



CRL.A NO. 250 OF 2009

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2025:KER:62468

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19TH DAY OF AUGUST 2025 / 28TH SRAVANA, 1947

CRL.A NO. 250 OF 2009

AGAINST THE JUDGMENT DATED 30.12.2008 IN CC NO.23 OF 2002 ON
THE FILES OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE

APPELLANT/ACCUSED No.1:

T.K. THANKAPPAN, S/O. LATE KUNJAN,
AGED 1 YEARS
THEVARAKKATTIL HOUSE, KODAKULAM, RAMAPURAMALA,,
KOTTAYAM DISTRICT.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
THROUGH THE DY.S.P. VIGILANCE AND ANTI CORRUPTION
BUREAU, PALAKKAD,, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF, KERALA, ERNAKULAM.

BY ADV PUBLIC PROSECUTOR

OTHER PRESENT:

ADV.RAJESH.A SPL PP VACB,ADV REKHA.S SR PP VACB.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
19.08.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



C R

A. BADHARUDEEN, J

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Crl. Appeal No. 250 of 2009

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Dated 19th day of August 2025

JUDGMENT

The 1st accused in C.C.No.23 of 2002 on the files of the Enquiry Commissioner and Special Judge, Kozhikode, has preferred this Criminal Appeal under Section 374 of the Code of Criminal Procedure (for short, 'CrPC.'), challenging conviction and sentence imposed against him in the said case dated 30.12.2008. The respondent is the Vigilance and Anti-Corruption Bureau (VACB), represented by the learned Special Public Prosecutor.



2. Heard the learned counsel for the 1st accused/appellant and the learned Special Public Prosecutor. Perused the records of the special court as well as the decisions placed by the learned Special Public Prosecutor in detail.

3. The prosecution case is that the 1st and 2nd accused while working as Secretary and Head Clerk respectively of Alanellur Grama Panchayat and as such being public servants abused their official position and as a sequel thereof and at 11 a.m on 12-12-2000, at the office of the Alanellur Grama Panchayat, demanded illegal gratification of Rs.1,000/- and Rs.250/- respectively, for themselves, to give advance payment of Rs.25,000/- from the whole estimate amount of Rs.1,00,000/- from the complainant, the Convener, who was elected as per Peoples' Planning Programme for the



improvement of Alungal – Kombamkallu road work, using funds from the Government's Peoples' Planning Programme. Then they reiterated the same demand on 15-12-2000 at the time of issuing the cheque for Rs.25,000/- and in pursuance of the said demand they received an amount of Rs.1,000/- and Rs.250/- respectively at 12.15 P.M on 22-12-2000 from the Complainant at the Alanellur Grama Panchayat Office as a reward and illegal gratification for doing the official act mentioned above and thereby, both of them have committed the offences punishable under Sections 7 and 13(2) r/w Section 13(1)(d) of the the Prevention of Corruption Act, 1988 ('PC Act' for short hereafter).

4. When Final Report filed before the special court alleging commission of the above-said offences, the special court proceeded



with trial after finishing the pre-trial formalities. During trial, PWs 1 to 6 were examined, Exts.P1 to P18, and MOs1 to 18 were marked from the side of the prosecution. After completion of the prosecution evidence, the accused was questioned under Section 313(1)(b) of the CrPC, and an opportunity was given to him to adduce defence evidence. DW1 was examined from the side of defence. On appraisal of the evidence, the special court found that accused Nos. 1 and 2, committed the said offences and accordingly, they were sentenced as under:-

“The 1st accused to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment for three months, under



Section 7 of the PC Act, 1988. The 1st accused is further convicted and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/- and in default to undergo Rigorous Imprisonment for three months, under Section 13(2) r/w Section 13(1)(d) of the PC Act. The substantive sentences shall run concurrently. Set off is allowed under Section 428 Cr.P.C. The 2nd accused is convicted and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.500/- and in default to undergo Rigorous Imprisonment for two months, under Section 7 of the PC Act. The 2nd accused is further convicted and sentenced to



undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/- and in default to undergo Rigorous Imprisonment for two months, under Section 13(2) r/w Section 13(1)(d) of the PC Act. The substantive sentences shall run concurrently. Set off is allowed under Section 428 Cr.P.C.”

