



2025:KER:60729

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 12TH DAY OF AUGUST 2025 / 21ST SRAVANA, 1947

CRL.A NO. 2423 OF 2009

CC NO.117 OF 2008 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,
KOTTAYAM

APPELLANT/ACCUSED:

DR.S.P. MALARKANNAN,
S/O.PALANICHAMY,
7 MEENAKSHI STREET,
ARUPPUKOTTAI, VIRUDHANAGAR.

BY ADVS.
SRI.M.T.SURESHKUMAR
SRI.P.M.RAFIQ
SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.AJEESH K.SASI
SRUTHY N. BHAT
SRI.RAHUL SUNIL
SMT.SRUTHY K.K
SHRI.SOHAIL AHAMMED HARRIS P.P.
SMT.NANDITHA S.

RESPONDENT/STATE & COMPLAINANT:

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

ADV P.VIJAYA BHANU (SR.)
SPL. PUBLIC PROSECUTOR ADV.RAJESH.A VACB,
SR. PUBLIC PROSECUTOR ADV. REKHA.S VACB.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2025,
THE COURT ON 12.08.2025 DELIVERED THE FOLLOWING:



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“C.R”

A. BADHARUDEEN, J.

=====
Crl.Appeal No.2423 of 2009-C
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Dated this the 12th day of August, 2025

J U D G M E N T

The 1st accused in C.C.No.117/2008 on the files of the Enquiry Commissioner and Special Judge, Kottayam, who is aggrieved by the judgment dated 01.11.2009, has preferred this appeal. Respondent is the State of Kerala represented by the Public Prosecutor.

2. Heard the learned counsel for the accused/appellant and the learned Public Prosecutor representing the prosecution side.

3. Perused the trial court records and the judgment under challenge.

4. In a nut shell the prosecution allegation is that the first accused had worked as a Veterinary Surgeon and the 2nd accused worked as a Livestock Inspector in Government Veterinary dispensary, Rajakkadu



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during 2002. While so, the first accused, being a public servant, at 6.00 P.M on 29/04/02 demanded illegal gratification of Rs.1500/- from one Prasanth, who is the brother's son of one Vijayan, as a motive for issuing postmortem certificate and other details of the cow of Vijayan, for claiming insurance amount. The first accused accepted Rs 200/-from Prasanth and repeated the demand for the balance amount. Thus at 5:30 P.M on 01.05.2002, the first accused obtained Rs.500/- from Vijayan and he made demand for the balance amount. On 25/09/02 at 12.00 noon first accused demanded Rs.800/- after issuing the papers, from Vijayan and when he expressed inability to pay the amount first accused took back that papers. On 28/09/02 first accused demanded a minimum of Rs.500/- from said Vijayan. Then he informed the Dy S.P. Vigilance and trap proceedings were initiated against the first accused. Thereafter at 12:30 PM on 01/10/2002 in the office room of the first accused, the accused demanded and accepted Rs.500/- from Vijayan. The further allegation is that the first accused entered into a criminal conspiracy with 2nd accused and in furtherance of the said conspiracy, the 2nd accused aided the 1st accused to conceal the received bribe amount from Vijayan and to screen



the 1st accused and to cause disappearance of evidence. On the said premise, the prosecution alleges commission of offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act ('PC Act' for short) and Sections 201, 109 and 341 of the Indian Penal Code ('IPC' for short), by the 1st and 2nd accused.

5. In this matter the Special Court took cognizance of the offences and recorded evidence. PW1 to PW12 were examined and Exts.P1 to P18 and M.O1 to M.O13 were marked on the side of the prosecution. Even though opportunity was provided to the accused to adduce defense evidence, after questioning him under Section 313(1)(b) of Cr.P.C, no defense evidence adduced.

6. Thereafter, the trial court found that the 1st accused committed the offences punishable under Sections 13(1)(d) r/w 13(2) of the PC Act, while acquitting him for the other offences and the 2nd accused was acquitted for all the offences. Accordingly, the 1st accused is sentenced as under:

“sentenced to undergo simple imprisonment for 3 (three) years and fine Rs.25,000/- in default to undergo simple imprisonment for 6 (six) months and convicted under Sec.13(2) r/w 13(1)(d) of the Prevention of Corruption Act and sentenced to undergo simple imprisonment for 3 (three) years and fine



Rs.25,000/- in default to undergo simple imprisonment for 6 (six) months. The sentence of imprisonment shall run concurrently. The accused is entitled for set off under Sec.428 Cr.P.C from 01.10.2002 to 08.10.2002 M.O.1 series shall be confiscated. M.O.2 to 9 and M.O.11 shall be returned to Dy.S.P, V.A.C.B, Iddukki. M.O.10 shall be destroyed. M.O.12 series and 13 shall be returned to the first accused.”

