurred.

xv. PW-6, serving as the sub-postmaster at Bidhan Park Post Office, detailed the protocol for withdrawing funds from an account held by a deceased individual. This process involved the submission of the deceased account holder's death certificate, with formalities managed by the heir. He identified the passbooks linked to PW-2's parents and confirmed that PW-2 had approached him to include his name in the passbook. Accordingly, PW-6 provided instructions and necessary forms to facilitate the inclusion process. Following this, PW-2 conveyed that he had completed the forms and handed them to the appellant, expressing intentions to return later to verify any required modifications.

xvi. PW-6's testimony took a different direction during questioning, resulting in his classification as a hostile witness. During cross-examination, PW-6 disclosed that the monthly deposit associated with PW-2's account was Rs. 300/- under the applicable scheme. The most recent deposit occurred on the 7th of March 1997, pertaining to the February installment, along with an additional Rs. 6/- for delayed payment. Consequently, the payment for March was pending.

xvii. PW-7, serving as the Deputy Superintendent of Police in C.B.I., Calcutta on the 17.3.1997, affirmed that he was instructed by S.P. Narayan Jha to register a case based on the complaint lodged by PW-2. Consequently, on the 18.3.1997, he initiated case number R.C. 16/97 against the appellant. During the entrapment operation, PW-7 mentioned receiving a predetermined signal from PW-5 after the transaction. However, this detail was contradicted by PW-1, PW-2, and PW-3, who asserted that PW-2 provided the alert signal, while PW-7 claimed it was PW-5.

xviii. Additionally, PW-7 stated that upon the C.B.I. team's arrival at the post office, information surfaced regarding staff members failing to deposit received money from account holders. This led to an investigation revealing a cash shortage of Rs. 5144.68/-. While probing this discrepancy, another issue emerged concerning PW-6's failure to deposit Rs. 20,000/- into an account. Despite a deposit slip certifying a balance of Rs. 29,516.20/- on the 12.3.1997, the ledger indicated a balance of only Rs. 9,516.20/-. When confronted, PW-6

admitted to the discrepancy. Subsequently, the ledger was provided to the Superintendent of the post office for further action against PW-6.

xix. During cross-examination, PW-7 mentioned that the complainant's hands were not washed since it was deemed unnecessary.

xx. PW-8, employed as an Inspector at the C.B.I. during the incident, confirmed his participation as a member of the team responsible for setting the trap. He specified that he arranged for the seized bottles to undergo chemical examination at the C.F.S.L. Following this examination, he received a favorable report from the C.F.S.L regarding the aforementioned bottles, subsequently leading to the filing of a charge sheet against the appellant. The C.F.S.L. report was documented as Exhibit 11.

xxi. Additionally, PW-8 mentioned that PW-6 did not provide any information regarding the final deposit in PW-2's account, the imposition of a fine in PW-2's account, or the absence of a deposit in the month of March within PW-2's account.

10. In the case of ***Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi*** [18]) the Hon'ble Supreme Court observed as follows :

> *"**LEGAL POSITION:-***
>
> ***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*

[18] 2023 SCC Online SC 280

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 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) (b)"Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.*

(c) *(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) *(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) *(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 Bench[4] 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."

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/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*."*

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. Jayaraj[1] and P. Satyanarayana Murthy[2]. There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu[5], which follows the view taken in the cases of B. Jayaraj[1] and P. Satyanarayana Murthy[2]. In paragraph 9 of the decision in the case of B.*

Jayaraj[1]*, 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."*

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. Vijayakumar*[5]*, 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."*

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."

11. In the case of ***P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh And Ors.***[19] the Hon'ble Supreme Court observed as follows :

*"**21.** In State of Kerala v. C.P. Rao [(2011) 6 SCC 450 : (2011) 2 SCC (Cri) 1010 : (2011) 2 SCC (L&S) 714] , this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.*

***22.** In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has*

[19] (2015) 10 SCC 152

been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

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.

24. *The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs 500 from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW 1 S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar*

does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act against the appellant has been proved beyond reasonable doubt.

