

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

SATURDAY, THE 25TH DAY OF OCTOBER 2025 / 3RD KARTHIKA, 1947

CRL.A NO. 159 OF 2015

AGAINST THE JUDGMENT DATED 05.02.2015 IN C.C. NO.11 OF 2014 ON THE
FILES OF THE COURT OF THE SPECIAL JUDGE (SPE/CBI) - III, ERNAKULAM

APPELLANT/ACCUSED:

MANIAPPAN
PRINCIPAL, KENDRIYA VIDYALAYA SANGATHAN, PAYYANNUR, EDAT
P.O., KANNUR, RESIDING AT PULIMOOTTIL HOUSE,
KUZHIMATTOM P.O., KOTTAYAM DISTRICT.

BY ADVS.
SRI.IEANS.C.CHAMAKKALA
SRI.V.A.NAVAS
SRI.BINU B.SAMUEL

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
CBI/ACB/COCHIN, REPRESENTED BY THE SPECIAL PUBLIC
PROSECUTOR, CBI, PIN-682018.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682031.

BY ADVS.
SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
SHRI.SREELAL N.WARRIER, SREELAL N.WARRIER, SPL.PUBLIC
PROSECUTOR, CENTRAL BUREAU OF INVESTIGATION (CBI)
SPL PP - SREELAL N WARRIER (CBI)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15.10.2025, THE
COURT ON 25.10.2025 DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

Dated this the 25th day of October, 2025

The sole accused in C.C. No.11/2014 on the files of the Court of the Special Judge (SPE/CBI)-III, Ernakulam, has filed this appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 [hereinafter referred as ‘Cr.P.C.’ for short], challenging the conviction and sentence imposed by the Special Judge, against him as per the judgment dated 05.02.2015. The Inspector of Police, CBI and the State of Kerala, represented by the learned Public Prosecutor are arrayed as the respondents herein.

2. Adv.Aadil Nazarudheen, is appointed as the State Brief appearing for the appellant, as the learned counsel, who filed the appeal for and on behalf of the appellant has given up his engagement. But, his appointment is modified as that of State Brief. Heard the learned State Brief appearing for the appellant and the learned Special Public Prosecutor appearing for the CBI, in detail. Perused the verdict under challenge, the records of

the Special Court as well as the decisions placed by both sides.

3. Parties in this appeal shall be referred as 'accused' and 'prosecution', hereafter.

4. In this matter, the prosecution case is that, the accused, while working as Principal, Kendriya Vidyalaya, Payyannur, during March, 2013 demanded illegal gratification other than legal remuneration of Rs. 10,000/- on 15.03.2013, from Sri.Kunhikannan (PW1), Secretary of Kannur District Labour Welfare Co-operative Society, as a motive for executing agreement for the award of contract in favour of the said Society, based on the comparative statement prepared on 16.02.2013 by a committee formed for that purpose after opening the bids for engaging service provider Firm for providing Manpower to Kendriya Vidyalaya, Payyannur, in which the Society stood as L1 (Bidder who offered the lowest price). It is further alleged that, the accused reiterated the demand of bribe on 18.03.2013 and accepted illegal gratification of Rs.10,000/- around 07.45 p.m. on that day at his office. It

is also alleged that the accused by corrupt or illegal means and by abusing his official position as a public servant obtained pecuniary advantage to the tune of Rs.10,000/-. On this premise, the prosecution alleges commission of offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act' for short], by the accused.

5. After framing charge, the Special Court recorded evidence and completed trial. During trial, PWs 1 to 14 were examined, Exts.P1 to P40 and MOs 1 to 7 were marked on the side of the prosecution. Even though, the accused was given opportunity to adduce defence evidence, after questioning him under Section 313(1)(b) of Cr.P.C, he did not opt to adduce any defence evidence.

6. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act. Accordingly, he was convicted for the said offences and sentenced as under:

i. The accused is sentenced to undergo Rigorous Imprisonment for one year and to pay fine of Rs.10,000/-, in default to undergo Simple Imprisonment for three months, for the offence u/s. 7 of the Prevention of Corruption Act.

ii. The accused is further sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.15,000/- in default to undergo S.I. for 3 (three) months, for the offence punishable u/s. 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act.

iii. Set off is allowed for the period from 18.03.2013 to 19.03.2013.

iv. Sentences shall run concurrently.

