2023/KER/49688

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 17TH DAY OF AUGUST 2023 / 26TH SRAVANA, 1945

CRL.A NO. 1726 OF 2010

AGAINST THE JUDGMENT IN CC 22/2002 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,KOZHIKODE

APPELLANT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,, HIGH COURT OF KERALA.

BY ADV SRI.A.RAJESH, SPL. PUBLIC PROSECUTOR FOR VACB

RESPONDENT/ACCUSED:

P.M.KUNHAPPAN
PERUMPALLIKKATTIL HOUSE,KUPPADITHARA, 16TH MILE,, PUTHUSSERIKKADAVU, (VILLAGE OFFICER, KANHIRANGAD).

BY ADVS.
SRI.DEVAPRASANTH.P.J.

OTHER PRESENT:

SMT S REKHA SR PP

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 7.08.2023, THE COURT ON 17.08.2023 DELIVERED THE FOLLOWING JUDGMENT OF CONVICTION: THE COURT ON 21.08.2023 PASSED THE FOLLOWING JUDGMENT ON SENTENCE:

"C.R."

J U D G M E N T

Dated this the 17th day of August, 2023

This is an appeal filed by the State against the judgment of acquittal dated 22/9/2007 in CC No.22/2002 on the file of the Enquiry Commissioner and Special Judge, Kozhikode (for short, 'the court below').

2. The accused faced trial for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').

3. The case of the prosecution, in short, is that the accused, while working as the Village Officer, Kanhirangad, demanded bribe of ₹3,000/ from the defacto complainant/decoy on 30/11/2000 for conducting verification on the application filed by him at the Land Tribunal, Mananthavady for getting purchase certificate and accepted ₹1,000/- on 5/12/2000, at 1.25 p.m. at his office by abusing his official position as a public servant.

4. After trial, the court below found the accused not

guilty and acquitted him vide impugned judgment. Challenging the said judgment of acquittal, the State preferred this appeal.

5. I have heard Sri. A. Rajesh, the learned Special Public Prosecutor for VACB and Sri.Devaprasanth P.J., the learned counsel for the accused/respondent.

6. The learned Special Public Prosecutor for VACB Sri. A. Rajesh submitted that the prosecution proved its case against the accused beyond reasonable doubt through the evidence of PWs1 to 9 and hence, the court below ought to have convicted him. The learned Public Prosecutor further submitted that the court below while appreciating the prosecution evidence, completely ignored the presumption required to be taken under sub-section (1) of Section 20 of the PC Act. The learned Public Prosecutor also submitted that the court below ignored the material piece of evidence adduced by the prosecution and failed to appreciate it in the correct perspective resulting in a failure of justice enabling this court to interfere with the judgment of acquittal. The learned Public Prosecutor relied on the following decisions in support of his argument: (i) ***Parameswaran Pillai R. (Dr.) v. State of***

Kerala (2011 (4) KHC 411), (ii) *Shaji E. V. v. State of Kerala* (2012 KHC 720),(iii)*Nayankumar Shivappa Waghmare v. State of Maharashtra* (2015 KHC 1596), (iv) *Raveen Kumar v. State of Himachal Pradesh* (2020 KHC 6606), (v) *Jeet Ram v. Narcotics Control Bureau, Chandigarh* (AIR 2020 SC 4313), and (vi) *Achhar Singh and Another v. State of Himachal Pradesh* (2021 KHC 6272).

7. On the other hand, the learned counsel for the accused Sri.Devaprasanth P.J. submitted that in the case of acquittal, there is double presumption in favour of the accused, and a judgment of acquittal can be interfered with only in exceptional cases where there are compelling circumstances which are lacking in this case. The learned counsel further submitted that the prosecution has miserably failed to prove that there was a demand for illegal gratification from the side of the accused and its acceptance by him. The learned counsel also submitted that PW1 illegally trapped the accused at the instance of PW6. The learned counsel added that the sanction for prosecution under Section 19 of the PC Act had not been properly proved by the prosecution.

