

2 . THE STATE BY KARNATAKA
LOKAYUKTHA POLICE
REP. BY ITS POLICE INSPECTOR
BENGALURU RURAL DISTRICT, M.S.BUILDING
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI B.B.PATIL, SPL PP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CR.P.C., PRAYING TO QUASHING THE IMPUGNED COMPLAINT DATED 04.03.2023 GIVEN BY THE R2(ANNX-A) AND THE IMPUGNED FIR IN CRIME NO.04/2023 DATED 04.03.2023 REGISTERED BY THE R1 UNDER SEC.7(c) OF THE PREVENTION OF CORRUPTION ACT, 1988 (ANNX-B) AND ALL FURTHER PROCEEDINGS PURSUANT THERETO, PENDING ON THE FILE OF THE IX ADDL.DISRICT AND SESSION COURT, BENGALORE RURAL DISTRICT.

THESE WRIT AND CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Conglomeration of these cases arises out of crimes registered against the petitioners on account of sting operations conducted by the media. Since all these petitions bring up a common challenge to sting operations so conducted and consequently the offences so alleged, they are taken up together and considered by this order.

The only variation would be the incidence and registration of crime, or the crime as the case would be. But, one stream that runs through the entire challenge is veracity of sting operation. In the light of the incidents being different, I deem it appropriate to narrate brief facts in each case.

Criminal Petitions Nos. 7430 of 2022, 7431 of 2022, 7473 of 2022 and Writ Petition No.15582 of 2022:

2. The 2nd respondent is the complainant in all these cases. A complaint comes to be registered on 03-08-2022 before the then Anti-Corruption Bureau. The allegation in the complaint is that a Television channel by name Power TV conducts a sting operation which consists of 8 Traffic Police Inspectors and 3 Assistant Commissioners of Police named in the complaint who are said to have indulged in taking money from public for letting Tipper Lorries on alternative routes where there would be no traffic jams which by itself caused a traffic jam and on verification of the video it was found that the Traffic Police Inspectors are letting granite lorries and all other lorries which are categorized as heavy motor vehicles by extracting money. This sting operation that was projected in the

Television Channel is said to have been noticed by the 2nd respondent and on the basis of the said Television broadcast registered the complaint. The complaint then becomes a crime in Crime No.60 of 2022 for offences punishable under Sections 7(a) and 12 of the Prevention of Corruption Act, 1988 ('the Act' for short). It is the registration of crime that drives the petitioners to this Court in the subject petitions. The petitioners, in Criminal Petition No.7430 of 2022, are the personnel working in the traffic wing of different police stations of different jurisdictions.

All the aforesaid facts pertaining to afore-quoted petitions both criminal petitions and writ petitions are arising out of a solitary fact and a solitary crime in Crime No.60 of 2022.

Writ Petition No.10825 of 2023:

3. The 2nd respondent/Lokayukta Police is the complainant as it is a *suo motu* action taken against the petitioners. The allegation against the petitioners is that a private news channel Asianet Suvarna conducts a sting operation on 19-11-2022 in the office of the Additional Commissioner of Commercial Taxes (South Zone),

Koramangala, Bangalore and found that officers in the Department are demanding illegal gratification. This is broadcasted in the television channel i.e., Suvarna News. Alleging that this formed offence under the Act, after about 4 months, the Lokayukta Police registers a crime on 04-03-2023 for offences punishable under Section 7(c) of the Act in Crime No.4 of 2023. The petitioners are accused Nos. 1 and 2 in the said crime.

Writ Petition No.10549 of 2023:

4. The issue in the subject petition concerns conduct of sting operations on 23-10-2022, 24-10-2022 and 28-10-2022 at the Bypass Road of Chitradurga and in the office of the Assistant Commissioner of Commercial Taxes, Chitradurga. The allegation is demand of illegal gratification. This was aired in the news channel on 25-11-2022 and the crime in Crime No.3 of 2023 is registered on 10-03-2023 for offences punishable under Section 7(a), 7(b) and 7(c) of the Act. The petitioners are accused Nos. 1, 2 and 3 in the said crime.

Writ Petition No.10676 of 2023:

5. The petitioners are accused 1 and 2 in Crime No.10 of 2023. The issue in this petition is also concerning a sting operation in the Department of Commercial Taxes. The operation allegedly conducted in Hosur Road, Outer Ring Road, Bangalore and in the office of the Additional Commissioner of Commercial Taxes. This was also aired on 25-11-2022 and the crime in Crime No.10 of 2023 is registered on 21-02-2023.

Writ Petition No.10313 of 2023:

6. The subject petition concerns Crime No.5 of 2023. Petitioners are accused Nos. 1, 2 and 3. The issue remains the same about conduct of sting operation in the office of the Assistant Commissioner of Commercial Taxes (Enforcement), Madikeri on 16-11-2022 and 19-11-2022. The allegation is demand of illegal gratification and the offence alleged is one punishable under Section 7(c) of the Act.

Writ Petition No.10585 of 2023:

7. The petitioners are accused 1 and 2 in Crime No.12 of 2023 registered for offences punishable under Section 7(c) of the Act. The petition again concerns conduct of sting operation in the office of the Commercial Taxes Department, Chikkaballapur on 02-11-2022.

Writ Petition No.10363 of 2023:

8. The subject petition concerns Crime No.4 of 2023 registered on 03-04-2023 for offences punishable under Section 7(c) of the Act. The petitioners are accused Nos.1, 2 and 3 in the said crime. The allegation springs from a sting operation conducted in the office of the Joint Commissioner of Commercial Taxes, Mysore Division, Mysore on 15-11-2022, 16-11-2022 and 24-11-2022.

Writ Petition No.10335 of 2023:

9. The subject petition concerns Crime No.11 of 2023. Petitioners are accused Nos. 1 and 2. The issue remains the same

about conduct of sting operation in the office of the Additional Commissioner of Commercial Taxes (Enforcement), Koramangala. The allegation is demand of illegal gratification and the offence alleged is the one punishable under Section 7(c) of the Act.