7. The learned State Brief, who read the evidence as a whole, canvassed three points to record acquittal of the accused. Firstly, it is pointed out that, in this case, the mandatory pre-trap enquiries not specifically stated in the FIR, which would show that there was no proper pre-trap verification in this case. Secondly, it is argued that, even though as per the prosecution allegation, the date of trap was on 18.03.2013, during cross-examination of PW1, he deposed that he had singed in the post-trap mahazar

marked as Ext.P10 on 15.03.2013 and the said fact is not clarified during re-examination also. Therefore, the evidence as that of PW1 would indicate preparation of mahazar on 15.03.2013 and signed by him on that date, though the mahazar produced is dated 18.03.2013. So, according to the learned State Brief, the genuineness of Ext.P10 mahazar is in the midst of doubt. He also pointed out that, going by Ext.P8 pre-trap mahazar as well as Ext.P10 post-trap mahazar, the same were generated through computer and there is nothing stated about the circumstances, which led to preparation of the above documents by computer print. According to the learned State Brief, Ext.P8 as well as Ext.P10 were prepared subsequently, after the trap, at the office of CBI and therefore, no credence could be given to the said documents. He also pointed out that, in consideration of the above anomalies along with non disclosure of the details of pre-trap verification, the prosecution case is not proved beyond reasonable doubts. As regards to the evidentiary value of the mahazar, the learned State Brief

placed decision of this Court in ***Nikesh v. State of Kerala*** reported in ***[2021 KHC 3242 : 2021 KHC OnLine 3242 : 2021 (1) KLT OnLine 1167]***, wherein in paragraph Nos.17 and 18, this Court observed that, *the mahazar is a document, which is prepared contemporaneously with the search and seizure. It is prepared at the spot. What the officer sees at the spot will be recorded in the mahazar. It is direct evidence. The preparation of the spot mahazar, the First Information Statement and the statements of witnesses, in printed formats by filling up the blank spaces would lead to the inference that the case set up by the prosecution in this case is artificial.* The learned State Brief submitted further that, as per the evidence of PW1, there was no color change on the left hand of the accused, when it was dipped in sodium carbonate solution, though the prosecution case was that the accused inserted MO1 series on the left pocket of his pants by his left hand, after having received the same by using his right hand. This would substantiate the case of the accused that, the bribe

money was forcefully placed inside the pocket of his pants by the complainant to implicate him in this crime. Moreover, it is argued by the learned State Brief that, finally the work for engaging service provider firm for providing manpower was done by a committee headed by the District Collector and the accused being the Principal of the Kendriya Vidyalaya has no competency to award the same. Accordingly, the learned State Brief pressed for interference in the verdict impugned to record acquittal of the accused.

8. Repelling the contentions raised by the learned State Brief, the learned Special Public Prosecutor appearing for the CBI would submit that, the contention of the learned State Brief that there was no pre-trap verification is unsustainable. In this regard, the learned Special Public Prosecutor placed Ext.P18 report marked through PW3, the trap laying officer, which is suggestive of the fact that there was pre-trap verification as on 17.03.2013, acting on Ext.P7 complaint dated 17.03.2013 submitted by PW1. It is pointed out by the learned Special

Public Prosecutor further that, insofar as the evidence given by PW1, which would indicate preparation of mahazar on 15.03.2013 as stated by PW1 is concerned, the same is preceded by a sentence that, the same was on the date of trap i.e. on 18.03.2013 and his statement that he had singed in the post-trap mahazar marked as Ext.P10 on 15.03.2013, is only a slip of a tongue, which could not be given much emphasis to disbelieve the entire prosecution case, where the entire evidence of PW1, the complainant and PW2 an independent decoy witness, would support the prosecution case as to demand and acceptance of bribe by the accused.