7. While assailing the verdict of the trial court, the learned Senior Counsel appearing for the 1st accused submitted that as per the evidence of PW6 referred in paragraph 12 of the judgment, it was observed by the Special Court that the 1st accused did not ask for Rs.700/- as bribe and also he didn't say that he witnessed the giving of any bribe to the 1st accused. According to the learned Senior Counsel, in this case, the 2nd accused alleged to have demanded bribe for and on behalf of the 1st accused and as per the evidence of PW10, when he gave money to the 1st accused, he pushed it away. Thus the point argued by the learned Senior Counsel is that the evidence of PW10 would clearly indicate that the petitioner neither demanded nor accepted the money. According to him, M.O1 series, the bribe money, also was recovered from the chamber of the 2nd accused. Therefore, in this case there is no evidence to see demand and acceptance of bribe by the 1st accused and, in such a case, without properly appreciating the evidence, the Special Court entered into the conviction



and sentence which would require interference.

8. Opposing the contention, the learned Special Public Prosecutor argued that even though the 1st accused stated that when money was given he pushed it away, on phenolphthalein test by dipping the hands of the 1st accused in Sodium Carbonate solution there was colour change which would indicate that the 1st accused had accepted the bribe and handed over to the 2nd accused. PW10's evidence in this regard is against his previous statement as he turned hostile to the prosecution. According to the learned Public Prosecutor, the ingredients to attract offences are well established in this case. Therefore, the conviction and sentence do not require any interference.

9. Having addressed the rival contentions, the points arise for consideration are:

(i) Whether the Special Court went wrong in finding that the 1st accused committed offence under Section 7 of PC Act?

(ii) Whether the finding of the Special Court, holding the view that the 1st accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act is correct?



(iii) Whether the verdict would require interference?

(iv) The order to be passed?

Point Nos.(i) to (iv)

10. Going by the judgment of the Special Court, in paragraph 22 the Special Court observed that the 164 Cr.P.C statement of the 2nd accused recorded before arraying him as an accused and the statement given by the 2nd accused during 313 questioning could not be used against the 1st accused. Thus the Special Court found that there is no direct legal evidence to find that the 1st accused handed over the tainted notes to the 2nd accused. But the Special Court found that from the circumstances necessary presumption could be drawn that the 1st accused gave notes to the 2nd accused since PW10 didn't say what happened to the notes fell down. This is the specific point on which the learned Senior Counsel canvassed acquittal on the ground that there is no evidence against the 1st accused to find commission of offences by him.

11. In this case, crime was registered recording the statement of PW10 by PW11 and Ext.P13(a) is the FIS so recorded and Ext.P13 is



the FIR registered. According to PW11 after registering the FIR he took custody of 5 notes of the denomination of Rs.100/- from the complainant, who was examined as PW10 in the presence of Satheesh Babu and George Daniel, who were summoned as witnesses and he marked date on the water mark of the notes and M.O1 series are the said notes. He deposed about demonstration of phenolphthalein test and colour change. According to him, Ext.P1 is the mahazar prepared while M.O1 series was obtained from PW10. PW10 would depose that after registering Ext.P13 FIR and preparing Ext.P1 mahazar, the vigilance party, along with the independent witnesses and PW10, reached near the Rajakkadu Veterinary hospital at 12 noon on 01.10.2002 and according to PW10, he had availed loan from Malanadu L.M.Bank to purchase a cow in the year 2002. 2 months later, the cow died and in order to claim insurance amount, he met the 1st accused to conduct the postmortem of the cow. PW4 and PW6 went to see the doctor in order to fix the date. Then PW4 told him that the accused asked for bribe and that he gave complaint to the vigilance police. He admitted giving statement to the vigilance in this regard and the signature in Ext.P13(a) FIS. PW10, in fact, turned hostile to the



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prosecution during chief examination. The evidence of PW10 further is that the Dy.S.P gave him some money and he did not count it and he did not notice whether the Dy.S.P noted the number and that he was not shown the reaction of phenolphthalein powder. But he admitted handing over of M.O1 series notes by PW11. According to PW10, when he reached the office of the 1st accused, the doctor was sitting in his room and he gave money to the doctor. Then the doctor pushed it away and the notes fell down. He was asked whether the doctor accepted bribe, he replied negatively. PW1 denied his previous statements to the effect that the doctor counted the notes with both his hands and the doctor said that there was only Rs.500/- and the doctor began to return the notes. Exts.P14 and P14(a) are the contradictions marked in this regard. PW10 deposed further that when the doctor tried to go out of the office in a jeep, he gave signal and then the Dy.S.P and the government officials came there and he described the incident.