10. Thus, the aforesaid two batches of petitions concern two instances of sting operation – one on the traffic wing of the jurisdictional police stations at Bangalore and the other at the offices of the Joint Commissioner of Commercial Taxes or Assistant Commissioner of Commercial Taxes of the Commercial Tax Department of the State of Karnataka. The offences alleged in all are the ones punishable under Section 7(a), (b) & (c) and 12 of the Act.

11. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioners in few of the cases; Sri M.S. Bhagwat, learned senior counsel appearing for the petitioners in few other cases; Sri D.R.Ravishankar, learned senior counsel appearing for the petitioners in W.P.No.15582 of 2022; Sri B.B. Patil, learned Special Public prosecutor appearing for the Karnataka Lokayukta

and Sri. Srikanth Patil.K., learned counsel appearing for respondent No.2/Sri.K.N.Jagadish Kumar in some of the cases.

12. The learned senior counsel Sri Sandesh J.Chouta, Sri M.S. Bhagwat and Sri D.R.Ravishankar appearing for the petitioners in different petitions would all in unison contend that registration of crime is illegal without it being in compliance with Section 17A of the Act, as for registration of crime, prior approval would be required to conduct investigation except in cases of trap. According to the learned senior counsel, in all these cases, the offence cannot be construed to be a trap, as there is no demand and acceptance. What is aired is an alleged sting operation which allegedly depicts demand of illegal gratification which would not mean that it is a trap laid by the Lokayukta. It is a fact narrated by someone else in the electronic media which becomes ingredient of the complaint. Therefore, it cannot be construed to be a trap but can be construed to be proceedings under Section 7 for which prior approval under Section 17A is imperative. Learned senior counsel Sri M.S. Bhagwat who appears for the petitioners in all the cases concerning sting operations in the Commercial Tax Department has laid an additional

ground that in terms of the Cable Television Networks (Regulation) Act, 1995 ('the 1995 Act' for short) the Government has issued certain guidelines pursuant to the judgment of the High Court of Delhi for conducting sting operations. He would contend that registration of crime in all these cases is illegal on two grounds – one, for want of prior approval under Section 17A of the Act and the other for violation of guidelines issued under the 1995 Act.

13. On the other hand, Sri B.B. Patil, learned counsel representing the respondent/Karnataka Lokayukta in all these cases would contend that it does amount to a trap and, therefore, Section 17A of the Act need not be complied with prior to registration of crime. All the petitioners have been caught red-handed while demanding illegal gratification not by the Lokayukta Police but by sting operations conducted by various Television Channels and they are broadcasted in those channels which are in public domain. If this cannot become ingredient of Section 7 (a), (b) or (c) and 12 of the Act, he would submit that nothing else can. It is his submission that it would become a mockery of law to the public. He would contend that the 1995 Act would bind the channels who have

broadcasted the sting operation. Those submissions would not be applicable to the Lokayukta as independently crimes are registered *suo motu* in cases concerning Commercial Tax Department and on a complaint in cases concerning Traffic Police. In all, he would submit that the rigour of Section 17A of the Act need not be complied if the allegation pertains to offence punishable under Section 7 of the Act, as Section 7 deals with demand and acceptance of illegal gratification and the public servants are caught red-handed in the case at hand. He would seek dismissal of the petitions.

14. The learned counsel for the 2nd respondent/ complainant in most of the cases has elaborately taken this Court through the documents appended to the statement of objections and the list of authorities so produced, to buttress his submission that sting operation is not illegal and the product of sting operation is display of lack of accountability on the part of the public servants. He would submit in clarification that in certain cases there need not be a demand or acceptance. It is straight away acceptance of bribe for a work to be performed immediately. He would quote the instances of Traffic Police Inspectors letting granite lorries and all other lorries

that are categorized as heavy motor vehicles by accepting money from drivers/owners of vehicles as the case would be, at completely prohibited time, in a completely prohibited area. He would, therefore, submit that these petitions be dismissed as no prior approval under Section 17A of the Act would even become applicable to the facts of cases at hand, much less in cases where the Traffic Police Inspectors caught receiving bribe. He would seek *en masse* dismissal of the petitions. All the respective learned counsel have placed reliance on several judgments of the Apex Court or the other High Courts. They would bear consideration *qua* relevance in the course of the order, as enlisting them would only lead to bulk of the order and therefore, they are considered henceforth.

15. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issues arise for my consideration:

- (i) Whether sting operations conducted are illegal and the result of such sting operations are invalid?**

- (ii) Whether compliance with Section 17A of the Prevention of Corruption Act is imperative to the facts of the cases at hand owing to its importance?**
- (iii) Whether sting operations will have to be in strict consonance with the Cable Television Networks (Regulation) Act, 1995?**

ISSUE NO.1:

- (i) Whether sting operations conducted are illegal and the result of such sting operations are invalid?**

16. Before embarking upon consideration of the validity of sting operations conducted, projected in the cases at hand, I deem it appropriate to notice its genesis and its consideration, by the Apex Court or other High Courts of the nation. A sting operation, is trite, an investigative exercise set about to uncover prevalent malpractices in the society and malfeasance on the part of the powers that be. Sting operations are deceptive operations undertaken and designed to catch a person while committing a crime. The word '**sting**' became popular in 1973 with the movie "**The Sting**" which featured two grifters and their attempts at conning their bosses for large sums of money. Sting operations, in

public domain, have been a part of response from modern police to crime. Undercover operations have been a part of police techniques from the days policing, has been in existence. Sting operations which have percolated into many modes are now conducted even by the media to prevent commission of crime through the art of deception. It is, therefore, the expression 'sting' is also illustrative of media's power in a democratic set up. There are certain types of sting operations which could be broadly classified as deception techniques employed by the Police which would be *disguise, storefronts, professional informers, surrogates, surveillance* etc. The same, when conducted by media, can be classified into two stings – one positive sting operation and the other negative sting operation. It is in public domain that positive sting operations are those which are conducted for the benefit of the Society to steer clear those incidents which should be put to public domain, as they have been proven to be harmful to the Society. The other one being the negative sting operation, it is conducted against an individual. It is not for the benefit of the Society, but to project and expose an individual.