9. The learned Special Public Prosecutor placed decision of the Apex Court reported in **[2024 KHC 6658 : 2024 (7) KHC SN 17 : 2024 KLT OnLine 2850] State of Karnataka v. Chandrasha**, with reference to paragraph Nos.13, 20 and 23, regarding application of Section 20 of the P.C. Act and the matters of consideration, when offences under Sections 7 and 13(1) (d) read with 13(2) of the P.C. Act is alleged. Paragraph

Nos.13, 20 and 23 of the above decision are as under:

13. S.7 of the Act deals with public servants accepting or attempting to accept illegal gratification other than their legal remuneration. Its essential ingredients are (i) that the person accepting the gratification should be a public servant; and (ii) that he should accept the gratification for himself, and the gratification should be 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 function, favour or disfavour to any person. (A. Subair v. State of Kerala (2009) 6 SCC 587). Insofar as S.13(1)(d) of the Act, it was amended by the Prevention of Corruption (Amendment) Act, 2018, with effect from 26th July, 2018. However, in view of S.6 of the General Clauses Act, S.13(1)(d) prior to the amendment, is applicable to the facts of the present case, as the offence was stated to have been committed on 05/08/2009. Thus, its essential ingredients are (i) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

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20. The main contention of the learned senior counsel for the respondent is that the bill was passed on 29/07/2009 and it was sent for preparation of cheque to P.W.4 on the same day itself and the cheque (Ex.P19) was also made ready on 30/07/2009 and hence, on the date of alleged trap i.e., on 05/08/2009, there was no work pending with the respondent and he did not demand or accept bribe from the complainant. However, the said cheque was not issued to the complainant and neither any intimation in this regard was sent to the school authorities, till 05/08/2009 nor was the complainant informed that the cheque was already ready. That apart, no plausible reason was adduced on the side of the respondent, as to why, it was retained in the office of the Sub Treasury without being issued to the party concerned. It is a common knowledge that when the bill was submitted to the office of Sub Treasury for sanction, only after issuance of the cheque to the concerned, the work will be treated as completed. In the instant case, no cheque was issued, and it was kept pending as on the date of trap. Therefore, the contention so made on the side of the respondent cannot be

countenanced by us.

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23. In view of the aforesaid analysis, we find that the trial Court based on the oral and documentary evidence adduced by the parties, rightly found the respondent guilty of the offences punishable under S.7 and S.13(1)(d) r/w S.13(2) of the Act and sentenced him for the same. However, the High Court by placing reliance on the decision of this Court in A. Subair's case (supra), held that since no work was pending with the respondent as on the date of trap, the ingredient to attract and complete the offences punishable under S.7, S.13(1)(d) read with S.13(2) of the Act was not met. The view so taken by the High Court is unsustainable as the decision of this Court in A. Subair's case (supra) did not support the view. It was a case where the complainant was not even examined and there were discrepancies in the evidence of the other witnesses. In the present case, we do not find such infirmities. Insofar as the reference to sub-section (3) to S.20 regarding the triviality of the gratification, the act sought or performed, and the amount demanded cannot be considered in isolation to each other. The value of gratification is to be considered in proportion

to the act to be done or not done, to forbear or to not forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. It is also not necessary that only if substantial amount is demanded, the presumption can be drawn. The overall circumstances and the evidence will also have to be looked into. S.20 would come into operation only when there is no nexus between the demand and the action performed or sought to be performed. But, when the fact of receipt of payment or an agreement to receive the gratification stands proved, there is a clear case of nexus or corroboration and the presumption itself is irrelevant. S.20 gets attracted when it is proved that the public servant has accepted or agreed to accept any gratification other than legal remuneration and in that case, presumption is that it is the motive or reward for any of the acts covered under S.7, S.11 or S.13(1)(b) of the Act. The presumption under S.20 is similar to S.118 of the Negotiable Instruments Act, 1881, where the onus is on the accused to prove that he is not guilty of the offences charged. The first two limbs under sub-sections (1) and (2) of S.13 make it clear that adequacy of consideration is irrelevant to draw

the presumption. That apart, sub-section (3) only grants a discretion to Court to decline from drawing any presumption if the amount is so trivial so that such inference of corruption is not fairly possible in the facts of the case. Therefore, it is not a rule but an exception available to the Court to exercise its discretionary power in the facts and circumstances of the case. In the present facts of the case, we are not inclined to exercise such discretion. As such, the judgment of acquittal passed by the High Court is illegal, erroneous and contrary to the materials on record.

10. Thus, the learned Special Public Prosecutor zealously submitted that as regards to demand and acceptance of bribe by the accused are concerned, the evidence available fully established the same and therefore, the Special Court rightly entered into conviction as well as sentence against the accused and the same do not require any interference.