8. It is not in dispute that the accused was working as Village Officer, Kanhirangad, during the relevant period. Ext.P8 posting order of the accused and Ext.P10 attendance register would also prove the said fact. It has come out in evidence that the decoy witness (PW1) submitted an application at the Land Tribunal, Mananthavady, to obtain purchase certificate in respect of 5 cents of property belonging to him on 14/1/2000. Ext.P2 is the said application. Similarly, he has submitted another application in the name of his father at the same Land Tribunal to obtain purchase certificate in respect of 4 Acres 95 cents of property. Ext.P1 is the said application. It has also come out in evidence that both Exts.P1 and P2 applications were forwarded by the Land Tribunal to the accused, who was the Village Officer, Kanhirangad, for enquiry and report. In the statement filed by the accused under Section 313 of Cr.P.C, he has admitted that PW1, along with PW6, Villageman approached him and made a request to help him to issue purchase certificate covered by Ext.P1 application.

9. The prosecution version is that on 30/11/2000, the

accused demanded a bribe of ₹3,000/- from PW1 for conducting verification on Ext.P1 application and when PW1 expressed his inability to pay the demanded bribe money in lumpsum, the accused agreed to accept the same in instalments and directed PW1 to pay ₹1,000/- as first instalment in the afternoon of 5/12/2000 and in pursuance of the said demand, the accused accepted an amount of ₹1,000/- as bribe from PW1 at about 1.25 p.m. on 5/12/2000 after laying a trap.

10. The prosecution mainly relied on the evidence of PWs1, 2, 3 and 9 to prove its case and to fix the culpability on the accused. PW1 is the decoy witness and the defacto complainant. The crime was registered based on Ext.P3 statement given by him. He deposed that he submitted Ext.P2 application on 14/1/2000 to obtain purchase certificate in respect of 5 cents of property belonging to him and Ext.P1 application on 15/1/2000 in the name of his father to obtain purchase certificate in respect of 4 Acres 95 cents before the Land Tribunal, Mananthavady and those applications were forwarded to the Village Officer, Kanhirangad for enquiry and report. According to PW1, even

though he visited the Village Office, Kanhirangad several times, no action was taken on Exts.P1 and P2. Ultimately, when he met the accused, who was the Village Officer on 30/11/2000, to enquire about the status of Exts.P1 and P2 applications, he demanded ₹3,000/- as bribe. When he expressed his inability to pay the money in lumpsum, the accused agreed to accept the same in instalments and asked him to pay ₹1,000/- as the first instalment on the afternoon of 5/12/2000 at his office. On the next day, i.e., on 1/12/2000, he reported the matter to the Dy.S.P. attached to VACB, Wayanad, who was examined as PW9. PW9 told him to meet the accused once again and sent PW3 along with him. He and PW3 went to the Village Office and he met the accused. The accused again demanded for money. He said that he did not bring the money. The accused then asked him to come on Tuesday (5/12/2000) with the money. PW9 then arranged a trap. He entrusted a sum of ₹1,000/- as instructed by PW9 as per Ext.P4 entrustment mahazar. MO1 series are the currency notes entrusted by PW1 with PW9. MO1 series were smeared with phenolphthalein powder and given back to PW1

with instructions to hand them over to the accused on demand. Thereafter, he in his bike and PW2, PW9, CW2 and the vigilance party in two jeeps, proceeded to the Village Office, Kanhirangad and reached the Village Office at 12.30 noon. PW1 alone went to the Village Office and met the accused. The accused told him to wait outside the office since there was a rush. After about one hour, the accused called him inside and asked whether he had brought the money. After that, they went to the nearby tea shop and returned to the Village Office after having tea. Then, he handed over MO1 series currency notes to the accused at the Village Office. It was at 1.25 p.m. The accused received the money and kept it in the drawer of his table. He gave the signal, and PW9 and the party reached the Village Office.