17. Sting operation or undercover operation has been a norm accepted by nations. The Federal Bureau of Investigation of United States of America has conducted several such undercover or sting operations like the operations Greylord, the operation lightning strike in the year 1991 and the most spoken about, Watergate Scandal through the Watergate Tapes, which led a President of the United States of America to resign. This resignation records the only instance where a President of the United States of America resigns. In the United Kingdom, undercover operations are regulated under the regulation of the Investigatory Power Act, 2000 where sting operations or undercover operations are a norm. In Canada "Mr. Big" is a technique originated for big operations of serious crime. There have been, in certain circumstances, sting operations judicially recognized as well.

18. In India, there are several sting operations that have been conducted. A few instances are the operation West Wing which was an undercover operation carried by Tehalka; operation Duryodhana, by Cobra Post, where certain members of the Indian Parliament were caught on camera; Narada case, highhanded

operation of financial bribes were unearthed by the said sting operation. These are a few instances where sting operations have been conducted which are in public domain. Judicial interpretations of sting operations have also been done through several judgments by the Apex Court or by the High Courts.

19. The concept of sting operations did bear consideration by The Apex Court in the cases of **R.K. ANAND v. DELHI HIGH COURT**¹ and **RAJAT PRASAD v. CBI**². I deem it appropriate to notice the said judgments of the Apex Court. In **R.K.ANAND** (*supra*) the Apex Court has held as follows:

"291. *This is, however, not to say that media is free to publish any kind of report concerning a sub judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. **A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment.***

... ..

¹ (2009) 8 SCC 106

² (2014) 6 SCC 495

Stings and telecast of sting programmes served important public cause

304. Looking at the matter from a slightly different angle we ask the simple question, what would have been in greater public interest: to allow the attempt to suborn a witness, with the object to undermine a criminal trial, lie quietly behind the veil of secrecy or to bring out the mischief in full public gaze? To our mind the answer is obvious. **The sting telecast by NDTV was indeed in larger public interest and it served an important public cause.**

305. We have held that the sting programme telecast by NDTV in no way interfered with or obstructed the due course of any judicial proceeding, rather it was intended to prevent the attempt to interfere with or obstruct the due course of law in the **BMW trial**. We have also held that the sting programme telecast by NDTV served an important public cause. In view of the twin findings we need not go into the larger question canvassed by Mr Salve that even if the programme marginally tended to influence the proceedings in the BMW trial the larger public interest served by it was so important that the little risk should not be allowed to stand in its way.

Excesses in the telecast

306. We have unequivocally upheld the basic legitimacy of the stings and the sting programmes telecast by NDTV. But at the same time we must also point out the deficiencies (or rather the excesses) in the telecast. Mr Subramaniam spoke about the "slant" in the telecast as "regrettable overreach". But we find many instances in the programme that cannot be simply described as "slants". There are a number of statements and remarks which are actually incorrect and misleading."

(Emphasis supplied)

The Apex Court in the case of **R.K. ANAND** (*supra*) notices the fact of publication of the product of sting operation in the media and holds that media is precluded from publishing any report concerning a matter that is sub-judice. Later, the Apex Court considers or rather views the matter differently to hold that sting was intended to prevent an attempt to interfere or obstruct due process of law therein.

20. The Apex Court in the case of **RAJAT PRASAD** (*supra*) has held as follows:

"12. The expression "sting operation" seems to have emerged from the title of a popular movie called The Sting which was screened sometime in the year 1973. The movie was based on a somewhat complicated plot hatched by two persons to trick a third person into committing a crime. Being essentially a deceptive operation, though designed to nab a criminal, a sting operation raises certain moral and ethical questions. The victim, who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the circumstances raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed but for the enticement. Another issue that arises from such an operation is the fact that the means deployed to establish the commission of the crime itself involves a culpable act.

13. Unlike US and certain other countries where a sting operation is recognised as a legal method of law enforcement, though in a limited manner as will be noticed hereinafter, the same is not the position in India which makes the issues arising in the present case somewhat unique. **A sting operation carried out in public interest has had the approval of this Court in R.K. Anand v. High Court of Delhi [(2009) 8 SCC 106: (2010) 2 SCC (Cri) 563] though it will be difficult to understand the ratio in the said case as an approval of such a method as an acceptable principle of law enforcement valid in all cases. Even in countries like the United States of America where sting operations are used by the law-enforcement agencies to apprehend suspected offenders involved in different offences like drug trafficking, political and judicial corruption, prostitution, property theft, traffic violations, etc. the criminal jurisprudence differentiates between "the trap for the unwary innocent and the trap for the unwary criminal" (per Warren, C.J. in Sherman v. United States [2 L Ed 2d 848: 356 US 369 (1958)]) approving situations where government agents "merely afford opportunities or facilities for the commission of the offense" and censuring situations where the crime is the "product of the creative activity" of law-enforcement officials (Sorrells v. United States [77 L Ed 413: 287 US 435 (1932)]). In the latter type of cases the defence of entrapment is recognised as a valid defence in USA. If properly founded such a defence could defeat the prosecution.**

14. A somewhat similar jurisprudence recognising the defence of entrapment in sting operations has developed in Canada where the defence available under specified conditions, if established, may result in "stay" of judicial proceedings against the accused the effect of which in the said jurisdiction is a termination of the prosecution [R. v. Regan [(2002) 1 SCR 297 (Can SC)] (para 2)].

15. In R. v. Mack [(1988) 2 SCR 903 (Can SC)] , it has been explained by the Canadian Supreme Court that

entrapment occurs when (a) the authorities provide a person with an opportunity to commit an offence without acting on a reasonable suspicion that this person is already engaged in criminal activity or pursuant to a bona fide inquiry, and (b) although having such a reasonable suspicion or acting in the course of a bona fide inquiry, they go beyond providing an opportunity and induce the commission of an offence. The following factors determine whether the police have done more than provide an opportunity to commit a crime:

- (1) the type of crime being investigated and the availability of other techniques for the police detection of its commission.*
- (2) whether an average person, with both strengths and weaknesses, in the position of the accused would be induced into the commission of a crime;*
- (3) the persistence and number of attempts made by the police before the accused agreed to committing the offence;*
- (4) the type of inducement used by the police including deceit, fraud, trickery or reward;*
- (5) the timing of the police conduct, in particular whether the police have instigated the offence or became involved in ongoing criminal activity;*
- (6) whether the police conduct involves an exploitation of human characteristics such as the emotions of compassion, sympathy and friendship;*
- (7) whether the police appear to have exploited a particular vulnerability of a person such as a mental handicap or a substance addiction;*
- (8) the proportionality between the police involvement, as compared to the accused, including an assessment of the degree of harm caused or risked*

by the police, as compared to the accused, and the commission of any illegal acts by the police themselves;