25. *In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(d)(i) and (ii) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(d)(i) and (ii) of the Act, thus, had been to underscore the indispensability of the proof of demand of illegal gratification.*

26. *In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in Sujit Biswas v. State of Assam [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.*

27. *The materials on record when judged on the touchstone of the legal principles adumbrated hereinabove, leave no manner of doubt that the prosecution, in the instant case, has failed to*

prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order [P. Satyanarayana v. State of A.P., Criminal Appeal No. 262 of 2002, order dated 25-4-2008 (AP)] of the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately."

12. In the case of ***B. Jayaraj Vs. State of Andhra Pradesh***[20] the Hon'ble Supreme Court observed as follows :

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

***8.** In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) before LW-9, and*

[20] (2014) 13 SCC 55

there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. *In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.*

10. *For the aforesaid reasons, we cannot sustain the conviction of the appellant either under Section 7 or under*

13(1)(d)(i)(ii) read with Section 13(2) of the Act. Accordingly, the conviction and the sentences imposed on the accused-appellant by the trial court as well as the High Court by order dated 25.4.2011 are set aside and the appeal is allowed."

13. In the case of ***M.W. Mohiuddin Vs. State of Maharashtra***[21] the Hon'ble Supreme Court observed observed as follows :

> ***6.*** *In Stroud's Judicial Dictionary, 5th Edn., Vol. 3, p. 1729, the meaning of the word 'obtain' is as under;*
>
> > *"Obtains [Larceny Act, 1916 (C. 50) Section 32(1)] meant obtains the property and not merely the possession [R. v. Lurie (1951)]."*
>
> *In Webster's Third New International Dictionary, p. 1559, the meaning of the word 'obtain' reads thus:*
>
> > *"Obtain: to gain or attain possession or disposal of USU, by some planned action or method, hold, keep, possess, occupy."*
>
> *In Shorter Oxford English Dictionary, 3rd Edn., Vol. II, p. 1431, the meaning of the word 'obtain' is given as under:*
>
> > *"Obtain: To procure or gain, as the result of purpose and effort; hence, generally, to acquire, get."*
> >
> > *Relying on the meanings of the word 'obtain' given in these dictionaries, the learned counsel further contended that the word 'obtain' has a definite connotation and unless it is proved that the accused gained or attained the possession of the money and held the same, the requirement is not satisfied. According to the learned counsel even if the prosecution is to be believed it may amount to a preparation or at*

[21] (1995) 3 SCC 567

the most to an attempt on the part of the accused and there is no completed offence.

7. *We see no force in this submission whatsoever. In Ram Krishan v. State of Delhi [AIR 1956 SC 476 : 1956 Cri LJ 837 : 1956 SCR 182] a Bench of three Judges of this Court while examining the requirements of Section 5(1)(d) of the Prevention of Corruption Act, 1947 observed thus:*

"We have primarily to look at the language employed and give effect to it. One class of cases might arise where corrupt or illegal means are adopted or pursued by the public servant to gain for himself a pecuniary advantage. The word 'obtains' on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver."

Therefore whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances in each case."

14. In the case of ***Neeraj Dutta Vs. State (Government of NCT of Delhi)***[22] the Hon'ble Supreme Court observed as follows :

*"**3.** Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short "the Act") would*

[22] (2023) 4 SCC 731

not arise. Thus, the proof of demand is a sine qua non for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and dehors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning "hostile" or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.

Relevant provisions of the Act

4. *Before proceeding further, it would be useful to refer to the relevant provisions of the Act. Sections 7, 13(1)(d)(i) and (ii) and 20 of the Act as they stood prior to their amendments are extracted as under:*

> *"**7. Public servant taking gratification other than legal remuneration in respect of an official act**.— Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government*

or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.

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

(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications 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.

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

(a)-(c)

(d) if he—

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

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

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

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

***20. Presumption where public servant accepts gratification other than legal remuneration**.—(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable*

thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

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

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

5. *The following are the ingredients of Section 7 of the Act:*

(i) the accused must be a public servant or expecting to be a public servant;

(ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;

(iii) for himself or for any other person;

(iv) any gratification other than legal remuneration; and

(v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

6. *Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely:*

(i) The accused must be a public servant.

(ii) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

(iii) To make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.

(iv) An agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).

(v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.

(vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.

(vii) Since the legislature has used two different expressions, namely, "obtains" or "accepts", the difference between these two must be noted.