11. PW2 is the independent witness who accompanied PW1 and the vigilance party. He was working as Taluk Supply Officer, Vythiri. He gave evidence in tune with the evidence tendered by PW1. He deposed that he saw PW1 entrusting MO1 series currency notes to PW9 as per Ext.P4 mahazar and applying phenolphthalein powder on it. After that, PW1, CW2, PW9, and

the vigilance party, went to the Village Office at 10.30 a.m, and they reached there at 12.15 a.m. PW1 alone went to the Village Office, and he and others waited outside awaiting the signal from PW1. After one and a half hours, PW1 gave the signal. He, PW9 and CW2, rushed to the Village office. The accused was sitting on his chair. PW9 asked PW1 whether he gave money to the accused. PW1 confirmed that he paid money to the accused, who accepted it with his right hand and kept the same in the right drawer of his table. When they searched the drawer, they could not find the money. After that, lime water was sprinkled on a piece of paper found inside the drawer. It turned pink colour. The said paper was seized. It was marked as Ext.P5. After that, the right hand of the accused was dipped into a sodium carbonate solution stored in MO4 bottle. The hand, as well as the solution, turned to pink colour. When PW9 asked about the money, the accused pointed to the rack. When the rack was searched, MO1 series and a cover fell from the rack. Ext.P6 is the cover, and Ext.P6(a) is the letter inside the cover. He then dipped the notes as well as the cover in a separate sodium carbonate solution.

They turned to pink colour.

12. PW3 was the Head Constable, VACB, Wayanad. He deposed that PW9 deputed him on 1/12/2000 for pre-verification. He went to the Village Office, Kanhirangad, along with PW1 on that day, and they reached there at about 11.00 a.m. The accused asked PW1 whether he brought the money. When PW1 answered in the negative, the accused told him to come with money on Tuesday. PW3 was also a member of the trap team on the trap day.

13. PW9 was the Dy. S.P. who recorded Ext.P3 FI statement, laid the trap and recovered MO1 series trap money. He registered Ext.P3(a) FIR based on Ext.P3 FI statement on 5/12/2000 at 8 am. He deposed that after the registration of FIR, as instructed by him, PW1 produced MO1 series of currency notes, he then applied phenolphthalein powder to it, and Ext.P1 mahazar was prepared. He entrusted MO1 series currency notes with PW1 and gave specific instructions to him that those notes should be given to the accused on demand. After that, he and PWs1, 2 and CW2 went to the Village Office. They reached there

by 12.00 p.m. He, PW2, and CW2 waited outside the Village Office and sent PW1 to the Village Office with a direction to give the signal when the accused accepted money from PW1. He received a signal from PW1 at about 1.30 p.m. He, along with PW2 and CW2, went to the Village Office. The accused was sitting on his chair. He disclosed his identity. He asked PW1 whether he gave money to the accused. PW1 confirmed that he paid money to the accused, who accepted it with his right hand and kept the same in the right drawer of his table. When the drawer was searched, no money could be found. After that, lime water was sprinkled on Ext. P5 paper found inside the drawer. It turned pink colour. Thereafter, the right hand of the accused was dipped into sodium carbonate solution stored in MO4 bottle. The hand, as well as solution, turned pink colour. When he asked about the money, the accused confessed that he had kept it inside the rack placed adjacent to his chair and pointed out to the rack. When the rack was searched, MO1 series and a cover fell from the rack. Ext.P6 is the cover, and Ext.P6(a) is the letter inside the cover. He then dipped the MO1 series currency notes and Ext.P6 (a)

cover in a separate sodium carbonate solution. The notes, as well as the cover, turned pink. He then arrested the accused.

14. The above evidence adduced by the prosecution to prove the demand of illegal gratification, the acceptance of MO1 series currency notes, its recovery and the arrest of the accused was discarded by the court below, citing following reasons:

(I) The very submission of Exts.P1 and P2 applications by the accused is suspicious.

(II) The evidence shows that the accused was not present in his office at 11.00 am on 1/12/2000, the date on which the accused allegedly made the demand for the second time.

(III) The conduct of PW1 not handing over MO1 series currency notes to the accused either at the tea shop or on the way to the tea shop is suspicious.

(IV) At the time of trial, there was no visible pink colour on Ext.P5 and MO4 bottle contained colourless liquid.

(V) The defence version that MO1 series currency notes were planted in the rack by PW1 with the help of PW6 is

more probable.