- (9) *the existence of any threats, implied or express, made to the accused by the police or their agents;*
- (10) *whether the police conduct is directed at undermining other constitutional values.*

16. *In the United Kingdom the defence of entrapment is not a substantive defence as observed in R. v. Sang [1980 AC 402: (1979) 3 WLR 263: (1979) 2 All ER 1222 (HL)] by the House of Lords: (AC p. 268)*

"... The conduct of the police where it has involved the use of an agent provocateur may well be a matter to be taken into consideration in mitigation of sentence; but under the English system of criminal justice, it does not give rise to any discretion on the part of the Judge himself to acquit the accused or to direct the jury to do so, notwithstanding that he is guilty of the offence."

17. *However, a shift in judicial reaction appears to be emerging which is clearly discernible in R. v. Looseley [(2001) 1 WLR 2060 : (2001) 4 All ER 897 : 2001 UKHL 53 (HL)] wherein the House of Lords found that : (WLR pp. 2067-68, paras 16-17)*

"16. ... A prosecution founded on entrapment would be an abuse of the court's process. The court will not permit the prosecutorial arm of the state to behave in this way.

17. ... entrapment is not a matter going only to the blameworthiness or culpability of the defendant and, hence, to sentence as distinct from conviction. Entrapment goes to the propriety of there being a prosecution at all for the relevant offence,

having regard to the State's involvement in the circumstance in which it was committed."

18. *Thus, sting operations conducted by the law-enforcement agencies themselves in the above jurisdictions have not been recognised as absolute principles of crime detection and proof of criminal acts. Such operations by the enforcement agencies are yet to be experimented and tested in India and legal acceptance thereof by our legal system is yet to be answered. **Nonetheless, the question that arises in the present case is what would be the position of such operations if conducted not by a State agency but by a private individual and the liability, not of the principal offender honey trapped into committing the crime, but that of the sting operator who had stained his own hands while entrapping what he considers to be the main crime and the main offender. Should such an individual i.e. the sting operator be held to be criminally liable for commission of the offence that is inherent and inseparable from the process by which commission of another offence is sought to be established? Should the commission of the first offence be understood to be obliterated and extinguished in the face of claims of larger public interest that the sting operator seeks to make, namely, to expose the main offender of a serious crime injurious to public interest? Can the commission of the initial offence by the sting operator be understood to be without any criminal intent and only to facilitate the commission of the other offence by the "main culprit" and its exposure before the public? These are some of the ancillary questions that arise for our answer in the present appeals and that too at the threshold of the prosecution i.e. before the commencement of the trial."***

(Emphasis supplied)

The Apex Court in **RAJAT PRASAD** (*supra*) traces genesis of sting operation and considers the product of sting operation in detail. Elucidating upon it with reference to permissible sting operations in United States of America, Canada among other countries termed it to be sometimes entrapment.

21. The Delhi High Court considers this aspect in detail, in two of its judgments, which I deem it appropriate to make a reference of. The Delhi High Court in the case of **COURT ON ITS OWN MOTION v. STATE**³ has held as follows:

"16. We have also come across an article titled "A tale in the sting", relating to the Uma Khurana incident, written by Ms. Barkha Dutt, Managing Editor of NDTV wherein she has referred to media reports/sting operations in the United States. Ms. Dutt in her article referred to reports of the American newspaper 'Chicago Sun Times' wherein Police officers were bribed by journalists to get a bar licence. Police officers taking bribe were caught on hidden camera and later the sting operation was shown on TV. The said programme won many awards but not the Pulitzer prize because they could not agree on whether the methods used were honourable enough. After having referred to the said incident, Ms. Dutt observed:

"This is, perhaps, what is at the heart of the matter. There is something unseemly and mildly sleazy about reporters playing Pied Pipers who lay out the cheese to seduce conmen into their rat traps. It is much easier to justify the use of a hidden camera when it is for capturing the event that would

³ 2007 SCC OnLine Del. 1662 (DB)

take place whether or not the camera was there. Entrapment somehow can't manage to shake off the suggestion of fabrication."

17. There is no doubt and there is no second opinion that "truth" is required to be shown to the public in public interest and the same can be shown whether in the nature of sting operation or otherwise but what we feel is that entrapment of any person should not be resorted to and should not be permitted. In this connection we may appropriately refer to the decision of the Supreme Court of the United States decided on 6th April, 1992 titled Keith Jacobson v. United States, 503 US 540. In the said decision it was held by the Supreme Court of the United States that in their zeal to enforce law, law protectors must not originate a criminal design, implant in an innocent person's mind a disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute. Where the government or their agents induce an individual to break the law and the defence of entrapment is at issue, the prosecution must meet and answer by establishing and answering beyond reasonable doubt that the defendant was predisposed to commit the criminal act prior to first being approached by government agents. The Supreme Court of the United States has also declared that law enforcement officials go too far when they implant in the mind of an innocent person a disposition to commit an offense and induce its commission in order that they may prosecute. The Court held in very unambiguous terms that the Government should not play on the weakness of an innocent party and beguile the party into committing a crime which the party otherwise would not have attempted. While artifice and stratagem may be employed to catch those who are engaged in criminal enterprises, there would be a need to prove that the person in question had a predisposition to commit the said criminal act prior to being approached by the enforcement agencies. The Government must not punish an individual "for an alleged offence which is

the produce because of the creative activity of its own officials". Ratio of the aforesaid decision rendered by the Supreme Court of the United States is in our considered opinion can be applied to the instant context also i.e. to the media.

18. Giving inducement to a person to commit an offence, which he is otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable and must be deprecated by all concerned including the media. Sting operations showing acts and facts as they are truly and actually happening may be necessary in public interest and as a tool for justice, but a hidden camera cannot be allowed to depict something which is not true, correct and is not happening but has happened because of inducement by entrapping a person.