11. In view of the rival submissions, the questions arise for consideration are:

1. Whether the Special Court is justified in

finding that the accused/appellant committed the offence punishable under Section 7 of the P.C. Act, 1988?

2. Whether the Special Court is justified in finding that the accused/appellant committed the offence punishable under Section 13(2) read with 13(1)(d) of the P.C. Act, 1988?

3. Whether the verdict of the Special Court would require interference?

4. Order to be passed?

12. Point Nos.1 and 2:- In order to address these questions, it is necessary to evaluate the evidence, in this case. Insofar as the demand and acceptance of bribe by the accused, as alleged by the prosecution is concerned, the prosecution has given heavy reliance on the evidence of PW1, the complainant and PW2, the independent decoy witness, who accompanied PW1 at the time of trap. PW1 deposed that, he was the Honorary Secretary of Kannur District Labour Welfare Co-operative Society (hereinafter referred as the Society). He deposed further that, on the basis of an advertisement dated 16.01.2013 in the newspaper on 15.02.2013, PW1 (Kunhikannan), in the capacity as Honorary Secretary of the Society, submitted

Ext.P1 quotation for supplying contract labourers for cleaning, gardening, security etc., in the Kendriya Vidyalaya, Payyannoor, where the accused was the principal. PW1, on getting communication, appeared before the accused at his office on 16.02.2003 for witnessing opening of the quotations. Quotations, three in numbers, were opened and the one submitted by PW1, for and on behalf of the Society, became the lowest (L1) and the same was accepted. After opening the quotations, Ext.P5 comparative statement was prepared at the office of the accused and PW1 was instructed to submit agreement for service contract as part of completion of the process. On 15.03.2013, PW1 submitted Ext.P6, agreement for service contract, before the accused. When PW1 submitted Ext.P6, agreement, accused demanded him to give Rs.10,000/- as bribe and demanded to bring the money on 18.03.2013. PW1 was not inclined to give bribe as demanded by the accused. He decided to lodge a complaint with the CBI. Then he submitted Ext.P7, complaint, to the Inspector of Police, CBI at the PWD Rest

House, Payyannur on 17.03.2013. On the basis of Ext.P7 complaint, PW3 registered Ext.P19, FIR. Evidence of PW1 and PW3 proved the above mentioned facts.

13. Apart from that, PW2, who accompanied PW1 also given evidence that he accompanied PW1 to the room of the accused on the date of trap and after his arrival, the accused demanded the amount and accepted the same. Both PW1 and PW2 identified MO1 series as the currency notes, so demanded and accepted by the accused and subsequently recovered from the possession of the accused. Both of them supported Ext.P8 and P10, the pre-trap as well as post-trap mahazars, apart from the evidence of PW3, who is none other than the trap laying officer.

14. Thus, the evidence forthcoming from PW1, PW2, PW3 and PW10 is that, after conclusion of the entrustment mahazar (Ext.P8) at 6.20 pm the trap team proceeded to Kendriya Vidyalaya, Payyannur. PW2 (K.V. Ramdas) and PW1 (Kunhikannan) went together on a motor bike. All of them reached there around 7.30 PM. PW1 and PW2 went

inside the campus and others positioned in and around the campus. Around 7.30 p.m, the accused came to his quarters in a car. When he reached the quarters, the accused contacted PW1 on mobile phone and instructed him to reach his office. As planned earlier, PW1 and PW2 entered into the office room of the accused. The accused requested them to be seated on the chairs placed in front of him. PW1 requested the accused to get the agreement signed by him. The accused handed over a format of bid (Ext.P9) to PW1, who filled it up. When PW1 submitted the format of bid (Ext.P9) the accused asked if he had brought the amount demanded by him. At that time, PW1 handed over MO1 series currency notes to the accused. Accused received MO1 series currency notes with his right hand and put into the left pocket of his pants with the aid of his left hand. As planned, PW2 went out and informed the CBI officials regarding these aspects. Immediately the CBI officers led by PW3 rushed to the office room of the accused and he was apprehended. As instructed by the CBI officials, when the accused dipped his right hand