7. *In Subash Parbat Sonvane v. State of Gujarat [Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 : 2002 SCC (Cri) 954] ("Subash Parbat Sonvane"), it was observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d). In Sections 7 and 13(1)(a) and (b) of the Act, the legislature has specifically used the words "accepts"*

or "obtains". As against this, there is departure in the language used in sub-section (1)(d) of Section 13 and it has omitted the word "accepts" and has emphasised on the word "obtains". In sub-clauses (i), (ii) and (iii) of Section 13(1)(d), the emphasis is on the word "obtains". Therefore, there must be evidence on record that the accused "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or that he obtained for any person any valuable thing or pecuniary advantage without any public interest.

8. *It was further observed [Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 : 2002 SCC (Cri) 954] with reference to Ram Krishan v. State of Delhi [Ram Krishan v. State of Delhi, AIR 1956 SC 476] ("Ram Krishan"), that for the purpose of Sections 13(1)(a) and (b) of the Act : (Subash Parbat Sonvane case [Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 : 2002 SCC (Cri) 954] , SCC p. 88, para 7)*

> *"7. … '9. … It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour.' [Id., AIR p. 478, para 9] "*

9. *Moreover, the statutory presumption under Section 20 of the Act is available for the offence punishable under Sections 7 or 11 or clauses (a) and (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13.*

10. *Reliance could also be placed on C.K. Damodaran Nair v. Union of India [C.K. Damodaran Nair v. Union of India, (1997) 9 SCC 477 : 1997 SCC (Cri) 654] ("C.K. Damodaran Nair"). That was a case under the Prevention of Corruption Act, 1947 (" the 1947 Act" for the sake of convenience).*

Speaking of a charge under Section 7 of the Act, it was held that the prosecution was required to prove that:

(i) the appellant was a public servant at the material time;

(ii) the appellant accepted or obtained a gratification other than legal remuneration; and

(iii) the gratification was for illegal purpose.

11. *While discussing the expression "accept", it was observed in C.K. Damodaran Nair case [C.K. Damodaran Nair v. Union of India, (1997) 9 SCC 477 : 1997 SCC (Cri) 654] that "accept" means to take or receive with a "consenting mind". Consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to "acceptance". Therefore, it cannot be said, as an abstract proposition of law, that without a prior demand, there cannot be "acceptance". The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Section, the prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Sections 5(1)(a) and (b) and not under Sections 5(1)(c), (d) or (e) of the 1947 Act. According to this Court, "obtain" means to secure or gain (something) as a result of*

request or effort. In the case of obtainment, the initiative vests in the person who receives and, in that context, a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Penal Code, 1860 (for short "IPC"), which can be established by proof of either "acceptance" or "obtainment".

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 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.

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.*

89. *In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] and P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] with the three-Judge Bench decision in M. Narsinga Rao [M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 : 2001 SCC (Cri) 258] , with regard to the nature and quality of proof necessary to*

sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases.

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."

15. PW- 1 during his deposition stated that he heard the conversation in Bengali between the complainant and the appellant where by the appellant asked the complainant as to whether he had brought everything as settled and Sukanta Chaterjee, the complainant agreed. The word 'settled' as quoted can have various connotation concurring different kinds of issues not exclusively restricted to the context of offer and acceptance of bribe. PW-1 did not specifically mention that the appellant had asked the sum of money to be his gratification for doing a job beyond his official capacity for his wrongful gain to the detriment of the complainant. It is an admitted fact that R/D account number was recorded in the joint name of the parents of the complainants and the monthly amount of deposit was Rs. 300/-. According to the evidence

of PW-6, the sub postmaster at the relevant time in cross examination stated the monthly amount of deposit was Rs.300/-. The last deposit was made on 07.03.97, towards deposit upto the month of February, 1997 and Rs. 6/- had to be deposited as fine due to making delay for payment for the month of February, 1997 and as such there was due for the month of March 1997 i.e. Rs. 300/-.