19. The duty of the press as the fourth pillar of democracy is immense. It has great power and with it comes increasing amounts of responsibility. No doubt the media is well within its rightful domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society. However, it is not permissible for the media to entice and try to actively induce an individual into committing an offence which otherwise he is not known and likely to commit. In such cases there is no predisposition. If one were to look into our mythology even a sage like Vishwamitra succumbed to the enchantment of "Maneka". It would be stating the obvious that the Media is not to test individuals by putting them through what one might call the "inducement test" and portray it as a scoop that has uncovered a hidden or concealed truth. In such cases the individual may as well claim that the person offering inducement is equally guilty and a party to the crime, that he/she is being accused of. This would infringe upon the individual's right to privacy. We believe and trust that all TV channels/Media shall take steps and prohibit its reporters from producing or airing any programme which is based on entrapment and which are fabricated, intrusive and sensitive. We also believe that responsible and senior TV journalists/reporters and editors

who are involved in production and airing of programmes through electronic media should take steps for drawing up a self-regulatory code of conduct. The Press Council of India should also examine and can take initiative in this regard.

20. Certain proposed guidelines were also placed before us by the learned Amicus. The said proposed guidelines are as follows:

- "1. A channel proposing to telecast a sting operation shall obtain a certificate from the person who recorded or produced the same certifying that the operation is genuine to his knowledge.**
- 2. There must be concurrent record in writing of the various stages of the sting operation.**
- 3. Permission for telecasting a sting operation be obtained from a committee appointed by the Ministry of Information and Broadcasting. The said committee will be headed by a retired High Court Judge to be appointed by the Government in consultation with the High Court & two members, one of which should be a person not below the rank of Additional Secretary and the second one being the Additional Commissioner of Police. Permission to telecast sting operation will be granted by the committee after satisfying itself that it is in public interest to telecast the same. This safeguard is necessary since those who mount a sting operation themselves commit the offences of impersonation, criminal trespass under false pretence and making a person commit an offence.**
- 4. While the transcript of the recordings may be edited, the films and tapes themselves should not be edited. Both edited and unedited tapes be produced before the committee.**

5. ***Sting operation shown on TV or published in print media should be scheduled with an awareness of the likely audience/reader in mind. Great care and sensitivity should be exercised to avoid shocking or offending the audience.***
6. ***All television channels must ensure compliance with the Certification Rules prescribed under the Cable Television Network (Regulation) Act 1995 and the Rules made thereunder.***
7. ***The Chief Editor of the channel shall be made responsible for self regulation and ensure that the programmes are consistent with the Rules and comply with all other legal and administrative requirements under various statutes in respect of content broadcast on the channel.***
8. ***The subject matter of reports or current events shall not:***
 - (a) ***Deliberately present as true any unverified or inaccurate facts so as to avoid trial by media since a "man is innocent till proven guilty by law"***
 - (b) ***Present facts and views in such a manner as is likely to mislead the public about their factual inaccuracy or veracity;***
 - (c) ***Mislead the public by mixing facts and fiction in such a manner that the public are unlikely to be able to distinguish between the two;***
 - (d) ***Present a distorted picture of reality by over-emphasizing or under-playing certain aspects that may trivialise or sensationlise the content;***
 - (e) ***Make public any activities or material relating to an individual's personal or private affairs or. which invades an individual's privacy unless there is an identifiable large public interest;***

- (f) Create public panic or unnecessary alarm which is likely to encourage or incite the public to crime or lead to disorder or be offensive to public or religious feeling.**
- 9. Broadcasters/Media shall observe general community standards of decency and civility in news content, taking particular care to protect the interest and sensitivities of children and general family viewing.**
- 10. News should be reported with due accuracy. Accuracy requires the verification (to the fullest extent possible) and presentation of all facts that are necessary to understand a particular event or issue.**
- 11. Infringement of privacy in a news based/related programme is a sensitive issue. Therefore, greater degree of responsibility should be exercised by the channels while telecasting any such programmes, as may be breaching privacy of individuals.**
- 12. Channels must not use material relating to persons' personal or private affairs or which invades an individual's privacy unless there is identifiable larger public interest reason for the material to be broadcast or published."**

(Emphasis supplied)

The Division Bench of High Court of Delhi considers the concept of sting operation and holds that duty of the press as a fourth pillar of democracy is immense and recognizes sting operations by the media.

22. In a later judgment, the Delhi High Court in the case of

BHUPINDER SINGH PATEL v. CBI⁴ has held as follows:-

"46. No doubt, the media plays an important role in a democratic society and acts as the fourth estate outside the Government but where freedom of Press can be envisaged as a special right under Art. 19(1)(a) of the Constitution of India, the restrictions under Article 19(2) cannot be neglected. It is true that accountability is the sine qua non of democracy and that the basic postulate of accountability is that people should have the information about the working of the Government, it is here that the role of media becomes significant. It is said that with great power comes great responsibility, therefore the freedom under Article 19(1)(a) is correlative with the duty not to violate any law. All sting operations involve making people commit crimes that they otherwise may not have committed. There can be no second thought about the fact that the media is well within its domain when it seeks to use tools of investigative journalism to bring us face-to-face with the ugly underbelly of the society but entrapment of any person should not be resorted to and cannot be permitted unless a right approach is taken which is in accordance with law of the land."

(Emphasis supplied)

The Delhi High Court holds that media plays an important role in a democratic society and act of the fourth estate outside the Government is necessary. But, sting operations involving people to commit crimes which otherwise they would not have committed

⁴ 2008 SCC OnLine Del 711

would display the ugly underbelly of the society, but entrapment of any person should not be resorted to and cannot be permitted unless a right approach is taken which is in accordance with law of the land. This finding of the Delhi High Court is affirmed by the Apex Court in the case of **RAJAT PRASAD** (*supra*).

23. What would unmistakably emerge from the aforesaid judgments of the Apex Court and that of the Delhi High Court is, the role and responsibility of the media in a democratic set up is imperative. But, imperativeness sometimes cannot be stretched for entrapping any person into a crime or luring any person into a crime which otherwise he would not have committed. Such actions are to be permitted only if they are in consonance with law. Therefore, '**sting operations are healthy; but they should be healthy sting operations**', healthy I mean, they should be in accordance with law. The issue *qua* sting operation is accordingly answered.

