IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 26TH DAY OF SEPTEMBER 2025 / 4TH ASWINA, 1947

CRL.A NO. 443 OF 2018

CRIME NO.6/2009 OF VACB, KOTTAYAM, Kottayam

AGAINST THE JUDGMENT DATED 28.02.2018 IN CC NO.40 OF 2010 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM

APPELLANT/ACCUSED:

K.A.ABDUL RASHEED
AGED 68 YEARS,
S/O. ALI, KUNNATH HOUSE, NEAR ST. JOSEPH'S LP SCHOOL,
UDUMBANNOOR VILLAGE, THODUPUZHA TALUK, IDUKKI.

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE
SRI.V.VINAY

RESPONDENT/STATE:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031, (VC 6/09/KTM OF VIGILANCE & ANTI CORRUPTION BUREAU POLICE STATION, KOTTAYAM UNIT).

BY SENIOR PUBLIC PROSECUTOR SMT.REKHA.S FOR VACB
SPECIAL PUBLIC PROSECUTOR SRI A.RAJESH FOR VACB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16.09.2025, THE COURT ON 26.09.2025 DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.Appeal No.443 of 2018

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Dated this the 26th day of September, 2025

J U D G M E N T

The sole accused in C.C.No.40/2010 on the files of the Enquiry Commissioner and Special Judge, Kottayam, has filed this appeal challenging conviction and sentence imposed against him in the above case dated 28.02.2018. The Vigilance and Anti-Corruption Bureau, represented by the Special Public Prosecutor is the respondent.

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

3. The prosecution case is that the accused, while working as Taluk Supply Officer, Kottayam, during the period from 25.06.2008 to

20.07.2009, demanded Rs.500/- as illegal gratification from the complainant Sri Shynavas on 13.07.2009 and thereafter he demanded and accepted the same at 1.45 p.m on 20.07.2009. On this premise, the prosecution alleges commission of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988' hereinafter), by the accused.

4. The Special Court took cognizance of the matter on getting final report filed, and proceeded with trial. During trial, PW1 to PW17 were examined, Exts.P1 to P25 and M.O1 to M.O8 series were marked on the side of the prosecution. During prosecution evidence, Exts.D1 and D2 were marked as that of PW11, but no defence evidence adduced independently.

5. The learned Special Judge evaluated the evidence and finally found that the accused had committed offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act, 1988 and accordingly he was sentenced as under:

> *"The accused is sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.10,000/- (Rupees ten thousand only), in default of payment of fine the accused has to undergo simple*

imprisonment for three months for the offence punishable under Sec.7 of the Prevention of Corruption Act, 1988. Accused is further sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.10,000/- (Rupees ten thousand only), in default of payment of fine the accused has to undergo simple imprisonment for three months for the offence punishable under Sec.13(1)(d) r/w. Sec.13(2) of the PC Act, 1988. The substantive sentences shall run concurrently. Set off under Sec.428 Cr.P.C is allowed."

6. The learned counsel appearing for the appellant/accused zealously argued that, in this case, the prosecution relied on the evidence of PW1 Shynavas to prove the demand of bribe by the accused on 13.07.2009 as well as on 20.07.2009 and its acceptance on 20.07.2009. But PW1 turned hostile to the prosecution. However, when he was questioned by the learned legal advisor for the prosecution, he had given some evidence supporting the prosecution case. According to the learned counsel for the appellant, even on meticulous scrutiny of the evidence in toto as that of PW1, there is no evidence to prove the demand of bribe by the accused in a convincing manner. According to the learned counsel for the accused, even otherwise, PW1 who spoke about the occurrence in derogation of the prosecution evidence, is a witness under the category "neither wholly reliable not wholly unreliable". It is pointed out by the

learned counsel for the appellant/accused that it is the well established rule of law that the court is concerned with the quality and not quantity of evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into 3 categories, namely : (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. It is pointed out that in the first category of proof, the court should have no difficulty in coming to its conclusion either way, it may convict or may acquit on the testimony of a single witness. In the second category, the court, equally has no difficulty in coming to its conclusion. But in the third category of cases, the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial to be acted upon. In this regard, the learned counsel for the appellant/accused placed decision of the Apex Court reported in [AIR 1957 SC 614 : MANU/SC/0039/1957 : (1957) 1 SCR 981], ***Vadivelu Thevar v. The State of Madras;*** [AIR 2022 SC 2631 : MANU/SC/0752/2022 : (2022) SCC 157], ***Mahendra Singh and Ors. v. State of M.P*** as well as the decision reported in [2025 SCC OnLine SC 1013], ***Aman Bhatia v. State (NCT of Delhi)***.

