2025:KER:71435

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 24TH DAY OF SEPTEMBER 2025 / 2ND ASWINA, 1947
CRL.A NO. 566 OF 2010
AGAINST THE ORDER/JUDGMENT DATED 23.02.2010 IN CC NO.120 OF 2008 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM

APPELLANT/ACCUSED:

P.A.NUJUM
(FORMER SECRETARY SPECIAL GRADE, GRAMA PANCHAYATH, ERUMELY) SUJI NIVAS, ANCHAL, KOLLAM.

BY ADVS.
SHRI.SANTHOSH PETER (MAMALAYIL)
SRI.P.N.ANOOP
SRI.K.C.SALMAN
SMT.SMITHA PILLAI
SMT.CHITHRA PRABHA
SRI.M.S.SANDEEP SUDHAKARAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,, HIGH COURT OF KERALA, ERANKULAM,, (DY.S.P.,V.A.C.B.KOTTAYAM)

BY ADV PUBLIC PROSECUTOR

OTHER PRESENT:

SPL PP RAJESH.A VACB,SRPP VACB REKHA.S

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 12.09.2025, THE COURT ON 24.09.2025 DELIVERED THE FOLLOWING:

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'CR'

A. BADHARUDEEN, J

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Crl.Appeal No. 566 of 2010

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Dated 24th day of September 2025

JUDGMENT

This Criminal Appeal has been filed under Section 374 of the Code of Criminal Procedure (for short, 'CrPC') challenging the judgment dated 23.02.2010 in C.C. No. 120 of 2008 on the files of the Enquiry Commissioner and Special Judge, Kottayam. The respondent is the State of Kerala, represented by the Vigilance and Anti-Corruption Bureau (VACB).

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2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor appearing for the VACB in detail. Perused the verdict under challenge as well as the records of the special court in detail.

3. The precise allegation of the prosecution is that, in continuation of a demand for illegal gratification made by the appellant/accused on 30.12.2001 and 03.01.2003, the accused who was then serving as Secretary (Special Grade) of the Erumeli Grama Panchayat accepted a sum of ₹6,000/- as illegal gratification from the complainant (examined as PW3) at 4:45 p.m. on 20.01.2003. This forms the basis of the prosecution case that the accused committed offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988').

Following the registration of the FIR on 20.01.2003, the investigation was completed, and the final report was filed before the learned Special Judge. The learned Special Judge took cognizance of the offences and proceeded with the trial. During trial, PWs1 to 8 were examined, Exhibits P1 to P13 and MOs 1 to 8 were marked on the side of the prosecution. On the side of the defence, DWs1 to 9 were examined, and Exhibits D1 to D10 were marked.

4. On anxious consideration of the evidence in detail, the learned Special Judge found that the accused had committed offences punishable under Sections 7 as well as 13(1)(d) r/w 13(2) of the PC Act, 1988, and accordingly he was convicted for the said offences and the accused was sentenced as under:-

"The accused was sentenced to undergo rigorous imprisonment for two years and fine of Rs.25,000/- (rupees twenty five thousand only) in default to undergo simple imprisonment for six months and convicted under section 13(2) r/w 13(1)(d) of the PC Act, 1988 and sentenced to undergo rigorous imprisonment for three years and fine of Rs.25,000/- (rupees twenty five thousand only) in default to undergo simple imprisonment for six months. The sentences shall run concurrently. The accused is entitled to get set off under Section 428 of CrPC from 20.01.2003 till 27.01.2003. MO1 series shall be given to PW3 and MOs2 to 8 shall be destroyed after the appeal period or appeal is over."

5. At the time of hearing, the learned counsel for the appellant/accused pointed out certain flaws in the evidence, and pointed out the anomalies in the prosecution case from the very beginning. According to the learned counsel, with respect to the sanction order marked as Ext.P5, the author of the said document was not examined. Instead, an Under Secretary in the Vigilance Department, who was familiar with the signature of the author of Ext.P5, was examined. It was further submitted that a perusal of Ext.P5, the same does not reflect the

essential elements indicating proper application of mind while granting sanction. Therefore, it was contended that there was no valid or proper sanction to prosecute the appellant/accused, and on that ground alone, the conviction and sentence are liable to be set aside. He also submitted that the prosecution case in toto is meddled with dubious circumstances which would give benefit of doubt to the appellant/accused.

6. Repelling this contention the learned Special Public Prosecutor would submit that examination of the author of the person who issued sanction is not at all necessary and in order to buttress this contention she placed reliance on the decision of the Apex Court reported in ***(2009) 15 SCC 72 State of Madhya Pradesh v. Jiyalal*** wherein paragraph 8 the Apex Court held as under:-

> *"8. It was also not justified for the learned Single Judge to hold that the District Magistrate who had passed the sanction order should have been subsequently examined as a witness by the prosecution in order to prove the same. The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a bona fide manner. It was of course open to the respondent to question the genuineness or validity of the sanction order before the learned Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution."*

Similarly the decision of this Court reported in ***2023 (4) KHC 530 Ravinathan L v. State of Kerala*** holding the same view also has been placed in this regard.

7. Apart from disputing the sanction, the learned counsel for the appellant/accused further argued that in this case, notice was given to the wife of the complainant (PW3) to retrieve sewing machines and materials supplied in the name of Pulari Swasraya Sangham. According to the learned counsel for the appellant/accused under the pretext of paying a portion the said amount of ₹6,000/-, PW3 reached the office of

the Secretary and entrusted the money. The Secretary accepted the amount and directed the concerned clerk to prepare a receipt. In the meantime, the accused was caught in a vigilance trap. The learned counsel also submitted that the documents produced as Exts.D1 to D10 through DWs 1 to 9 would substantiate the defence case along these lines. Therefore, it was contended that the story of the prosecution is not believable.

8. The learned counsel for the appellant/accused placed decision of the Apex Court reported in **2023 Supreme (SC) 370 Soundarajan v. State Rep.by the Inspector of Police vigilance anticorruption Dindigaul** and also the decision of this Court reported in ***1966 Supreme (Ker) 309 Lukose v. State of Kerala*** wherein paragraph 6 it was held as under:-

"6. Demand by the accused for the bribe is an essential ingredient of the offence and that has an important part to play in ascertaining whether the trap laid is legitimate or illegitimate. "There are two kinds of traps, "a legitimate" trap where the offence has already been born and is in its course, and an "illegitimate trap", where the offence has not yet been born and a temptation is offered to see whether an offence would be committed, succumbing to it, or not. Thus, where the bribe has already been demanded from a man, and the man goes out offering to bring the money, but goes to the police and the Magistrate, and brings them to witness the payment, it will be a "legitimate trap", wholly laudable and admirable, and adopted in every civilized country without the least criticism by any honest man. But where a man has not demanded a bribe and is only suspected to be in the habit of taking bribes, and he is tempted with a bribe, just to see whether he would accept it or not and, to trap him, if he accepts it, it will be an illegitimate trap and, unless authorised by an Act of Parliament it will be an offence on the part of the persons taking part in the trap who will all be 'accomplices' whose evidence will have to be corroborated by untainted evidence to a smaller or larger extent as the case may be before a conviction can be had under a rule of court which has ripened into a rule of law."

9. Similarly another decision of the Apex Court reported in ***2009 (3) SCC 779 C M Girish Babu v. CBI Cochin, High Court of***

Kerala wherein paragraphs 14, 15 and 20 the Apex Court held as under:-

> *"14. The fact remains that the prosecution established through evidence of PW-12 and PW-13 and Exhibit P9-post trap mahazar that MO IV series tainted currency notes were recovered from the pocket of the appellant. A question then arises for consideration is that whether the recovery of the tainted money itself is sufficient to convict the appellant under Section 7 of the said Act?*
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> *15. The crucial question would be whether the appellant had demanded any amount as gratification to show any official favour and whether the said amount was paid by PW-10 and received by the appellant as consideration for showing such official favour. The only evidence available in this regard is that this regard is that of PW-10 who did not support the case of the prosecution. The appellant at the earliest point of time explained that it was not the bribe amount received by him but the same was given to him by PW-10, saying that it was towards repayment of loan taken by his Manager-PW2 from the Accused no. 1. This is evident from the suggestion put to PW-2 even before PW-10 was examined. Similar suggestion was put to the investigating officer that he had not recorded the version given by the appellant correctly in the post trap mahazar-Exhibit-P9 and no proper opportunity was given to explain the sequence of events.*
>
> *20. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of*

the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

"It is well established that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence of proof his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4 under the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (See Jhangan v. State 1966 3 SCR736)(Emphasis supplied)"

10. Another decision of the Apex Court reported in ***1954 Supreme (SC) 157 Ramjanam Singh v. State of Bihar*** wherein paragraph 39 the Apex Court held as under:-

"39. Now we are dealing here with a case in which the High Court has interfered with an acquittal. The law about this has been laid down repeatedly and it is needless to say that no modification of

> *what was said in* ***Narayan Ittiravi v. State of Travancore-Cochin, A I. R. 1953 S C 478 at p. 484 (b), Wilayat Khan v. U.P. State, A. I. R. 1953 S C 122(C), Surajpal Singh v. The State, A. I. R. 1952 S C*** *52, and* ***Sheo Swarup v. King-Emperor, AIR 1934 P C. 227 (2) (E)*** *is intended here. But the presumption of innocence still remains and the fact that one Court has doubted or disbelieved the evidence strengthens the hands of the accused. It behoves the High Court in such cases to furnish strong reasons why the benefit of the doubt should not go where it has already been placed in the lower Court."*

11. On appraisal of the rival contentions, the following questions arise for consideration.

1. Whether the trial court rightly entered into the conviction on the finding that appellant/accused committed offence punishable under Section 7 of the PC Act, 1988?
2. Whether the trial court rightly entered into the conviction on the finding that appellant/accused committed offence

punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988?

3. Whether the verdict under challenge would require interference?

4. The order to be passed?

Point Nos. 1 to 5

12. To address the above questions, it is necessary to evaluate the evidence. PW2 examined in this case is the person who accompanied the complainant (PW3) on 16.12.2002 and on 30.12.2002. He deposed that his wife was the Vice President of Pulari Swasraya Sangham. He deposed that on 27/12/2002, he along with PW3 went to see the Secretary upon receiving a letter dated 16/12/2002. However, the Secretary was on leave that day. On 30/12/2002, they again went to see the Secretary and he

stood outside the Secretary's room. PW3 went inside, and he overheard the conversation between the Secretary and PW3. PW2 stated that the Secretary told PW3 that the articles supplied to the stitching unit were to be taken back since the unit was not functioning, as per the decision of the Panchayat Committee. PW3 replied that the unit was functioning. The Secretary replied that he did not want to know the same and he insisted that the articles were to be taken back. Then PW3 requested the materials might not be taken back. The Secretary then said that he could either do it or not do it. PW3 asked what they had to do. The Secretary told him that if Rs. 6,000/- was given, the problem would be resolved. PW3 deposed that the President could not take a decision by herself. The Secretary then stated that the money had to be paid on 03/01/2003, failing which the articles would be taken back. PW2 identified the

accused in the dock as the Secretary who made these statements. During cross-examination of PW2 the improbability of his presence with PW3 was attempted to be extracted, but this attempt failed. In fact nothing elicited during cross-examination of PW2 to disbelieve him.

13. PW3 examined in this case is the complainant. He deposed in support of the prosecution case. He supported the version of PW2. According to him, he lodged Ext.P3 FIS and produced two notes of ₹1,000 denomination and eight notes of ₹500 denomination before the Deputy Superintendent of Police (for short, 'Dy.SP' hereafter) and the Dy.SP marked the notes with the letter 'V'. He identified those notes as M.O.1 series. He further deposed about the summoning of two gazetted officers by the Dy.SP and their presence at the office of the Dy.SP. He also deposed that DySP had given the details regarding the

trap proceedings to him and phenolphthalein demonstration test on a sample note and its pink color change. PW3 testified further that MO1 series notes also smeared with phenolphthalein and then the notes were placed in the pocket of the shirt of PW3 by a police officer after ensuring nothing else otherwise was in the pocket. Thereafter, they proceeded to the Erumeli Grama Panchayat office and arrived there at around 4:40 p.m. One of the officers, named Majeed, stood about 20 meters away from the Panchayat office when PW3 entered into the room of the accused/Secretary. The Secretary asked PW3 whether he had brought the money, to which PW3 replied affirmatively. The Secretary then came out of his room, walked through the hall towards the road, asking PW3 to accompany him. Upon reaching the corner of the old Panchayat office, the accused asked PW3 to hand over the

money. Then PW3 gave the money to the right hand of the accused and the accused accepted the notes and placed the same in the right pocket of his pants. Thereafter, the Secretary walked towards the Erumeli-Ranni road on the western side. As prearranged, PW3 signaled the Dy.SP. and Sri.Majeed. Then the Dy.SP and other policemen intercepted the accused. The Dy. SP showed his identity card to the accused and brought him back to the Panchayat office. The accused appeared bewildered, stating that he would commit suicide if he would not be saved. The Dy.SP asked the accused whether he had obtained any illegal gratification, initially, the accused was silent. The Dy.SP then questioned PW3, who narrated the actual events. The Dy.SP questioned the accused again, and the accused responded. Thereafter,

phenolphthalein tests were conducted, during which Officer Majeed took notes taken from the pocket of the accused.

14. Supporting the evidence of PWs 2 and 3, PW8, the Dy.S.P. also given evidence. He deposed about the procedures done at the Vigilance office. He testified that PW3 produced M.O.1 series notes and the receipt of the same by him by marking 'V' on the notes, smearing phenolphthalein powder on it through a policeman, the experiment with phenolphthalein powder and entrustment of the notes back to PW3 and directed to him give the notes to the accused on demand. He also corroborated the version of PW3 regarding the things that happened at the panchayat office and the recovery of M.O.1 series notes on which phenolphthalein powder was smeared at the Vigilance office. He further said that after reaching the panchayat office the

fingers of the government officers and himself were dipped in sodium carbonate solution, that there was no colour change and that the said solution was collected in M.O.3 bottle. He further said that when the fingers on the right hand of the accused was dipped in sodium carbonate solution in another bottle the solution turned pink, that the solution was collected in a bottle, it was packed and sealed and a label containing the signatures of the witnesses and himself were marked on it. He identified the bottle as M.O.4. CW2 picked the notes from the pocket of the pants of the accused. When the corner portions of MO1 series notes were dipped in sodium carbonate solution, there was pink color change. The said solution was taken in MO5 bottle. There was no color change when the left hand fingers of the accused were dipped in sodium carbonate solution. The said solution was collected in MO6

bottle. The accused was allowed to change his pants. When the sodium carbonate solution was spilled on the portion of the pocket of the pants he was wearing there was pink colour change. The solution collected from the pants were taken in MO7 bottle. He identified MO8 as pants worn by the accused. He testified that Ext.P1 mahazar prepared in this regard. Later the accused was arrested at 8:10 P.M.

15. Apart from the evidence of PWs2,3 and 8, prosecution examined PW1 also. PW1, examined in this case is the decoy witness. He deposed that he was Senior Superintendent in Kottayam collectorate in 2003 and he retired as Tahsildar in the year 2005. According to him on 20/01/2003 at about 1:15 P.M. he had gone to Kottayam Vigilance office as per the direction of the District Collector. He corroborated the version of PWs3 & 8 regarding the pre and post

trap proceedings. He identified M.O.1 series notes as the bribe money recovered from the accused, who was at the dock.

16. On scrutiny of the evidence tendered by PWs1, 2, 3 and 8, even though they were subjected to searching cross-examination, nothing extracted to disbelieve them. In this case acceptance of Rs.6,000/- marked as MO1 series notes by the accused and its recovery from him are not disputed by the accused since the contention of the accused is that PW3 gave the amount to the accused towards revenue recovery amount and that the accused was falsely implicated by PW3 since he had enmity towards the accused.

17. In this case the case of the appellant/accused is that the money alleged to be recovered from the possession of appellant/accused is the amount he accepted as part of the money to be

recovered under the revenue recovery proceedings due from Pulari Swasraya Sangham. In order to substantiate this contention the appellant/accused examined DWs1 to 9 and marked Exts. D1 to D10. DW1 deposed that he was the Secretary of Erumeli Grama Panchayat from 14/01/2005 to 03/05/2005 and from 31/07/2006 to 19/05/2008, and he gave certified copies of the documents in the panchayat office. He further said that Exts.D1, D3 & D5 to D10 were the certified copies given by him and these were issued after verifying the original documents in the panchayat office after attesting the same. The accused summoned for the original of some of the documents from the panchayat office. But reply was given that some of the documents could not be traced out. Ext.D4 is the copy of decision No.16 dated 21/12/2000, Ext.D5 is the copy of decision No.14 dated

08/01/2003, Ext D6 is the copy of decision No.15 dated 08/01/2003 & Ext.D7 is the copy of decision No. 3 dated 22/04/2003 of the Grama Panchayat committee. Regarding the veracity of these documents, it is specifically pointed out by the learned Public Prosecutor that these documents were falsely created under the influence of the accused. It is also pointed out that some of the documents are not properly attested. She also pointed out that from the side of the prosecution also photostat copy of the pages in the minutes book was produced and marked as Ext.P8 and the same also an incomplete one. This has been pointed out to contend that the office files and proceedings in the office of the accused were not properly maintained.

18. DW2 deposed that he was the U.D. Clerk in Erumeli Grama Panchayath and on 20/01/2003 as directed by the Secretary he prepared receipt for Rs.6,000/- in the name of President, Pulari Swasraya Sangham and Ext.D10 is the copy of the said receipt. He further testified that at about 4:40 P.M. on that day the Secretary came nearby the table of Junior Superintendent, that Saji (PW3) was also along with him, that the Secretary asked him to write receipt in accordance with the minutes of the last panchayat committee, that the Secretary went outside the office room, that he wrote the receipt, when he looked for Saji to give the receipt, he was not there, he informed the matter to the Junior Superintendent and he left the office since his child was not well. He further said that only on the next day he knew about the arrest of the accused, that he informed about the writing of

the receipt to N D Mathew, he showed the receipt to the Superintendent Joseph who was in charge of the office and as said by Joseph he noted the circumstances in which the receipt was written and Joseph wrote on the receipt as "seen" and initialled it. The said Joseph is examined as DW9. He corroborated the version of DW2 regarding the circumstances in which the receipt was written. The original receipt book was produced from the panchayat later as the accused summoned it. It contains the entries stated by DW2. Ext.D7 is copy of decision No.3 dated 22/04/2003 in which would show that the Secretary was empowered to get back Rs.6,000/- in the receipt dated 20/01/2003 which was taken by Kottayam Vigilance and to remit it in the panchayat fund.

19. On the defence side DW5 was examined to show that there was enmity or ill will for PW3 towards the accused. DW5 deposed that he was conducting a hotel nearby Erumeli bus stand during 2002-2003, that the accused was residing in the 3rd floor of a building nearby Erumeli temple, that he used to serve the accused food in his room, that in January 2003 there was oral altercation between the accused and PW3 and he witnessed it when he went to serve the food to the accused. He further that PW3 asked the accused to remove the steps taken against the telephone booth, that the accused replied that he couldn't do it, that the booth had to be removed and that attachment steps would be taken and that PW3 came outside the room with great emotion and he uttered that he would show the accused i.e, he would do something against the accused. According to him, it was

on 14/01/2003 that the incident happened and later he knew that the accused was arrested on 20.01.2003.

20. DW7 given evidence that he was the Erumeli Grama Panchayath committee member, that on 20/01/2003 on 5.P.M. the accused was brought to the panchayat office room by the Dy.S.P. and he went there. To a question whether there was change of behaviour to the accused at that time, he replied negatively and added that the accused was seen as usual. DW9 also gave the same version. DWs7 & 9 also said that the accused represented to the Dy.S.P. that he got Rs.6,000/- towards R.R. amount and he asked to write receipt for the same and that the Dy.S.P. replied that they would enquire about it and the accused could say the fact before the court. Learned counsel for the accused blamed the Dy.S.P. for not conducting a proper investigation.

It is argued that if the Dy.S.P. conducted a proper investigation and seized the relevant documents in respect of the recovery of the amount from the Swasraya Sangham and the action taken to remove the telephone booth, it would have been found that the accused accepted the amount towards the R.R. proceedings.

21. DW8 deposed that as PW3 approached him and he asked PW3 to remit Rs.6,000/- and that he told PW3 that STD booth could not be transferred in his name.

22. Ext.D6 is another decision dated 08/01/2003 of the panchayat committee. It is stated in that one Murali who conducted telephone booth in private bus stand, transferred the same to another person unauthorisedly in violation of the agreement terms, that there were arrears and so the Secretary was empowered to take legal steps

against him. Ext.D1 is the copy of the letter dated 10/01/2003 notice alleged to be sent to C V Muraleedharan informing that he transferred the telephone booth unauthorisedly, that he has to submit explanation within 3 days and that telephone booth would be removed. Ext.D9 is copy of the reply alleged to be given by Muraleedharan on 22/05/2003. DW8 deposed that PW3 asked him to transfer the STD booth in his name and that DW8 replied to him that it would not be possible as there was already a decision of the panchayat committee to remove that booth.

23. The learned counsel for the accused submitted that these two proceedings taken against PW3 and his wife, developed enmity on the part of PW3 towards the accused and proceeded to lay a false trap against the accused by giving Rs.6,000/- as the portion of the amount

as per the R.R. demand. The counsel cited the ruling reported in ***2008 Cri.L.J (NOC) 859 (State of Madhya Pradesh V. Govind das)*** and argued that inference can be drawn that on account of enmity that the accused has been falsely implicated. The counsel also cited the ruling reported in ***2009 (2) SCC (Cri) 1 (C.M. Girish Babu V. CBI)*** and argued that mere recovery of tainted money itself is not enough in the absence of evidence to prove payment of bribe or to show that the accused voluntarily accepted the bribe knowing the same to be bribe, to convict the accused.

24. 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.

25. 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."

26. 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 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.

27. 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."

28. First of all, I shall address the question as to whether the non-examination of the sanctioning authority who issued Ext. P5 is a sufficient reason to discard the prosecution evidence in toto. In this connection the decision placed by the learned Public Prosecutor in ***Jiyalal's*** case (supra) is relevant. The ratio therein is that when the sanction order was clearly passed in discharge of routine official functions and hence there would be a presumption that the same was done in a *bona fide* manner. Further, though it was open to the accused to question the genuineness or validity of the sanction order, there was no requirement for the prosecution to examine the sanctioning authority as a witness. Same principle has been reiterated by this Court

in ***Ravinathan L's*** case (supra). Thus, the law is well settled that when the sanction order indicates that the same was issued in the discharge of routine official functions and shows that the sanctioning authority applied its mind after examining the entire prosecution records, the mere non-examination of the person who authored the sanction order is not fatal to the prosecution.

29. Applying the same ratio, when Ext.P5 the sanction order herein is perused, it is evident that the sanctioning authority applied its mind and considered the prosecution records, satisfying itself that the accused should be prosecuted for the offences alleged. In view of the above discussion, the challenge against the prosecution sanction must necessarily fail and is accordingly dispelled.

30. It is pointed out by the learned counsel for the appellant/accused that the evidence of PW3 is flooded with improvements which would not appear in his previous statement. Mainly it is contended that PW3 deposed that the appellant/accused stated to him that the sewing machines and other articles which would come to the tune of Rs.30,000/-, if he would give Rs.2000/- for Rs.10,000/- each and thus a total sum of Rs.6,000/- the accused would solve the problem. This version of PW3 does not appear in his previous statement. However, this alone is not sufficient to discard the evidence of PW3, as his consistent testimony is that the accused demanded and accepted Rs. 6,000/- to avoid the return of the sewing machines and other articles provided to Pulari Swasraya Sangham.

31. Another anomaly pointed out by the learned counsel for the appellant/accused is that PW3 and PW5 deposed that there was no half door in the room of the Secretary. PW2 stated that there was a half door, while PW6 also testified that there was no half door. It is true that the evidence of PW2, PW3, PW5, and PW6 regarding the presence of a half door in front of the appellant/accused's room is not highly relevant to disbelieving the prosecution's case, particularly when their testimonies were rendered in relation to an incident registered on 07.12.2009, after about seven years.

32. In this case, the prosecution case is supported by the evidence of PWs 2, 3, and 8, which would establish that the accused demanded Rs. 6,000/- in order to resolve the issue regarding the return of the sewing machines and other articles, and subsequently accepted the said

amount. However, through the evidence of DWs 1 to 9 and Exts. D1 to D10, the accused attempted to establish that a RR notice was issued against the wife of PW3 for the return of the aforesaid articles or their value, in accordance with the decision of the Panchayat Committee. Accordingly, PW3 went to the office of the accused with Rs. 6,000/-, being a part of the amount demanded, and handed over the same to the Secretary. The case of the accused is that he had instructed the concerned clerk to issue a receipt for the amount, and evidence has been adduced by the defence to show that such a receipt was indeed prepared.

33. While evaluating the evidence tendered by the accused as discussed hereinabove it could be seen that when the complainant (PW3) met the accused, the accused demanded the amount. When PW3 replied in the affirmative, the accused walked with PW3 towards the

road, asking him to accompany him. On reaching the corner of the old Panchayat office, the accused asked PW3 to hand over the money. PW3 then handed over the amount to the accused, who accepted the same with his right hand and placed the same in the right pocket of his shirt. Thereafter, the accused proceeded towards the Erumeli–Ranni road, where he was intercepted by the Vigilance team, and the post-trap proceedings were carried out and finalised.

34. It is necessary to evaluate the contention raised by the appellant/accused regarding the receipt of Rs. 6,000/- from PW3 on the date of the trap, which was subsequently recovered from him, as discussed hereinabove. If the case put forward by the accused that he received Rs. 6,000/- towards the amount due under the notice issued to the wife of PW3 is true, there would be no reason for the Secretary to

accept the money outside the office and proceed towards the road. There is no necessity for a higher-ranking officer in an office to personally accept payments due under various heads, as it is ordinarily the responsibility of the concerned clerk to receive such payments. If, for argument sake, the contention raised by the appellant/accused that he being the Secretary accepted the amount, then the Secretary should have immediately handed over the money to the concerned clerk. In such circumstances, there would be no necessity for the Secretary to come outside the office with the complainant and to accept the amount outside the office, and walk towards the road, where the vigilance party intercepted and apprehended him. It is true that certain records were produced, including a receipt for the said amount. It is discernible that, even the Panchayat decided to recover the amount from the vigilance

and remit the same to the office. This would go to show that the Panchayat and its officials are overstepped their authority and shown unnecessary enthusiasm to provide assistance to the accused. Preparation of the receipt for the same and subsequent decisions of the Panchayat were the result of this attempt.

35. In this case, the appellant/accused further contended that he was absent from the office on 03.01.2003, and in support of this, the Log Book of the driver was produced. On perusal of the Log Book, it appears that a correction was made to indicate the appellant/accused's absence on that day by altering the recorded time of his departure. Therefore, this too must be regarded as an attempt to save the accused from prosecution.

36. On perusal of the prosecution evidence discussed hereinabove, there is no reason to disbelieve the evidence of PWs 2, 3 and 8 supported by the other evidence to hold that the accused demanded Rs.6,000/- on 30.12.2001, 03.01.2003 and accept the same on 20.01.2003 and thereby established the necessity ingredients to prove the offence punishable under sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988.

37. In view of the above discussion, Conviction imposed by the special court is confirmed. However taking into consideration the request made by the learned counsel appellant/accused sentence can be modified.

38. In the result, appeal is allowed in part. Conviction imposed by the special court is confirmed and sentence stands modified as under:-

1. The appellant/accused is sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.15,000/- (Rupees fifteen thousand only) for the offence punishable under section 7 of the PC Act, 1988 in default of payment of fine the appellant/accused has to undergo rigorous imprisonment for a period of forty-five days.

2. The appellant/accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.20,000/- (Rupees twenty thousand only) in default of payment of fine the appellant/accused shall undergo rigorous imprisonment for a period of two months.

3. The substantive sentence shall run concurrently and the default shall run separately.

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39. All interlocutory applications stand dismissed.

40. The order suspending sentence and granting bail to the appellant/accused is cancelled and his bail bond also is cancelled. Accordingly, the appellant/accused is directed to surrender before the special court forthwith to undergo the modified sentence. If the appellant/accused 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