ISSUE NO.2:

(ii) Whether compliance with Section 17A of the Prevention of Corruption Act is imperative to the

facts of the cases at hand owing to its importance?

24. The marrow of the submissions of all the learned senior counsel representing the petitioners lied in non-compliance of Section 17A of the Act. Therefore, I deem it appropriate to notice Section 17A of the Act, its interpretation and applicability to the facts of the cases at hand. Section 17A of the Prevention of Corruption Act, 1988 was brought into force on 26.07.2018. Section 17A is extracted hereunder for the purpose of quick reference:

"17-A. Enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

In terms of the above extracted provision of law introduced by an amendment, no Police Officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under the Prevention of Corruption Act, where the alleged offence is relatable to any recommendation made or decisions taken by such public servant in discharge of his official functions or duties without the previous approval of the officer or authority concerned.

25. Clause **(a)** thereof provides that in case of public servant who is or was employed in connection with the affairs of the Union at the time when the offence alleged to have been committed, the

previous approval of the Central Government shall be obtained. Clause **(b)** likewise provides that in case of a public servant who is or was an employee in connection with the affairs of the State at the time when the offence was alleged to have been committed, the approval of the State Government shall be obtained before proceeding. Clause **(c)** provides that in case of any other person who comes within the definition of public servant, previous approval of the Competent Authority to remove him from office at the time when the offence alleged to have been committed should be obtained. The narrative hereinabove cannot but indicate that the object of the Section was to protect public servants from malicious, vexatious or baseless prosecution. However, if enquiry into the circumstances in which the alleged administrative or official act was done by the public servant or where malfeasance committed by the public servant which would involve an element of dishonesty or impropriety is to be proceeded against, the approval of the Competent Authority is required.

26. In the considered view of this Court, Section 17A and its purport must be observed with complete strictness bearing in mind

public interest and protection available to such officers against whom offences are alleged, failing which, sometimes result in malicious prosecution. Section 17A is clearly a filter that the prosecution must pass in order to discourage or avoid vexatious prosecution, though it cannot be considered as a protective shield for the guilty, but a safeguard for the innocent.

27. The provision (*supra*) was also considered by the Apex Court in the case of **YESHWANTH SINHA v. CENTRAL BUREAU OF INVESTIGATION**⁵. The Apex Court though did not consider as to how the previous approval of the Competent Authority has to be taken, but considered the amendment and its importance in the following paragraphs:

"117. In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed

⁵ (2020) 2 SCC 338

by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent CBI, is done after Section 17-A was inserted. The complaint is dated 4.10.2018. Para 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paras 6 and 7 of the complaint are relevant in the context of Section 17-A, which read as follows:

"6. We are also aware that recently, Section 17-A of the Act has been brought in by way of an amendment to introduce the requirement of prior permission of the Government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the Government under Section 17-A of the Prevention of Corruption Act for investigating this offence and under which, "the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month".

(emphasis supplied)

118. *Therefore, the petitioners have filed the complaint fully knowing that Section 17-A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17-A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24.10.2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17-A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17-A continues to be on the statute book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17-A*

but when it comes to the relief sought in the writ petition, there was no relief claimed in this behalf.

119. *Even proceeding on the basis that on petitioners' complaint, an FIR must be registered as it purports to disclose cognizable offences and the Court must so direct, will it not be a futile exercise having regard to section 17-A. I am, therefore, of the view that though otherwise the petitioners in Writ Petition (Criminal) No. 298 of 2018 may have made out a case, having regard to the law actually laid down in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524], and more importantly, Section 17-A of the Prevention of Corruption Act, in a review petition, the petitioners cannot succeed. However, it is my view that the judgment sought to be reviewed, would not stand in the way of the first respondent in Writ Petition (Criminal) No. 298 of 2018 from taking action on Ext. P-1, complaint in accordance with law and subject to first respondent obtaining previous approval under Section 17-A of the Prevention of Corruption Act."*

The Apex Court has considered the importance of previous approval of the Competent Authority in the afore-extracted judgment.

28. Section 17A casts an obligation of application of mind on the part of the Competent Authority in three situations. The Section makes it clear that no officer shall conduct any **enquiry or inquiry or investigation** without previous approval. Therefore, the approving authority will have to look into the materials, apply its mind in all the three contingencies i.e., enquiry or inquiry or investigation. Though, 'enquiry' and 'inquiry' are often used

interchangeably, there exists a difference between the two. Etymologically, the source of both enquiry and inquiry could be the same as 'en' is derived from French and 'in' is from Latin. Inquiry has a formal and official ring to it. Enquiry is informal and can be unofficial. Enquiry could even mean, to question; Inquiry is a formal investigation; investigation is a search. Therefore, the act casts an obligation of application of mind upon the authority to consider whether approval is sought for an enquiry, inquiry or an investigation. It becomes imperative for the authority to apply its mind to what is brought before it, as application of mind is the bedrock of any order that an authority passes, failing which, it would be contrary to the principles of natural justice, as non-application of mind is in itself violative of principles of natural justice.

29. Whether Section 17A of the Act would be applicable to the facts of the case at hand is required to be examined. The submission of the learned counsel appearing for the then Anti Corruption Bureau, now the Lokayukta is that, the proviso to Section 17A directs that no such approval would be necessary for

cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or any other person. Section 17A cannot be read in isolation and it should be read qua the offences that are alleged against these petitioners. They are the ones punishable under Section 7 of the Act. Section 7(a), (b) and (c) of the Act reads as follows:

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

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

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

Section 7(a), (b) or (c) mandates that one who obtains or accepts or attempts to obtain from any person an undue advantage, with an intention to perform or forbear from performing any public duty would be an offence. The soul of Section 7 is therefore, demand and acceptance. The concept of demand and acceptance being *sine qua non* for any proceeding to be initiated under Section 7 of the Act need not detain this Court for any further interpretation as the Apex Court in plethora of judgments has considered this aspect and has rendered its imprimatur to the said concept. Reference being made to the judgment of the Apex Court in the case of **NEERAJ DUTTA v. STATE (GOVT. OF N.C.T. OF DELHI)**⁶ in the circumstances becomes apposite. The Apex Court has held 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 13 as they stood on the date of commission of the offence. Section 7, as existed at the relevant time, reads thus:*

⁶ 2023 SCC OnLine SC 280

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

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

(a) ***Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.***

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

(c) ***Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial***

evidence in the absence of direct oral and documentary evidence.