14(i). PW8 is the father of PW1. He deposed that he acquired title over five acres of land comprised in R.S.No.62/1 of Kanhirangad Village. Ext.P1 application was made in respect of 4.95 Acres of land, and Ext.P2 application was made in respect of 5 cents of land. PW1 deposed that he obtained 55 cents of land from his father as per the document. Based on this evidence, the court below found that since PW8 had title over the remaining 4 acres and 45 cents only, he cannot move an application for purchase certificate in respect of 4 Acres and 95 cents. This was highlighted by the court below to hold that the case of the prosecution that PW1 made Exts.P1 and P2 applications was highly improbable. The said finding of the court below appears to be baseless. It is not in dispute that PW1 made Exts.P1 and P2 applications at the Land Tribunal, Mananthavady and those applications were forwarded to the Village Office, Kanhirangad, for enquiry and report. In the statement filed by the accused under Section 313 of Cr.P.C., he has admitted that one day, PW1, along with PW6, approached him and made a request to help him

to issue purchase certificate in respect of 4.95 Acres in the possession of the father of PW1 and he informed them about the necessity to produce the title deeds in respect of the said property. It was further stated that after that also, PW1, on two occasions, approached him for the same purpose. This evidence establishes that Exts.P1 and P2 applications filed by PW1 before the Land Tribunal, Mananthavady, have been forwarded to the accused for enquiry and report.

14(ii). According to the prosecution, the first demand was on 30/11/2000, and the second demand was on 1/12/2000, on the next day. PW1 deposed that on 30/11/2000, the accused demanded illegal gratification and said that unless ₹3,000/- is paid, Exts.P1 and P2 will not be processed. He went to the Vigilance office the next day, met PW9 and complained. PW9 told him to meet the Village Officer once again and sent PW3 along with him. PW3 deposed that he and PW1 went to the Village Office, Kanhirangad, on 1/12/2000 and reached there at 11 am. He stood at the verandah, and PW1 went inside the room of the accused. He further deposed that he heard the talk between PW1

and the accused about the demand for money. The court below heavily relied on Ext.P12 attendance register of the accused on that day to disbelieve the evidence of PW3. As per the attendance register, the accused was on ‘other duty ‘on the forenoon of 1/12/2000. The relevant entry in Ext. P12 was marked as Ext. P2(a). Based on the said evidence, the court below concluded that the evidence of PW3 that the accused was present at his office on the forenoon of 1/12/2000 cannot be believed. What was marked in Ext.P12 is that the accused was on 'other duty' on the forenoon of 1/12/2000. The accused was not on leave. Even if he was on other duty, his presence in the office cannot be ruled out. PW1 and PW3 gave evidence that they met the accused on 1/12/2000 at 11 a.m. and had a talk with him. There is nothing to disbelieve the said evidence. Merely because of Ext.P12(a) entry in Ext.P12, the concrete evidence of PWs1 and 3 cannot be discarded at all.

14(iii). According to PW1, when he reached the Village Office on 5/12/2000 at 12.30 noon, the accused asked him to wait outside the office and he was called inside only after about one

hour. The accused enquired with him as to whether he had brought the money. Thereafter, they went to the tea shop and after having the tea, returned to the Village Office and he handed over MO1 series currency notes to the accused. The court below observed that nothing prevented the accused from handing over the money either at the tea shop or on the way to the tea shop and hence, the conduct of PW1 is suspicious. The said finding was far-fetched and unsupported by any logic or reason. It has come out in evidence that initially when the accused met PW1, there was rush in the Village Office and when PW1 and the accused went to the tea shop, other staff of the Village Office also accompanied them and there was nobody in the Village Office. That apart, the time and place chosen by the receiver and giver of the bribe cannot be doubted on the ground that they could have chosen some other better place or time.

14(iv). The evidence on record disclosed that when the lime water was sprinkled on Ext.P5 paper found inside the drawer of the table of the accused, it turned into pink colour. Similarly, when the right hand of the accused was dipped into MO4