7. The learned counsel for the accused/appellant read out the depositions of PW1, PW2, PW17 and other relevant portions of the evidence tendered by the prosecution, where PW1 did not support Ext.P1 statement given by him in full. According to the learned counsel for the appellant/accused, the FIR is not a substantive piece of evidence and it can only be used to discredit the testimony of the maker thereof and it cannot be utilised for contradicting or discrediting the testimony of other witnesses. In this connection, the learned counsel for the appellant placed decisions of the Apex Court reported in [2009 (4) KLT Suppl. 1036(SC)], ***Pandurang Chandrakant Mhatre v. State of Maharashtra*** and [MANU/SC/0180/1971 : AIR 1972 SC 283], ***Hasib v. The State of Bihar***, [(2023) 4 SCC 731]. It is also pointed out by the learned counsel for the appellant/accused that demand and acceptance are the vital essential ingredients to prove acceptance under Sections 7 and 13(1)(d) and (2) of the PC Act, 1988. In support of this contention, the learned counsel placed decisions of the Apex Court reported in [(2023) 4 SCC 731], ***Neeraj Dutta v. State (NCT of Delhi)***; [2011 (2) KLT 812], ***State of Kerala v. Rao***; [2015 (4) KLT SN 47 (C.No.53) : AIR 2015 SC 3549], ***Satyanarayana***

Murthy v. District Inspector of Police; [2009 KHC 4250 : 2009(3) SCC 779], ***Girish Babu C.M v. CBI***; [(2023) 19 SCC 498], ***Jagtar Singh v. State of Punjab***; [2025 SCC OnLine SC 1463], ***M.Sambasiva Rao v. State of A.P.*** and [2025 SCC OnLine SC 1013], ***Aman Bhatia v. State (NCT of Delhi)***.

8. Thus the sum and substance of the argument mooted by the learned counsel for the appellant/accused is that in this case the prosecution miserably failed to prove necessary ingredients to establish offences under Sections 7 and 13(1)(d) and 13(2) of the PC Act, 1988 and the evidence relied upon by the Special Court are not wholly reliable and in such view of the matter, the verdict impugned would require interference to acquit the accused.

9. Per contra, the learned Public Prosecutor relied on the evidence of PW1 supported by the evidence of PW2 and PW17 along with the circumstances which would show receipt of Rs.500/- by the accused to contend that following the ratio in ***Neeraj Dutta v. State (NCT of Delhi)***'s case (*supra*) the attending circumstances in this case would show the demand and acceptance supported by the evidence of PW1, though he

turned hostile to the prosecution. Therefore, conviction and sentence are liable to be confirmed.

10. Now the questions arise for consideration are:

(i) Whether the trial court rightly found that the accused committed offence punishable under Section 7 of the PC Act, 1988?

(ii) Whether the trial court rightly found that the accused committed offence punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act, 1988?

(iii) Whether the verdict under challenge would require interference?

(iv) The order to be passed?

Points (i) to (iv)

11. In this matter, PW1, examined by the prosecution is Sri Shynavas, who lodged Ext.P1 complaint which led to registration of FIR and consequential trap of the accused.

12. During the chief examination, PW1 had given evidence that he had been conducting a ration shop No.ARD.40 and the income and expenditure of a week would be submitted to Revenue Inspectors attached

to Taluk Supply Office on every Monday. The Taluk Supply Officer would make necessary changes in the ration card once in every 3 months in the register to be kept at the ration shop and the same would be called as `abstract'. The further version of PW1 is that on 09.07.2009 he met the Taluk Supply Officer, who is the accused herein, and he had made some objection and he did not sign the register. He identified the accused at the dock. He deposed about lodging of Ext.P1 complaint before the Vigilance Dy.S.P, but he denied the contents therein to the effect that the accused demanded Rs.500/- as illegal gratification for signing the register. At a later stage when he was asked what was his stand if such a version would appear in Ext.P1, he failed to give answer for some time and later argued that it was so felt to him. At this juncture, the learned legal advisor sought permission to cross examine PW1 under Section 154 of the Evidence Act and Section 162 of the Code of Criminal Procedure; When he was subjected to searching queries referring to his previous statements in Ext.P1, he had admitted certain portions in Ext.P1. When he was asked a question suggesting that in Ext.P1 he had stated that the accused demanded money from him twice and he had disclosed the same in Ext.P1 as true,