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

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

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

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

there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

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

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

(g) ***In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.*** The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal.

Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.

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

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

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

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

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

(emphasis added)

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

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

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

(emphasis added)

14. The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved,

unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.

15. In the case of N. Vijayakumar, another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

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

the criminal jurisprudence gets doubled by acquittal recorded by the trial court."

(emphasis added)

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

17. *Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". **The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved.** In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the*

referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

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

(Emphasis supplied)

The Apex Court was clarifying the judgment rendered by the 5 Judge Bench in **NEERAJ DUTTA v. STATE**⁷ and the Apex Court holds that the basic concept of demand and acceptance has not been diluted and that is the soul of the offence under Section 7 of the Act. If the facts obtaining in the case at hand, as narrated above, are noticed on the bedrock of the provision and its interpretation by the Apex Court in the aforesaid judgment, what would unmistakably emerge is that there is ostensible lack of demand of money, but the presence of alleged acceptance pervades through the allegations against the petitioners particularly to that officers working in the Commercial Tax Department.

30. The proviso to Section 17A will have to be read in juxtaposition with Section 7. If so done, what would unmistakably emerge is, in cases where the officers of the Commercial Tax Department have been the subject matter of issues in the *lis*, they would require prior approval for registration of crime as they are not the ones wherein the officers have demanded, accepted and caught accepting such bribe or arrested on such ingredients. The

⁷ 2022 SCC OnLine SC 1724

allegations are that they have accepted bribe at the point in time when the sting operation recording is made. Therefore, it is a case where there is no demand, but only acceptance. It cannot be equated with a trap where the public servant had already demanded or demanding and accepting at the time of recording in the sting operation. Therefore, those cases which involve acceptance of money during a sting operation or forcefully loading into the hands of those officers would come within the ambit of protection under Section 17A of the Act. On both the counts that the allegations against the petitioners/officers of the Commercial Tax Department do not meet the very soul of Section 7 i.e., the demand and acceptance, as also, their being no approval for registration of the crime as obtaining under Section 17A, the crimes registered in those cases would necessarily meet its obliteration.

31. It would have been an altogether different circumstance and judicial scrutiny would have been differently done if there had been an order obtaining approval from the hands of the Competent Authority to register the crime, as obtaining under Section 17A of the Act. The case at hand is one which has no approval at all, so to

say there is no approval sought from the hands of the Competent Authority and the defence put up is that it is not required. The cases at hand are not cases of trap. Therefore, on the act of no approval being sought or granted by the Competent Authority prior to registration of the crime, the crimes registered in those cases are necessarily to be obliterated.

32. The other batch of cases are the ones where sting operation reveals acceptance of bribe from the drivers and owners of lorries for permitting the lorries into the City during the time when they are not to be permitted at the places where they are not supposed to be permitted. In these cases, there is deemed, demand and acceptance of bribe for permitting lorries carrying huge granite slabs in an area where they are not supposed to ply, and during prohibitory hours. This permission is given on the strength of acceptance of money from the owners or drivers of lorries. This is caught on camera. This would undoubtedly mean that it was a positive sting operation, as the public servant or Traffic Police Inspector demands money, for doing a favour of letting the lorries and in exchange of such undue favour accepts money. The sting

operation has thus caught the officers accepting money. It is undoubtedly akin to a trap proceeding or even on a higher pedestal. Therefore, rigour or protection under Section 17A of the Act would not be applicable in cases of public servants accepting money for permitting violations of traffic.

33. What is alleged is letting of vehicles which carry granite blocks in the peak, and prohibitory hours into the city. This has resulted in clogging vehicular traffic in the city, a menace in the city to-day. Therefore, such cases where Traffic Police indulge in accepting of bribe for movement of vehicles which are clearly prohibited is an unpardonable act. The rigour of Section 17A cannot be pressed into service for such acts, as it cannot become a cloak for protection of such illicit acts. The cases would clearly mean that they have demanded money, accepted bribe and executed the work immediately on acceptance of such bribe. These are cases where the Government/prosecuting agencies will have to deal with an iron hand.

34. In the light of what is observed hereinabove, the division is clearly two fold. If a public servant is entrapped for his ugly undertakings, it would amount to violation of right to privacy, as he has not demanded on his own volition, but he is alleged of accepting money which is caught on the camera during the sting operation. It is, therefore, the offence under Section 7(a), (b) and (c) is laid. These are cases where prior approval under Section 17A would be imperative. The other set of cases, as observed hereinabove, where there is due demand and acceptance, and immediate favour is done, such cases would not require approval under Section 17A of the Act, as its rigour is protected under the proviso. Therefore, the issue is answered holding that crimes registered on account of either acceptance of hush money by these officers of the Commercial Tax Department cannot be permitted to be continued as there is no prior approval granted; and those crimes registered against Traffic Police Inspectors, in any of these cases, are necessarily to be permitted to be continued. The issue is answered accordingly.

ISSUE NO.3:***(iii) Whether sting operations will have to be in strict consonance with the 1995 Act?***

35. As observed in answering issue No.1, the sting operations are not completely alien to society, either by the media or the Police. The cases at hand involve media. Power TV conducts sting operation, makes a video against 8 Traffic Police Inspectors and 3 Assistant Commissioners of Police which has recorded them as accepting bribe in return of official favours. They are between the dates 10-06-2022 and 27-06-2022. The allegation is that they have facilitated movement of trucks during the prohibited time on acceptance of hush money. It is, therefore, the afore-quoted provisions are invoked. The other set of cases are the ones where money is thrust upon a public servant. Therefore, owing to different kinds of sting operations that may emerge, it is imperative for certain guidelines to be followed by the media while conduct of sting operations. What are the guidelines is no longer *res integra* as they are themselves made by the News Broadcasting Standards

Authority. The guidelines for conduct of sting operation read as follows:

"GUIDELINES FOR CONDUCTING STING OPERATIONS

In furtherance of the principles of self-regulation as contained in NBA's Code of Ethics and Broadcasting Standards and Specific Guidelines Covering Reportage, a member news channel may conduct a "sting operation", but only in conformity, with the following guidelines.