12. In this case, the independent witness examined by the prosecution, who witnessed pre and post trap proceedings, is PW1. The evidence of PW1 is that on 01.10.2002 he went to Idukki officer in order



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to assist the vigilance as per the direction of his superior officer and he accordingly reached at 8 a.m. When he reached the vigilance office he noticed the presence of PW10 and the other official witness. The Dy.S.P informed him that if the Government officer demands for bribe, he should be a witness for the same. According to PW1, Vijayan (PW10) entrusted 5 notes of Rs.100/- denomination to the Dy.S.P and the Dy.S.P marked and he identified the same as M.O1 series. He also corroborated the version of PW11 regarding the pre trap proceedings done at the vigilance officer and he also admitted his signature in the register. According to PW11 he along with the vigilane party reached near Rajakkad Veterinary hospital. Then he corroborated the version of PW11 regarding sending of PW11 to the Veterinary hospital and the signal given by PW10 after acceptance of bribe by the 1st accused. Subsequently he deposed about the post trap proceedings and dipping of the fingers of the 1st accused in Sodium Carbonate solution and pink colour change to the solution, and he identified M.O2 as the bottle containing the said solution. According to PW1, then the left hand of the doctor also was dipped in Sodium Carbonate solution and there was pink colour change, and he identified the



said solution as M.O2. According to PW1, nothing recovered from the 1st accused. The further evidence of PW1 is that Abdul Vahab, the 2nd accused, stated that the doctor entrusted some money to him on undertaking to return back in the evening. Later the right hand of the said Abdul Vahab also was dipped in the Sodium Carbonate solution and there was pink colour change and the said liquid is M.O5. Even though the left hand of the 2nd accused also was dipped in the Sodium Carbonate solution, there was no colour change and the said liquid is M.O6. Thereafter he had recovered the notes kept in an old pot near the seat of the 2nd accused and on inspection he found that the said notes (Rs.500/- in total) were entrusted by the doctor to PW10 having denomination of Rs.100/- each. When notes were dipped in the Sodium Carbonate solution, the solution showed pink colour change and the said liquid is M.O7.

13. PW2 examined in this case is a Part-time Sweeper attached to Government Veterinary Dispensary, Rajakkad and it was through her, Ext.P4 attendance register as on 01.10.2002 was proved. According to PW2, as on 01.10.2022, Abdul Vahab, the Live Stock Inspector (A2) and Dr.Muralikannan, the Veterinary Doctor (A1) were



present in the office. Regarding the trap proceedings, PW2 did not support the prosecution.

14. PW3, the Manager, Union Bank of India, was examined by the prosecution and PW3 testified that in order to give insurance pertaining to the cow (dead) purchased by loan from Union Bank, Rajakumari, Postmortem certificate issued by the Veterinary doctor and the request of the party were necessary. PW4, the brother's son of PW1 and PW6 turned hostile to the prosecution.

15. The District Animal Husbandry Officer in between 10.05.1999 to 2004 was examined as PW5 to prove that the 1st accused was appointed as Veterinary Surgeon in Veterinary Dispensary, Rajakkad as on 03.01.2002 as per Ext.P7 and he also was given the additional charge of the Veterinary Dispensary, Santhanpara and the order in this regard is marked as Ext.P8. During chief examination itself, PW5 stated that there is no necessity to keep Phenolphthalein power content in Veterinary hospital. The evidence of PW5 has been given much emphasis by the learned counsel for the accused on the submission that in order to conduct postmortem of a deceased animal free of cost as part of Government job,



the dead animal to be produced before the Dispensary at the expense of the party. Further, during duty time Veterinary Surgeon did not go to conduct postmortem of dead animals of private parties. Further, if on request of the Panchayat such postmortem was done during duty time, honourarium would be given. Further PW5 also had given the evidence that if the Veterinary Doctor conducted postmortem, there was permission to receive fees and it is the usual practice that Veterinary Surgeon may do private practice and earn money.

16. PW7 examined in this case is the Judicial First Class Magistrate Court-I, Thodupuzha on 16.10.2002. It was through him Ext.P11 confession statement given by the 2nd accused was marked and the learned Magistrate given evidence supporting 164 statement. Ext.P12 is the sanction issued to prosecute the accused by N.Ramakrishnan, the Principal Secretary and the same was proved through PW8, the Under Secretary, who worked along with him. In fact, there is no challenge raised as regards to sanction.