solution, his hand, and the solution in MO4 turned into pink. Ext.P4 mahazar would show that both Ext.P5 and MO4 had change of colour. However, at the time of trial, there was no visible pink colour on Ext.P5 and the liquid in MO4 was colorless. This instance was relied on by the prosecution to doubt the phenolphthalein test conducted on Ext.P5 and on the right hand of the accused. It must be noted that the recovery of Ext.P5, MO4 and the administration of phenolphthalein test on it was on 5/12/2000. The evidence was adduced in August 2007, after a lapse of seven years. As per Ext.P7, Ext.P5 turned into pink colour when lime water was sprinkled on it and there was light pink colour in the liquid collected in MO4. There is every possibility of fading the colour in Ext.P5 and MO4 liquid becoming colourless during the passage of time. Phenolphthalein is colourless in acidic solution and pink in basic solution. In strong basic solutions, its pink colour undergoes a rather slow fading and would become colourless again. Therefore, the possibility of fading the colour by course of time cannot be ruled out. That apart, if the solution is shaken, the pink colour might spread and

disappear [see *Parameswaran Pillai* (supra)]. A Single Bench of this Court in *Shaji* (supra) relying on a Journal on Forensic Science observed that the coloured phenolphthalein solution tends to gradually fading away with passage of time varying up to several months and that the possibility of phenolphthalein solution turning colourless by course of time due to small chemical changes cannot be ruled out. That apart, it is not at all mandatory to conduct phenolphthalein test to establish demand or acceptance of bribe. The phenolphthalein test is conducted for the conscious satisfaction of the trap officer that he was proceeding against a real bribe taker to satisfy himself that the suspected public servant had really demanded and accepted the bribe money. Independent of the evidence regarding the phenolphthalein test, the demand and acceptance can be proved. Ext.P7 is a contemporaneous document prepared on the spot. In Ext.P7, there is clear narration of phenolphthalein test and the result. Adding to that, there is unimpeachable evidence of PW2 and PW9 that when the right hand of the accused was dipped in the sodium carbonate solution, his hand as well as the solution

turned pink and when the sodium carbonate solution was sprinkled on Ext.P5 paper, it turned into pink. Therefore, the fact that MO4 solution was colourless and MO5 paper had no pink colour at the time of evidence assumes no significance.

14(v). According to PW1, when he handed over MO1 series currency notes, the accused received it and put it in the drawer. MO1 series currency notes were seized from the rack placed near to the chair of the accused. According to the defence, MO1 series currency notes were planted in the rack by PW1 with the help of PW6. The court below found that since the recovery of the tainted currency notes was not from the possession of the accused but from the rack, there should be some corroboration to prove the acceptance of MO1 series currency notes by the accused. The evidence on record would show that there was sufficient time for the accused to keep MO1 series currency notes in the nearby rack after receiving it from PW1. It is to be noted that when the rack was searched, MO1 series currency notes along with Ext.P6 brown envelope fell down. When phenolphthalein test was administered on Ext.P6 cover, the result

was positive. If PW1 wanted to implicate the accused falsely, he could have said that after receiving the MO1 series currency notes from him, the accused placed it in the rack in his presence. According to the defence, on the day of the trap, at about 12.00 p.m., PW1, along with PW6, approached him and thrust MO1 series currency notes into his hand, and he threw them away. It is highly improbable that they again went to the room of the village office during lunch break and placed MO1 series currency notes in the rack, as alleged by the defence. Moreover, the evidence of PW6 coupled with the entry in Ext. P12 would show that PW6 was on leave on 5/12/2000. It is true that in Ext. P12, in the forenoon column on 5/12/2000, initial of PW6, was seen erased. But there is nothing on record to suggest that the erasing was made purposefully to make it appear that PW6 was leave on that day. There is nothing to doubt the categoric evidence of PW6 that he was on leave that day.

14(vi). Thus, the reasoning given by the Court below to disbelieve the evidence of PWs 1 to 3, 6 and 9 is perverse, baseless, and unjustified.

15. Though PWs1 to 3 and 9 were cross-examined in length, nothing tangible could be extracted from their evidence to discredit their testimony. The learned counsel for the accused vehemently argued that there was no concrete evidence to prove the demand and acceptance. It is not necessary that there should be direct evidence in all cases to prove the demand and acceptance. It can be proved by acceptable circumstantial evidence as well. (See ***Neeraj Dutta v. State (Govt. of NCT of Delhi)*** (2023 (1) KLT S.N.28)]. Moreover, there is direct evidence in this case to prove the demand and acceptance. The evidence of PWs1, 2, 3 and 9 establishes that the accused demanded bribe of ₹3,000/- from PW1 to process Exts.P1 and P2 applications, thereafter the trap was arranged, and they, along with CW2 went to the Village Office, PW1 gave MO1 series currency notes to the accused as bribe, and he accepted it. Thus, the demand and acceptance of illegal gratification have amply been proved by the prosecution through the evidence of PWs1, 2, 3, and 9. The evidence regarding the positive result of the phenolphthalein test on the hand of the accused, MO1 currency notes, Exts.P5 and P6,

is strong circumstance to suggest that the accused has accepted and handled the tainted notes.