though he stated the same to CW2 and CW3, PW1 answered that what he stated before the witnesses were true. When he was questioned again, suggesting that he had disclosed only true facts in Ext.P1 and CW2 and CW3 witnesses stated in the affirmative; Further he deposed in support of pre and post trap proceedings to a certain extent by identifying M.O1 note for a value of Rs.500/- which he was entrusted to the Dy.S.P and in turn received back, which was recovered from the accused as part of post trap proceedings. Again when he was asked whether he had disclosed before the Dy.S.P that only after money would be given to the Taluk Supply Officer, the Taluk Supply Officer would sign the register and as instructed by the Dy.S.P he had given money to the Taluk Supply Officer only when demanded by the Taluk Supply Officer and on receipt of money by the Taluk Supply Officer he would reach the door and show signal by opening his palm etc. were suggested as the statement given before the vigilance, initially he stated that he had not said anything, soon he added that he had given such statements. When PW1 was again questioned whether he had given any statement to the police stating that he entered into the office of the Taluk Supply Officer at 1.45 p.m and soon the Taluk Supply Officer

enquired whether the money was brought and he had given Rs.500/- entrusted by the Dy.S.P, he denied the statement and the same got marked as Ext.P2. That apart he also admitted his previous statement to the effect that one among the official witnesses examined the pocket of the Taluk Supply Officer where Rs.500/- notes and Rs.10/- notes to a total sum of Rs.3,570/- were found. When asked whether one among the notes found in the pocket of the accused was M.O1 series entrusted to PW1 by the Dy.S.P, he answered in the affirmative. During cross examination by the learned counsel for the accused, PW1 deposed that before this incident, the Taluk Supply Officer never demanded money from him and abstract was not necessary to supply ration goods. He deposed that as on 30.06.2009, the accused inspected his shop and he had paid Rs.1,442/- as fine on finding that 26 litres of kerosene was shortage in the stock. During re-examination by the learned legal advisor for the prosecution, he had denied the suggestion that the accused demanded money on 09.07.2025 and 13.07.2025 and accordingly PW1 reached the vigilance office along with M.O1 series. PW1 answered that "പ്രതി പണം ആവശ്യപ്പെട്ടിട്ടില്ല" (ie. accused did not demand money).

13. PW2 examined in this case is the Assistant Engineer, PWD Special Building, Gandhinagar, Kottayam. He deposed that he appeared before the Dy.S.P at 9.30 a.m on 20.07.2009 as instructed by the District Collector. When he reached there, Sundan Achari, the Special Tahsildar, MVID and PW1 were present and the Dy.S.P introduced all to each other and Ext.P1 was read over. He deposed about entrustment of Rs.500/- by the complainant to the Dy.S.P and putting his initial on that note after noting its number by the Dy.S.P. He also deposed about Phenolphthalein test demonstration by using Sodium Carbonate solution in one note by dipping the hands of the police dealt with the note smeared with Phonolphthalein powder and its pink colour change. He identified the liquid used for the same as M.O2. According to him, the Dy.S.P entrusted back M.O1 note to PW1 with direction to give the same to the accused only when he would demand the same and M.O1 note was put in the pocket of PW1. Further the Dy.S.P instructed PW1 to show signal by lifting his hand on receipt of money. He deposed about the arrival of PW1, another gazetted officer and the Dy.S.P along with him started from the Vigilance office at 11.30 a.m on 20.07.2009. According to PW2, PW1

and one Sundaran Achari had first gone to the supply office and others - PW2, Dy.S.P and 2 gazetted officers were waiting outside the supply office. The Taluk Supply Officer reached the office at 1.15 p.m and at 1.45 p.m PW1 came out and showed the signal and soon the Dy.S.P and party along with him entered into the office. PW2 deposed further that when Dy.S.P asked PW1 about what was done by the accused after receiving M.O1 series, he stated that the accused had placed the same on the right drawer of the table used by him. He deposed about the examination of the party to ensure that no money available with them. According to him, thereafter hands of the persons dipped in Sodium Carbonate solution and there was no colour change and the said solution is M.O3. He deposed that when the right fingers of the accused was dipped in Sodium Carbonate solution, there was pink colour change and the said solution is marked as M.O4. Similarly when the left hand of the accused also subjected to Phenolphthalein test, there was pink colour change and the solution so marked is M.O5. According to PW2, when the drawer of the table was examined, no money was found. Thereafter he along with Sundaran Achari searched the accused and his pocket and found M.O1

note. When M.O1 note also was subjected to Phenolphthalein test the solution showed pink colour change and the same is marked as M.O6. He also deposed that when the pocket of the shirt of the accused was subjected to Phenolphthalein test, the same also showed pink colour change and the solution is marked as M.O7. He deposed that Ext.P4 is the recovery mahazar prepared for the same and he also deposed that Ext.P3 is the entrustment mahazar. It was through Ext.P4 recovery mahazar, Ext.P5 attendance register of the Taluk Supply Office for the year 2009, Ext.P6 cash details during the period from 01.04.2008 to 20.07.2009, Ext.P7 card register of ARD 40 ration shop of PW1 and Ext.P8 TR5 Book No.71 of Taluk Supply Office, Kottayam got marked. Even though PW2 was subjected to searching cross examination, nothing extracted to disbelieve the version of him in the matter of pre and post trap proceedings.