16. P.W.-6 further stated that no proceeding was initiated against him as he was overburdened with work, he asked the appellant to keep the relevant papers and money with him. The complainant had visited the post office prior to 18.3.97 and took the requisite forms with him. The complainant being PW-2 deposed his mothers desire to withdraw money deposited in the post office after the death of his father with regard to the account held jointly in the name of his parents. According to P.W.-2, the appellant refused to such withdrawal as the 6 passbooks were issued in the name of his father. P.W.-2 thereafter approached the Sub-Post Master and subsequently the mother of P.W.-2 applied for inclusion of PW.-2's name in those passbooks before the sub postmaster who asked PW-2 to meet the dealing assistant being the appellant. According to PW-2, the appellant did not accept the application as it was not in proper form. On 11.3.97, PW-2 had been to the appellant for the inclusion of his name in the passbook. After some time the appellant came out from the post office and asked him to pay Rs.600/- at first and finally it was settled at Rs. 300/- which the appellant asked him to pay by 17/18.03.1997.

17. The de-facto complainant at the first instance wanted to withdraw the amount of money deposited in the monthly income scheme and the recurring deposit at Kalyani Bidhan Park Post Office on the death of his father to fulfill the desire of his mother with regard to the accounts jointly held by his parents. The appellants' objection to such desire for removal was justified. The complainant being an ex-serviceman should have been aware of the process to regularize the accounts as aforesaid at the demise of his father. The objection raised by the appellant with regard to the application being improper was also justified. Rectification of the same would not have created much of a difference. The appellant under no circumstances could have claimed bribe from the complainant for such a meager amount for such a trivial issue that too the amount that was commensurate to the monthly deposit. It was the admission of the complainant that his application was not in proper form. Non-acceptance of the application, not properly submitted might have triggered the ego of the ex-air force personnel i.e. the complainant to have implicated the appellant in a criminal case being boastful and impetuous of his position directly involving the higher police officials who had acted on the whims and frenzy of the de-facto complainant to brutally devastate the career and life of the appellant, a staff at the post office who evidently carried out the functions of his seniors as allotted to him. The entire exercise on the part of the prosecution, the procedure of trap was at the behest of the complainant whose claim of withdrawal of money at the very inception without following the necessary procedure was unlawful and unjustified. The appellant had to undergo rigor, trial and turmoil to have

not subserved the unjustified and unethical demand of the complainant whose intention was to display his power and control over the system. The manner in which the complaint was lodged directly before the CBI officials and a trap being laid to indict the appellant was a glaring example of misuse of power and nepotism. Such nefarious activity on the part of the complainant is contemptuous without an iota of evidence on record apart from concocted and fabricated depositions that the appellant had claimed a bribe of Rs. 300/- which otherwise was the monthly premium to be paid against the accounts held by the mother and the deceased father of the complainant. The wrath of the complainant on being rejected at his proposal by a staff of the post office intensified to such an extent that he maliciously involved the prosecution machinery to satisfy his ulterior motive in an unprecedented manner which acted biasedly and partially. The demand for the bribe or illegal gratification could not be proved. There was a delay in lodging the FIR which inferred the scope of malevolent and hostile implication of the appellant consequent to the infuriated complainant's lividness and egotism. The prosecution failed to prove the motive of the appellant to advantageously manipulate his public office for wrongful gain or reward. The money to have been kept in his shirt pocket cannot be presumed to be a surreptitious act on his part, since such a modicum amount cannot sub-serve a furtive act which otherwise was justifiable on account of the monthly premium to be paid. The appellant acted under instruction of his senior.

18. The technicalities with regard to recording of statement under Section 313 of the Cr.P.C. is not considered at this stage where this Court considers the FIR itself to be a spurious and manipulated document which should have been discarded at the very first instant.

19. In view of the above discussions and series of citations, the prosecution has failed to prove its case and accordingly the appeal is allowed.

20. Under such facts and circumstances of the case, the judgment and order of conviction dated 28th March, 2003 and sentence dated 29th March 2003 passed by Learned Additional Sessions Judge, 4th Court, Nadia and Judge, Special Court Prevention of Corruption Act, Nadia in Special Court Case No. 1 of 1997 convicting the appellant under Section 7 and 13(1)(d) of Prevention of Corruption Act and sentencing him to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to suffer rigorous imprisonment for one month for the offence punishable under Section 7 of the Prevention of Corruption Act and further sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs 1,000/- in default to suffer rigorous imprisonment for two months for the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act, is set aside.

21. Accordingly, CRA 193 of 2003 is disposed of. Connected application, if there be any, also stands disposed of.

22. There is no order as to cost.

23. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)