fingers in the Sodium Carbonate solution prepared there, the same showed pink colour change. When asked about the money, the accused pointed to his pants' left pocket. The left hand fingers of the accused were also dipped, as per instruction, in another Sodium Carbonate solution. In that process there was no apparent change in the colour of the liquid. The accused took out MO1 series currency notes from his pocket. CBI officials recovered MO1 series currency notes and ascertained that the money treated with Phenolphthalein during the pre-trap proceedings were the notes recovered from the possession of the accused. The CBI officials instructed an employee of the Kendriya Vidyalaya to bring a dhoty and they recovered the pants worn by the accused. When the left pocket region of the pants worn by the accused was also subjected to Phenolphthalein test, the solution turned pink in colour. CBI officials prepared Ext.P10, recovery mahazar, at the place of occurrence. MO1 series currency notes were secured by PW3. PW3 formally arrested the accused vide Ext.P12 memo. PW3 prepared Ext.P15, rough

sketch. The specimen seals used for sealing the material objects were taken on Ext.P6. PW3 conducted search at the office of the accused and seized Ext.P13 file as per Ext.P14 search list. PW3 conducted search in the residence of the accused vide Ext.P17 list.

15. PW12, Sri. Rajkumar Parothil, proved the Customer Application form (Ext.P33) submitted by PW1 and the ID proof attached to it. He also proved the CDR (Ext.P34 series), showing the call details of the number allotted to PW1 and the certificate under Section 65B of the Evidence Act. The CDR in respect of the mobile number (9447730811) used by the accused and the Customer Application form were marked as Exts.P25 series and P26 through Sri. A.R. Mohanan (PW6), Alternate Nodal Officer of BSNL. The CDRs in respect of the mobile phones (Ext.P34 and Ext.P26) used by the accused and PW1 show that around 16.32 hours on 18.03.2013, there was an outgoing call from the mobile phone used by the accused to the mobile phone used by PW1 lasting for 49 seconds. Exts.P34 and P26 further show that around 19.37

hours there was an outgoing call from the mobile phone used by the accused to the mobile phone used by PW1, which lasted for 15 seconds.

16. PW14, Sri. Avinash Dikshit, the Commissioner of Kendriya Vidyalaya Sangathan, the competent authority to remove the accused from the service, issued Ext.P40, sanction order, after perusing the relevant records and applying his mind and after fully and carefully examining the materials with a finding that *prima facie* there are materials to prosecute the accused in the court of law for the offences punishable under Sections 7 and 13 (2) read with 13(1)(d) of the PC Act. Ext.P40, sanction order, speaks for itself and it is sufficiently clear to indicate that the sanctioning authority had applied its mind to the relevant materials and granted sanction for prosecuting the accused. In fact, no challenge raised disputing the insufficiency of sanction.

17. In the evidence of PW13, Devaraj, it has been made out that the material objects (MOs 2 to 6), were sent for chemical examination to the Central Forensic

Science Lab. Smt. Deepthi Bhargava, Senior Scientific Officer, and Assistant Chemical Examiner to the Government of India received four sealed glass bottles and a sealed packet labeled 'A' to 'E' and subjected them for chemical examination. The report dated 11.06.2013 prepared by Smt. Deepthi Bhargava, admitted in evidence as Ext.P38 under Section 293 Cr.P.C, shows that the exhibits noted therein as 'A' to 'E' gave positive tests for the presence of Phenolphthalein.

18. Apart from PW12, the Security Guard of Kendriya Vidyalaya during the relevant time was also examined as PW10. According to him, he was on duty at the Kendriya Vidyalaya at 6.00 p.m. on 18.03.2013 to 7.00 p.m. on 19.03.2023 and the accused was the principal of the school and he identified the accused at the dock. He testified that, on 18.03.2013, in between 06.45 pm to 07.00 pm, two persons came to school and out of which, one person was PW1, Kunhikannan and they waited outside. When PW10 informed them that the principal was not at his quarters, they waited till the arrival of the

accused. At 7.00 a.m, the Principal reached the office and entrusted the key of the office to PW10 and he opened the office as instructed by the accused. When the accused entered the room, PW1 along with other person entered into room of the Principal and later three-four persons reached school and when they attempted to enter the office of the principal he restrained them. Thereafter, they informed him that they were CBI officials and accordingly he was pushed back and they entered into the office room. Thus, the evidence of the security guard also would support prosecution case, as to arrival of PW1 and PW2 at the office of the accused on the date of trap.