1. No sting operation shall be conducted except with the approval and under the supervision of the head of the editorial term of a news channel, who shall also along with other person concerned, be responsible for all consequences;

2. A sting operation may be conducted only if warranted in public interest;

3. A sting operation should be conducted only for exposing a wrong doing;

4. A sting operation should not be used for gratuitously prying into peoples' private lives;

5. A sting operation may be resorted to only if there is no other effective overt means of collecting or recording the same information or news;

6. In conducting a sting operation, a news channel shall not indulge in inducing a person to commit a wrongful act not otherwise contemplated by the person;

7. Resort shall not be had to sleaze or sex or any illegal act as a means for carrying out a sting operation;

8. The entire recordings of a sting operation, including edited and un-edited, audio and video footage,

must be preserved, as they are for a period of 90 days or for such other period as may be necessary in a given case.

9. *Recording of a sting operation, including edited and un-edited, audio and video footage, shall not be tampered, manipulated, interposed, altered, distorted, morphed, or otherwise doctored in any manner that may change the context, purport or meaning thereof;*

10. *There must be concurrent and contemporaneous recording in writing of the various stages of progress of a sting operation by the person in-charge of it; and such written record shall also be preserved for a period of 90 days or for such other period as may be necessary in a given case;*

11. *A sting operation must not offend against the provisions of Section 5 of The Cable Television Networks (Regulation) Act, 1995 and Rule 6 of The Cable Television Networks Rules, 1994 relating to "Programme Code" or any other law in force for the time being, including Section 24 of the Prevention of Corruption Act, 1988;*

12. *A sting operation shall be telecast only if, and when there is ample evidence to prima facie demonstrate the culpability of a wrong doer;*

13. *If a sting operation is found false or fabricated, all persons concerned with conducting the sting operation should be liable for punishment in accordance with the law."*

February 27, 2012/November 15, 2012."

(Emphasis supplied)

The Press Council of India has also notified norms of Journalistic Conduct which covers guidelines for sting operations. The guidelines are as follows:

"(b) Guidelines on Sting Operations

(i) A newspaper proposing to report a sting operation shall obtain a certificate from the person who recorded or produced the same certifying that the operation is genuine and bona fide.

(ii) There must be concurrent record in writing of the various stages of the sting operation.

(iii) Decision to report the sting operation should be taken by the editor after satisfying himself of the public interest of the matter and ensuring that report complies with all legal requirements.

(iv) Sting operation published in print media should be scheduled with an awareness of the likely reader in mind. Great care and sensitivity should be exercised to avoid shocking or offending the reader."

(Emphasis supplied)

What would emerge from the guidelines of the News Broadcasting Standards Authority is that sting operation must not offend against the provisions of Section 5 of the 1995 Act and the Rules framed there under. Therefore, the sting operations will have to be in consonance with the Networks Act as well.

36. Though I deem it appropriate to uphold sting operation in few cases and obliterate in few cases as rendered hereinbefore, sting operations henceforth have to be in strict compliance with the guidelines. The guidelines mandate that no sting operation shall be conducted except with the previous approval and under the supervision of the head of the editorial team of the news channel and sting operations could be conducted for two reasons – in public interest and to expose a wrong doing. There are several other conditions. Therefore, the media pursuant to whose actions the present crimes are registered are required to be encouraged following of guidelines quoted *supra* while conduct of any sting operation is imperative, failing which, such sting operations cannot but be termed to be illegal and contrary to law unless justified on a case to case basis.

SUMMARY OF THE FINDINGS:

- The validity of the sting operations conducted are sustained subject to that they would be strictly in consonance with law in future.

- Seeking prior approval under Section 17A of the Prevention of Corruption Act, 1988 is held to be mandatory only in cases concerning sting operations on the officers of the Commercial Tax Department.
- No prior approval is required under Section 17A of the Prevention of Corruption Act, 1988 in cases where sting operations are conducted on the traffic police, as they have demanded hush money; accepted and also performed the illegal act of permitting violations in traffic norms. It is akin to being caught red-handed in a trap proceeding.
- Sting operations if conducted, shall be in strict consonance with the provisions of the Cable Television Networks (Regulation) Act, 1995.

EPILOGUE:

37. ***Ergo***, a parting observation in the circumstances may not be inapt, it is in public domain that traffic congestion or traffic clogging in the City of Bangalore has reached mountainous proportion. The city has now emerged as the second most congested city in the world close to London, which is the first. Reasons for such traffic clogging are manifold. One such circumstance that has led to such clogging is the alleged corruption at the hands of traffic sleuths, which is the subject matter of second kind of crime registered in the cases at hand. The Government by way of its policy or the respective Departments would bring in prohibitory hours for heavy traffic vehicles to come into the city and if on acceptance of money these prohibitory hours are diluted for lorries or heavy traffic vehicles to come in, it would become an aid or an added circumstance leading to vehicular traffic clogging in the city. Such instances which are found to be happening in broad day light and which are brought to the notice of the State, by any quarter whatsoever should merit immediate address, and such

persons who indulge in creating such traffic snarls or any other person indulging in such corruption should be dealt with an iron hand, as these can be considered as crimes affecting the general public and every citizen, having cascading effect on the economy of the State as well. Therefore, the top brass, in the Departments that are concerned with regulating traffic in the city should forthwith address such problems of deviation of any norm in traffic with the connivance of traffic police, and bring them to books in accordance with law without loss of time.

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

ORDER

- (i) Writ Petition Nos.10313 of 2023, 10335 of 2023, 10363 of 2023, 10549 of 2023, 10585 of 2023, 10676 of 2023 and 10825 of 2023 are allowed and the crimes registered against them in Crime Nos.5 of 2023, 11 of 2023, 4 of 2023, 3 of 2023, 12 of 2023 and 10 of 2023 respectively stand obliterated.

- (ii) Writ Petition No.15582 of 2022 and Criminal Petition Nos.7430 of 2022, 7431 of 2022 and 7473 of 2022 are all dismissed.

Pending applications, if any, also stand disposed, as a consequence.

**Sd/-
JUDGE**

Bkp
CT:SS