14. PW3, the Revenue Inspector attached to Supply Office, Kottayam, during the relevant time deposed about the procedure for verification of abstract and signing of the same by the Taluk Supply Officer. PW4, the A.T.S.O (Administration) of Supply Office, Kottayam, during the relevant time deposed about Ext.P9 file regarding the sale of

tickets in connection with Nehru Trophy Boat Racing, Alappuzha, and also entrustment of the sale price to the Taluk Supply Officer.

15. In this matter, it is pointed out by the learned counsel for the accused that Sundaran Achari, who also accompanied the trap team and also accompanied PW1 to the office of the Taluk Supply Officer though present before the court, he was not examined. Since the prosecution has a case that he accompanied PW1, he would be able to speak about the demand and acceptance, but a material witness was spared without being examined and the same is fatal to the prosecution. PW8 examined in this case is the Office Attendant attached to Taluk Office, Kottayam.

16. As far as the evidence given by PW8 to PW17 are concerned, the same in no way would establish that the accused demanded bribe from PW1. Thus the evidence of PW1 alone is available to find the demand of bribe by the accused.

17. Now, it is necessary to address the ingredients required to attract the offences under Section 7 and Section 13(1)(d) r/w Section 13(2) of the PC 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) xxxxx

(b) xxxxx

(c) xxxxxx

(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. xxxxx

(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.

18. 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."

19. 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.

20. In this context, it is relevant to refer the decision of this Court in ***Sunil Kumar K.*** *v.* ***State of Kerala*** reported in **[2025 KHC OnLine 983]**, in Crl.Appeal No.323/2020, dated 12.9.2025, wherein in paragraph No. 12, it was held as under:

> *"12. Indubitably in* ***Neeraj Dutta's*** *case (supra) the Apex Court held in paragraph No.69 that there is no conflict in the three judge Bench decisions of this Court in B.Jayaraj and P.Satyanarayana Murthy with the three judge Bench decision in M.Narasinga Rao, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of*

law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no conflict between the judgments in the aforesaid three cases. Further in Paragraph No.70 the Apex Court held that 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 13(1)(d) r/w Section 13(2) of the Act based on other evidence adduced by the prosecution. In paragraph No.68 the Apex Court summarized the discussion. That apart, in ***State by Lokayuktha Police****'s case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the offences punishable under Section 7 and 13(1)(d) r/w 13(2) of the PC Act,1988 and held that demand and acceptance of bribe are necessary to constitute the said offences. Similarly as pointed out by the learned counsel for the petitioner in* ***Aman Bhatia****'s case (supra) the Apex court reiterated the same principles. Thus the legal position as regards to the essentials to be established to fasten criminal culpability on an accused are demand and acceptance of illegal gratification by the accused. To put it otherwise, proof of demand is sine qua non for the offences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and dehors the proof of demand the offences under the two Sections could not be established. Therefore mere acceptance of any amount allegedly by way of bribe or as undue pecuniary advantage or illegal gratification or the recovery of the same would not be sufficient to prove the offences under the two Sections*

in the absence of evidence to prove the demand."

21. In the instant case, as already pointed out, PW1, the complainant, who was examined to prove the demand of illegal gratification of the accused, turned hostile to the prosecution and during cross examination of him by the learned legal advisor for the prosecution, he had inconsistent versions. During cross examination by the learned counsel for the accused, he had denied the demand of bribe by the accused as on 13.07.2009 and 20.07.2009, though M.O1 note were recovered from the possession of the accused. Thus the available evidence is either not sufficient or reliable to hold that the prosecution succeeded in establishing the necessary ingredients to prove the offences under Section 7 as well as under Sections 13(1)(d) r/w 13(2) of the PC Act, 1988, particularly, the demand. In view of the matter, the conviction and sentence imposed by the Special Court are liable to be interfered and set aside. Accordingly, I do so.

22. In the result, this appeal succeeds and the verdict under challenge is set aside. Accordingly the Appeal is allowed. The appellant is acquitted for the offences under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and he is set at liberty forthwith. His bail bond stands

cancelled.

Registry is directed to forward a copy of this judgment to the Enquiry Commissioner and Special Judge, Kottayam, for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/