19. As far as the anomaly pointed out by the learned State Brief that, there was no proper pre-trap enquiry is concerned, Ext.P18 proved through PW3 would cut the root of the said argument. As far as preparation of Ext.P8 and P10 mahazars by way of computer print is concerned, it is submitted by the learned Public Prosecutor that, the same is usual practice of CBI, since they were equipped in such a way. Since the learned

counsel for the accused, who conducted the case before the Special Court was fully aware of this procedure, no challenge was raised before the Special Court in this regard and no question was asked to the Investigating Officer or the trap laying officer, who prepared Exts.P8 and P10, for clarifying the same. Therefore, this challenge is of no consequence. I do agree with the arguments of the learned Public Prosecutor in this regard.

20. Coming to the anomaly pointed out in the evidence of PW1 regarding preparation of Ext.P10 mahazar on 15.03.2013, on reading the entire evidence of PW1, he deposed about the pre-trap proceedings, the demand and acceptance of bribe money as MO1 series by the accused and the preparation of post-trap mahazar referring the date 18.03.2013 with certainty. In this connection, it is necessary to be borne in mind that, while evaluating the evidence of a witness, the evidence as a whole is to be read and assessed. Segregating stray sentences or minor mistakes to disbelieve the evidence in toto is not permissible under law. Thus, in the instant case,

a stray sentence of PW1 during cross-examination by stating the date as 15.03.2013, which was not clarified during re-examination, the same by itself is not a reason to disbelieve the case of prosecution, to hold that the mahazar was prepared on 15.03.2013.

21. In this case, it is pointed out by the learned State Brief that, as per the evidence of PW1, there was no color change on the left hand of the accused, when it was dipped in sodium carbonate solution, though the prosecution case was that the accused inserted MO1 series on the left pocket of his pants by his left hand, after having received the same by using his right hand. In fact, the same is of no serious consequence, where the substantive evidence of PW1 and PW2 would suggest that the accused accepted the bribe money and placed in the pocket of his pants and the pocket also turned pink color when the same has been dipped in sodium carbonate solution as part of phenolphthalein test. Even though, it is argued by the learned State Brief for the accused further that, in this matter, the complainant forcefully placed the

bribe money in the pocket of the accused, the said suggestion could not be believed, as the accused reached the school at odd hours for the purpose of accepting the bribe money, as deposed by PW1. As far as the argument of the learned State Brief that, the work for engaging service provider firm for providing manpower is done by a committee headed by the District Collector and the accused being the Principal of the Kendriya Vidyalaya is incompetent to award the same is concerned, in fact, from the evidence available, it could be gathered that the file has to be routed through the accused and for which the accused demanded and accepted bribe. Therefore, this contention also would not yield.

22. 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.

23. In this connection, it is relevant to refer a 5 Bench decision of the Apex Court in [AIR 2023 SC 330], Neeraj Dutta v. 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, 1988 and in paragraph No.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.”

24. Thus, the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act, 1988, is extracted above. Regarding the mode of proof of demand of bribe, if there is an offer to pay bribe 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.

25. 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."*

26. Point Nos.3 and 4:- Thus, it has to be held that the prosecution successfully established that the accused committed offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act, 1988. Therefore, the prosecution case is proved beyond reasonable doubt. Thus, the conviction imposed by the Special Court does not require any interference. Considering the facts and circumstances of this case, I am of the view that some leniency in the matter of sentence can be considered.

27. In the result, this appeal stands allowed in part. The conviction imposed by the Special Judge is confirmed. In the interest of justice, I am inclined to modify the sentence. The sentence imposed against the accused for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act is modified as under:

i. The accused is sentenced to undergo rigorous imprisonment for six months in and to pay fine of Rs.10,000/-, in default to undergo Simple Imprisonment for three months, for the offence under Section 7 of the P.C. Act, 1988.

ii. The accused is further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.15,000/- in default to undergo simple imprisonment for three months, for the offence punishable under Section 13(2) read with 13 (1)(d) of the P.C. Act, 1988.

iii. The substantive sentence shall run concurrently and the default sentence shall run separately, after the substantive sentence.

iv. The period of detention undergone by the accused in this case will be set off against the substantive sentence of imprisonment.

28. The order suspending sentence and granting bail to the accused stands vacated, with direction to the accused to appear before the Special Court, forthwith, to undergo the modified sentence, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith, for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

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