5. While assailing the judgment of the special court, learned counsel for the 1st accused/appellant argued that, in this case, the investigation was conducted by the Inspector of Police and he had no power to investigate the present case. Therefore, the investigation is vitiated. It is argued further that, though sodium carbonate solution with pink colour was alleged to be produced



before the court during the time of evidence the same found to be colourless and that is a point in favour of the accused to grant benefit of doubt. Apart from that, the learned counsel for the 1st accused/appellant argued that the evidence given by PW1 as regards to demand and acceptance of bribe against the 1st accused is not convincing or reliable. Thus, it is submitted on these grounds, the special court verdict is liable to be interfered with to record acquittal of the 1st accused.

6. Per contra, it is submitted by the learned Special Public Prosecutor that, insofar as the contentions raised by the 1st accused/appellant regarding the competence of the Inspector to investigate this crime, proviso to Section 17 of the PC Act is relevant. As per the proviso, State Government can authorize by



general or special order to investigate a crime under the PC Act not below the rank of a Sub Inspector. According to him, as early as 02nd March 1993, such a general order was passed by the Government; therefore, this contention could not succeed.

7. In this connection, the learned Special Public Prosecutor placed the decision of the Division Bench judgment of this Court reported in **2000 KHC 311 Sankaran Kutty v. State of Kerala** reference to Paragraph No.8 where this Court considered the same question in view of Notification No.12094/C1/88/Vig dated 02nd March 1993 and held as under:-

“8. The operative portion of S.17 lays down that no Police Officer below the rank of Deputy Superintendent of Police or a Police Officer of an equivalent rank shall investigate



any offence punishable under the Act without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as a case may be, or make any arrest therefor without a warrant. As per the first proviso to S.17, it is provided that if a Police Officer now below the rank of Inspector of Police is authorised by the State Government on this behalf by the general or special order, he may investigate without the order of a Metropolitan Magistrate or the Magistrate of the First Class, as the case may be, or make arrest therefor, without a warrant. Therefore, as per the operative portion of S.17, any Police Officer who is even below the rank of Inspector of Police can be authorised by the Magistrate for investigation as envisaged in that Section. The Parliament, in its wisdom has conferred power on the State Government, as per the first proviso to S.17, to empower Police Officers not below



the rank of Inspector of Police, for investigation of the offence under the Act. Thus, the first proviso to S.17 is not in any way abridging or nullifying the operative portion of S.17 of the Act. It is only in lawful exercise of the powers conferred under the first proviso to S.17 that the State Government has issued the statutory notification as per Ext. P5 empowering the Police Officers not below the rank of Inspector of Police for conducting the investigation.

8. Regarding the second point, the learned Special Public Prosecutor placed decisions of this court reported in **2011 (4) KHC 411 Parameswaran Pillai R. (Dr.) v. State of Kerala** with reference to Paragraph No.15, and **2023 KHC 560 State of Kerala v. P M Kunhappan** reference to paragraph 14 to contend



that colour change of solution is insignificant as the same would occur because of chemical change.

9. In view of the rival arguments, questions arises for consideration are:-

1. Whether the contention raised by the 1st accused/appellant regarding incompetency of the Inspector of Police to investigate this crime is sustainable?
2. Whether the trial court rightly entered into finding that the 1st accused/appellant committed offence punishable under Section 7 of the PC Act?



3. Whether the trial court rightly entered into finding that the 1st accused/appellant committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act?
4. Whether the verdict under challenge would require interference?
5. The order to be passed?

Point No. 1:-

10. Chapter 4 of the PC Act 1988 deals with the investigation of cases under the Act and it has been provided that no police officer below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank is competent to investigate the offence under the PC Act. At the same time, first proviso to



Section 17 states that, if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant. Thus the proviso is clear on the point that the State Government has the power to authorise a police officer not below the rank of an Inspector of Police by general or special order to investigate any of the offences under the PC Act and this point was upheld as per the ratio in *Sankarankutty's* case (*supra*).

Since the State Government had issued Notification No.12094/C1/88/Vig dated 02nd March 1993, in tune with the first proviso of Section 17 authorising a police officer not below the



rank of an Inspector of Police the investigation of this case conducted by the Inspector of Police is perfectly in order. Therefore the contention raised by the 1st accused otherwise highlighting incompetency of the Investigating Officer would not sustain. Point No.1 answered accordingly.