16. It is true that in the case of acquittal, there is double presumption in favour of the accused, and an order of acquittal cannot be interfered with as a matter of course. However, there is no difference in power, scope, jurisdiction, or limitation under the Cr. P.C. between the appeals against judgment of conviction or acquittal. The appellate court is free to consider fact and law, despite the self-restraint that has been ingrained into practice, while dealing with the judgment of acquittal considering the interest of justice and fundamental principles of presumption of innocence. [see *Raveen Kumar v. State of Himachal Pradesh* (supra)] and [*Achhar Singh and Another v. State of Himachal Pradesh* (supra)].

17. The Apex Court has consistently taken the view that in an appeal against acquittal, the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence, the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal

was formulated by the Judicial Committee of the Privy Council in ***Sheo Swarup v. King Emperor*** (AIR 1934 PC 227) and ***Nur Mohammed v. King Emperor*** (AIR 1945 PC 151). These two decisions have been consistently referred to in the judgments of the Apex Court as laying down the true scope of the power of an appellate court in hearing criminal appeals. [See ***Surajpal Singh v. State*** (AIR 1952 SC 52) and ***Sanwat Singh v. State of Rajastan*** (AIR 1961 SC 715)]. Similar view has been expressed in ***Damodarprasad Chandrikaprasad v. State of Maharashtra*** [(1972) 1 SCC 107)], ***Girja Prasad v. State of M.P*** [(2007) 7 SCC 625], ***S. Ganesan v. Rama Raghuraman and Others*** [(2011) 2 SCC 83] and ***Jeet Ram*** (supra). The Apex Court in ***State of Uttar Pradesh v. Banne alias Baijnath and Others*** [(2009) 4 SCC 271], in paragraph 28, very illustratively listed circumstances where interference of the appellate court against acquittal would be justified. These would include patent errors of law, grave miscarriage of justice, or perverse findings of fact. In ***Babu v. State of Kerala*** [(2010) 9 SCC 189], it was clarified by the Apex Court that a finding of fact recorded by a court could be held to be perverse if the findings

have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/ inadmissible material or if they are against the weight of evidence or if they suffer from the vice of irrationality.

18. Admittedly, the accused was a public servant as defined under Section 2(c) of the PC Act working as the Village Officer on the date of the alleged incident. As stated already, the evidence of PWs 1, 2, 3 and 9 proves the demand and acceptance of the bribe by the accused from PW1 as well as its recovery. In fact, the recovery of MO1 currency notes from the rack that was placed near his chair was not disputed by the accused. The defence set up by him is that PW1, with the help of PW6, placed MO1 series currency notes in the rack, and they were instrumental in foisting a false case against him. But there is absolutely nothing on record to probablise the said defence story. Once the prosecution has established that gratification in any form had been paid or accepted by a public servant, it can be presumed that gratification was paid or accepted as a motive or reward to do (or forbearing from doing) an official act in a charge

under Section 7 of the PC Act. Similarly, once it is proved that the accused accepted the tainted money without any protest, it can be presumed that he obtained the tainted money within the meaning of Section 13(1)(d) of the PC Act. The court below, while appreciating the prosecution evidence, completely ignored the presumption required to be taken under sub-section (1) of Section 20 of the PC Act. Sub-section (1) of Section 20 of the PC Act provides that where, in any trial of an offence punishable under Sections 7 or 11 or Clause (a) or Clause (b) of sub-section (l) 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 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. The Apex Court, in ***State of Andhra***

Pradesh v. C. Uma Maheswara Rao and Another [(2004) 4 SCC 399], analyzed Section 20(1) and held that the term "shall be presumed" in Section 20(1) showed that Courts had to compulsory draw a presumption. It was further held that the only condition for drawing the presumption is that during the trial it should be proved that the accused has accepted or agreed to accept any gratification and that once it is proved that gratification has been accepted, the presumption automatically arose. In this case, the condition precedent to draw 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. The accused has failed to offer any satisfactory explanation for the receipt of MO1 series currency notes from PW1. Thus, the presumption under Section 20 of the Act becomes applicable for the offence committed by the accused under Section 7 of the PC Act.