17. PW12 while working as Dy.S.P, VACB, Idukki, filed this case and it was through him, Ext.P18 mahazar pertaining to recovery



of documents produced by the L.D Clerk, B.D.O as on 07.06.2004 got marked and it was PW12, who incorporated the 2nd accused also in the array of accused.

18. On scrutiny of the prosecution evidence, 164 statement given by the 2nd accused regarding the involvement of the 1st accused, in the matter of demand and acceptance of bribe by him from PW10, could not be accepted, as the statement of a co-accused cannot be the foundation to convict another co-accused. Similar is the position as far as the 313 statement of the 2nd accused, even otherwise the same is not evidence contemplated under the Evidence Act, as rightly found by the Special Court. Now it is necessary to delve upon, what is the independent evidence available to prove demand of bribe by the 1st accused and acceptance of the same pursuant to the said demand.

19. In this connection it is relevant to refer a 5 Bench decision of the Apex Court in [AIR 2023 SC 330], *Neeraj Dutta Vs State*, where the Apex Court considered when the demand and acceptance under Section 7 of the P.C Act to be said to be proved along with ingredients for the offences under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act and in



paragraph 68 it has been held as under :

"68. 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) 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.”

20. Thus the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the P.C Act is extracted above.

Regarding the mode of proof of demand of bribe, 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. 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. The mode of proof of demand and acceptance is 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. 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.

21. In this case the crucial witness cited by the prosecution to prove the demand and acceptance of bribe by the 1st accused is PW10, the complainant, but he turned hostile to the prosecution. In his evidence, there is nothing to suggest demand of bribe by the 1st accused. According to PW10 when he gave the bribe money, the 1st accused pushed it away. Even though this evidence is against the prosecution without support of his prior statement, no effective cross examination done by the legal advisor, Vigilance to extract anything from the mouth of PW10 regarding demand and acceptance of bribe by the 1st accused. No other witnesses are available to see the demand otherwise. Therefore, either by the direct evidence or by circumstantial evidence, demand of bribe by the 1st accused could not be established. PW11 also given evidence that when the 1st accused was asked about the bribe money given by PW10, he replied that he didn't accept the same and he pushed it away. It is true that M.O1 series notes was recovered from the pot nearby the 2nd accused. Anyhow the 2nd



accused was acquitted by the Special Court for want of evidence. No appeal preferred thereof. Thus as per the observation made by the learned Special Judge in paragraph 22 it was found that there is no direct legal evidence to find that the 1st accused handed over the tainted notes to the 2nd accused. But the Special Court was of opinion that from the circumstances the necessary presumption could be drawn that the 1st accused gave notes to the 2nd accused. That apart, the Special Court taken note of the colour change occurred when the hands of the 1st and 2nd accused were dipped in carbon to find acceptance of bribe by the 1st accused and handing over of the same to the 2nd accused. In fact, this could happen even if the notes had been thrown away by the 1st accused. Since the 2nd accused was acquitted by the Special Court and the Special Court did not find any challenge against the said acquittal, this Court need not discuss on the acquittal of the 2nd accused.

22. It is pointed out by the learned counsel for the accused that as per Rule 71 of the Manual of Animal Husbandry Department, Veterinary Surgeons and other officers in the same grade are allowed to take up private practice without detriment to their official duties and that



such private practice may be prohibited if such practice is likely to interfere with the efficient discharge of official duties. As per Rule 74 of the Manual of Animal Husbandry Department, any fee charged for private attendance shall be reasonable and shall conform to normal professional conduct and as per Rule 75, private practice should be undertaken only outside office hours without causing public interest to suffer on any account. These provisions have been pointed out by the learned counsel for the accused to prove that the 1st accused if at all found to have received any amount that would have to be considered as fees for doing postmortem of dead animals as part of private parties.

23. Having appraised the evidence in this matter, in fact, demand of bribe by the 1st accused not at all established by reliable and convincing evidence. If at all the colour change in the hands of the 1st accused is taken into consideration to prove acceptance, then also demand could not be found. In such view of the matter, the Special Court went wrong in holding that the 1st accused committed offences punishable under Sections 7, 13(2) r/w 13(1) of the PC Act beyond reasonable doubt since the prosecution evidence is not free from doubts. Therefore, the 1st



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accused is entitled to get the benefit of doubt.

In the result, this Appeal succeeds. Accordingly the verdict under challenge is set aside and the appellant/1st accused is acquitted for the said offences. The bail bond of the 1st accused stands cancelled and he is set at liberty forthwith.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/