Point Nos.2 to 5

11. As regards to demand and acceptance of bribe, the prosecution relied on the evidence of the complainant, who got examined as PW1. PW-1 is a resident of Alanellur Grama Panchayat, and he was the Convener of the improvement work of Alungal Kombamkallu road. The Chairman of the Committee was A.P. Mohammedali. As convener, he had executed an agreement



before the Panchayat. For the purpose of disbursement of Rs.25,000/- as advance payment, out of the estimate amount of Rs.1,00,000/-, for that road work he had approached the accused at 11.00 am on 12-12-2000. Then the 1st accused had demanded Rs.1,000/- for him and Rs.250/- for the 2nd accused for disbursement of the advance amount. He stated that he was not having any money with him and promised to pay the same after encashment of the cheque, on 15-12-2000. On that day, when he went to collect the cheque, both the accused reiterated the demand, and after receipt of the cheque, he presented the same to the Sub-Treasury, Mannarkkad. The treasury officials noted certain objections in the cheque, and that was rectified by the 2nd accused and he encashed the cheque on 16-12-2000. Since he was not



willing to pay the bribe amount to the accused, he lodged Ext.P-1 complaint before the Dy.S.P., Vigilance and Anti-corruption Bureau, Palakkad, at 10 a.m. on 22-12-2000. Subsequently, two Government servants came before PW-5, the Dy.S.P. and they were introduced to him and the facts of the case were narrated to them. M.O-1 series and M.O-2 series currency notes were handed over to PW-5. After demonstration of phenolphthalein test on a currency note of Rs.10/-, M.O-1 series and M.O-2 series were put into his pocket by a Police Constable as directed by PW-5 after smearing phenolphthalein powder over the same. The production mahazar Ext.P-2 was then prepared, and the trap party proceeded to Alanellur Grama Panchayat Office. Then PW1 as well as a police constable went to the office of the 1st accused and he apprised that



the encashment of the cheque. The 2nd accused was there in the room of A-1. Then, the 1st accused demanded the amount of Rs.1,000/-, and PW-1 gave that amount of Rs.1,000/- (M.O-1 series) to the 1st accused. The 1st accused accepted M.O-1 series and subsequently the 2nd accused demanded and accepted Rs.250/- (M.O-2 series). After that PW-1 came out from the office room and gave the pre-set signal to the Vigilance Officers. Thereupon PW-5 along with the witnesses and the Police Party entered into the office room of the 1st accused. Afterwards he produced Ext.P-3 Minutes Book as per Ext.P-4 mahazar.

12. PW-2 James Rajakumar was the independent witness examined to prove the pre-trap and post-trap proceedings. He deposed that he witnessed the trap on 22-12-2000. On the



instructions of the Superintending Engineer, he had gone to the office of the Dy.S.P., Vigilance and Anti-Corruption Bureau, Palakkad on that date at about 9.30 A.M. CW-3 was there as a witness for the trap. Then PW-5, the Dy.S.P. introduced him to PW-1 and narrated the facts of the case. PW-1 handed over M.O.-1 series (Rs.1,000/-) and M.O.-2 series (Rs.250/-) currency notes to PW-5. After conducting demonstration of the phenolphthalein test on a currency note of Rs.10/- M.O-1 series and M.O-2 series were placed into the pocket of PW-1 after smearing phenolphthalein powder over the same and also directing him to pay the same to the accused on demand. Ext.P-2 production mahazar was prepared and the trap party proceeded to the Alanellur Grama Panchayat Office. After obtaining the signal himself as well as the Vigilance Party and



another witness entered into the room of the 1st accused. The 2nd accused was also there in that room. The Dy.S.P. introduced himself as well as the witnesses to the first accused and asked with regard to the amount received from PW-1. The fingers of the right hand of the first accused was immersed in the sodium carbonate water solution, then the colour of the solution was turned pink. The fingers of the left hand of the first accused was also immersed in the sodium carbonate water solution, then the colour of the solution was turned pink. The M.O-1 series currency notes along with some papers were recovered from the shirt pocket of the first accused. Likewise, PW-5 has asked the 2nd accused with regard to the amount received by him from PW-1. He also given M.O-2 series currency notes kept in his shirt pocket. His hands were immersed in the sodium carbonate



water solution and the colour of the solution was turned into pink. Those solutions were seized and identified as M.Os 3 to 4. Both the accused were arrested after preparing Ext.P-6 Arrest Memo. Thereafter the accused, MO1 and records of trap were brought to the Vigilance office, Palakkad.

13. PW-3 was the U.D. Clerk of Alanellur Grama Panchayat. He was present in that office on 22-12-2000. As per the direction of the Vigilance Police, he had produced certain documents before the Vigilance Office. The work file of the Project No. 97 of the improvement work of Alungal Kombamkallu road was marked as Ext.P-7. The yearly Plan for 2000-01 of Alanellur Grama Panchayat and the connected Annexure Form was produced and marked as Ext.P-8. The Treasury Cheque Book was also produced and marked



as Ext.P-9. The Cash Book kept in Alanellur Grama Panchayat from 13-3-1998 to 15-12-2000 was produced and marked as Ext.P-10. The attendance Register of Alanellur Grama Panchayat from 1-7-1999 to 22-12-2000 was produced and marked as Ext.P-11. The transfer and postings of the Panchayat Secretaries and the file thereof were produced and marked as Ext.P-12. The transfer and postings of the Head Clerks and the file thereof was produced and marked as Ext.P-13. The mahazar prepared to seize these documents, got marked as Ext.P-14. The Counter-Foil of Cheque Leaf No.280872 dated 15-12-2000 was marked as Ext.P-9(a), which was issued in the name of K.A.Jalaluddeen (PW1). The details of that cheque was stated in Ext.P-10 in Page No.84. That page was marked as Ext.P-10(a). The application filed by PW-1 for advance payment was



marked as Ext.P-7(a). In Page No.26 of Ext.P-7, another application given by PW1 for obtaining Rs.25,000/- as advance. That was marked as Ext.P-7(b). In Page No.27 of Ext.P-7, there is an advance payment voucher of Rs.25,000/-, which was prepared by the 2nd accused, and that was marked as Ext.P-7(c). In Page No.28 of Ext.P-7, there is Receipt of Rs.25,000/- signed by PW1 (K.A.Jalaluddeen) as well as A.P. Mohammedali, as Convener and Chairman, respectively, and that was marked as Ext.P-7(e). The total amount granted for the road work was Rs.1,00,000/-

14. Ext.P15 sketch regarding the place of occurrence was by PW4 the Assistant Engineer, PWD Building Section, Mannarkkad.



15. PW5, the DySP Vigilance and Anti Corruption Bureau, Palakkad as on 22.12.2000 deposed about the arrival of PW1 in his office and lodging of Ext.P1 complaint. According to him, Ext.P1 FIR was registered acting on Ext.P1 complaint. He deposed about the presence of PW2 and CW3 before him, and production of MO1 and MO2 series notes by PW1. He also deposed about phenolphthalein test and smearing of phenolphthalein in MO1 and MO2 series and entrustment of the same that of PW1. He fully supported the pre-trap proceedings as well as post-trap proceedings including recovery of Rs.1,000/- (MO1 series) from the pocket of the shirt of the 1st accused and his arrest as per Ext.P6 memo. Similarly he had given evidence supporting recovery of Rs.250/-



(MO2 series) from accused No.2. PW6 filed Final Report in this case.

16. Although the learned counsel for the accused cross-examined PW1 to PW6 nothing extracted to disbelieve their versions. In this case, Ext.P11 attendance register tendered in evidence would show that as on the date of occurrence, the 1st accused and 2nd accused were working in the office of the Grama Panchayat Alanelloor. Coming to the crux of the case, PW-1 was the convener for the improvement work of Alungal-Kombamkallu road, using the funds from the Government's Peoples' Planning Programme, in Alanellur Grama Panchayat. The total estimated amount of the work was Rs.1,00,000/-. For effecting the advance payment of Rs.25,000/-, PW-1 put up an application before the 1st



accused, the Secretary of the Alanellur Grama Panchayat. The 2nd accused was the Head Clerk in that office during the relevant period. For granting the advance payment of Rs.25,000/-, the 1st accused had demanded an amount of Rs.1,000/for him and Rs.250/- for the 2nd accused, at 11 a.m. on 12-12-2000 at the office of the Alanellur Grama Panchayat. Although PW1 had expressed his inability to pay the amount, both the accused reiterated the demand and thereby PW1 agreed to pay the amount after the encashment of the cheque, on 15-12-2000. The cheque was issued to him on that date. Both the accused reiterated the demand and also stated that if that amount would not be paid, they would not grant further instalment payments for the construction work. After receipt of the cheque, he had presented it before the Sub-Treasury, Mannarkkad.



The Treasury officials noted certain objections in the cheque, and later it was rectified and encashed the cheque on 16-12-2000. Since he was not willing to pay the bribe amount to the accused, he informed the Vigilance Police. Then, on 22-12-2000, he went to the Vigilance Office at Palakkad. Two Government servants, PW-2 and CW-3 came there on the request of PW-5. They introduced themselves and narrated the facts of the case. After completing the demonstration and also entrusting M.O-1 series and M.O-2 series currency notes to PW-5 and he made initial in it and seized as per an entrustment mahazar. After smearing phenolphthalein powder in M.O-1 series and M.O-2 series currency notes that were entrusted to PW-1 with direction to give that amount to the accused on demand. Then they proceeded to the Panchayat Office, Alanellur. PW-1 and a



Police Constable went to the office of the 1st accused, and he apprised that the encashment of the cheque. A-2 was also sitting in the room of A-1. Then the 1st accused demanded an amount of Rs.1,000/-. M.O.-1 series currency notes were given to the 1st accused, and he accepted the same and put in his shirt pocket. Likewise, the 2nd accused also demanded Rs.250/- and that was given to him, and he accepted the same and put in his shirt's pocket. After that, he came out from the office room and gave signal to the vigilance officers. Then, PW-5 along with the witnesses and police party entered into the office room of the 1st accused.

17. To support the case of PW-1, PW-2 an independent witness also was examined and the independent witness fully supported the pre-trap and post-trap proceedings where PW1



categorically deposed about demand and acceptance of MO1 and MO2 series by accused Nos. 1 and 2.

18. Now, it is necessary to address the ingredients required to attract the offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The same are extracted as under:—

Section 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.

Section 13:- Criminal misconduct by a public servant. – (1) *A public servant is said to commit the offence of criminal misconduct,-*

(a) xxxxxx



(b) xxxxxx

(c) xxxxxxx

(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.*

xxxxxxx

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



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. Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law.

21. On scrutiny of the evidence in parity with the legal position discussed in the instant case, the prosecution succeeded in



proving that the 1st accused by misusing his position as public servant demanded and accepted Rs.1,000/- as illegal gratification and thereby committed criminal misconduct punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act. Therefore the special court rightly found so and the said conviction does not require any interference.

22. Coming to the sentence the special court imposed rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- for the offence punishable under Section 7 of the PC Act and in default of payment of fine, to undergo rigorous imprisonment for a period of three months. Similarly, for the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, the 1st accused was sentenced to undergo rigorous imprisonment



for two years and to pay fine of Rs.2,000/-. In default of payment of fine, the 1st accused would undergo rigorous imprisonment for a period of three months. Having considered the facts of this case, and in consideration of the arguments tendered by the learned counsel for the 1st accused in the matter of reduction of sentence, I am inclined to modify the sentence.

23. In the result, this appeal is allowed in part. The conviction imposed by the special court is confirmed. The sentence stands modified as under:

1. The 1st accused is sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.1,000/- for the offence punishable under Section 7



of the PC Act, 1988. In default of payment of fine, the 1st shall undergo rigorous imprisonment for a period of two weeks.

2. The 1st accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/-. In default of payment of fine the 1st accused shall undergo rigorous imprisonment for a period of four weeks.

24. Set off is allowed for the period he was in judicial custody in connection with this crime.

25. The order suspending the sentence and granting bail to the accused is cancelled and his bail bond also is cancelled.



Accordingly, the 1st accused/appellant is directed to surrender before the special court forthwith to undergo the modified sentence.

If the 1st accused/appellant fails to surrender as directed, the special court is directed to execute the modified sentence without fail.

The Registry is directed to forward a copy of this judgment to the special court forthwith for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

RMV