19. The evidence on record, the sequence of events and circumstances narrated above clearly proves that the accused has accepted ₹1,000/- as illegal gratification from PW1 by abusing

his official position as a public servant and availed pecuniary advantage by corrupt and illegal means. The findings of fact recorded by the court are perverse and suffer from the vice of irrationality. The view taken by the court below was not at all possible, having regard to the evidence on record and findings which are erroneously recorded contrary to the evidence on record. The court below has ignored the material piece of evidence and failed to appreciate the evidence in the correct legal perspective. No doubt, it amounts to a failure of justice, enabling this court to interfere with the impugned judgment of acquittal. In ***Niranjan Hemchandra Sashithal and Another v. State of Maharashtra*** [(2013) 4 SCC 642], the Apex Court has discussed the gravity of the corruption cases in the following words:

> *"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers' disorder, destroys the societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered."*

20. The learned counsel for the accused lastly submitted that Ext.P15 sanction to prosecute the accused was not proved in accordance with the law. Indeed, the authority who gave Ext.P15 was not examined. It was marked through the investigating officer, PW9. According to the counsel, the independent application of mind before according prosecution sanction is a matter which could be proved only through the oral testimony of the sanctioning authority.

21. Section 19(3) of the PC Act says that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. There is no case for the accused that a failure of justice has been caused by the non-examination of the sanctioning authority. The Apex Court in ***State of Madhya Pradesh v. Jiyalal*** (AIR 2010 SC 1451) has held that there is no requirement to examine the authority who gave the sanction to prove the

sanction order, but it is open for the accused to question the genuineness or validity of the sanction order. The defence did not question the genuineness or validity of the Ext.P15 sanction order. The Apex Court in ***State through Inspector of Police, A.P. v. K.Narasimhachary*** (AIR 2006 SC 628) has held that an order of valid sanction can be proved either by producing the original sanction which itself contains the fact constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show that facts were placed before the sanctioning authority and the satisfaction arrived at by it. It is evident from Ext.P15 that the sanctioning authority had applied its mind to the facts of the case and the materials placed before it. That apart, as per Section 19(4), the objection regarding sanction should be raised at an early stage of the proceedings. The perusal of the evidence would show that the accused did not challenge the validity of the sanction at all at the court below. It is raised for the first time before this court. For these reasons, the submission of the learned counsel for the accused that the sanction of prosecution has not been proved in accordance with the law must fail.

Based on the above findings, I hold that the judgment of acquittal passed by the court below cannot be sustained, and accordingly, it is set aside. The accused is found guilty of the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, and he is convicted for the said offence. The respondent/accused shall be present before this Court on 21/08/2023 at 10.15 am for hearing on sentence under Section 235(2) of Cr.P.C.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

21/8/2023 at 10.15. a.m.

The accused appeared in person. I have heard him on the question of sentence. I have also heard the learned counsel for the accused. The accused submitted that he is a handicapped person, aged 64 years and is suffering from various ailments. He further submitted that he has to support his wife and aged

mother. Taking into account all these factual aspects and also taking into consideration of the fact that the appeal has arisen from acquittal, I am of the view that the imposition of minimum substantive sentence would meet the ends of justice.

Hence, the accused is sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹10,000/- (Rupees Ten thousand only), in default to suffer simple imprisonment for 60 (sixty) days for the offence punishable under Section 7 of the PC Act. The accused is also sentenced to undergo simple imprisonment for a period of one year and to pay a fine of ₹15,000/- (Rupees Fifteen thousand only), in default to suffer simple imprisonment for 60 (sixty) days for the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act. The substantive sentence shall run concurrently.

The appeal is allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp