

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.861 OF 2013

c/w

CRIMINAL APPEAL NO.366 OF 2013

Crl. Appeal No.861 of 2013

BETWEEN:

THE STATE OF KARNATAKA BY
THE POLICE INSPECTOR,
KARNATAKA LOKAYUKTHA POLICE, DAVANGERE.

...APPELLANT

(BY SRI B S PRASAD, ADVOCATE)

AND:

SRI RAJASEKHARAIHAH K H,
AGED ABOUT 47 YEARS,
S/O KASHINATHAIAH HIEMATH,
DEPUTY DIRECTOR,
OFFICE OF THE JOINT DIRECTOR,
DISTRICT INDUSTRIES CENTRE,
DAVANAGERE - 577 602,
NOW AT: YAYYADI INDUSTRIES ESTATE,
AIRPORT ROAD, MANGALORE - 575 008.

...RESPONDENT

(BY SRI M V REVANASIDDAIAH, ADVOCATE)

THIS CRL.A IS FILED U/S.377 CR.P.C PLEADED TO GRANT
LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF
SENTENCE DATED: 26.03.2013 PASSED BY THE PRL. DIST.,
AND S.J., AND SPL. JUDGE (LOKAYUKTA COURT),
DAVANAGERE IN SPECIAL (LOK) CASE NO.6/2007 THEREBY
IMPOSING INADEQUATE SENTENCE AGAINST THE
RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 7, 13(1)(d)

R/W 13(2) OF THE PREVENTION OF CORRUPTION ACT. THE RESPONDENT/ACCUSED IS SENTENCED TO UNDERGO R.I. FOR A PERIOD OF ONE YEAR AND TO PAY FINE OF RS.20,000/- FOR COMMITTING THE OFFENCE U/S 7 AND SEC. 13(2) R/W SEC. 13(1)(d) OF PREVENTION OF CORRUPTION ACT. IN DEFAULT OF PAYMENT OF FINE, ACCUSED SHALL UNDERGO S.I. FOR FURTHER PERIOD OF SIX MONTHS.

Crl. Appeal No.366 of 2013

BETWEEN:

RAJASEKHARAIHA K H,
S/O KASHINATHAIAH HIEMATH,
AGED 47 YEARS, D.D.,
JOINT DIRECTOR OFFICE,
DISTRICT INDUSTRIES CENTRE,
YAYYADI INDUSTRIES ESTATE,
AIRPORT ROAD, MANGALORE-575008.

...APPELLANT

(BY SRI M V REVANASIDDIAIAH, ADVOCATE)

AND:

STATE BY LOKAYUKTHA POLICE,
K B EXTENSION,
DAVANGERE CITY-577002.

...RESPONDENT

(BY SRI B S PRASAD, ADVOCATE)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PLEADED TO SET ASIDE THE ORDER DATED 26.03.2013 PASSED BY THE PRL. DIST. & S.J. AND SPL. JUDGE (LOKAYUKTHA), DAVANAGERE IN SPL. (LOK) CASE NO.6/2007 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 7,13(2) R/W 13(1)(d) OF PREVENTION OF CORRUPTION ACT, 1988.THE APPELLANT/ACCUSED IS SENTENCED TO UNDERGO R.I. FOR 1 YEAR AND PAY FINE OF RS.20,000/-, IN DEFAULT TO PAY FINE, HE SHALL UNDERGO S.I. FOR FURTHER PERIOD OF 6 MONTHS FOR THE OFFENCE P/U/S 7,13(2) R/W 13(1)(d) OF PREVENTION OF CORRUPTION ACT, 1988.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 26.02.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

Criminal Appeal No. 366/2013 is filed by the appellant/accused challenging the judgment of conviction and order of sentence dated 26.03.2013 passed in Special (LOK) Case No. 6 of 2007 by the Principal District and Sessions Judge and Special Judge (Lokayukta), Davanagere (hereinafter referred to as the "trial Court").

2. For the sake of convenience and clarity, the parties are referred to in accordance with their rank before the trial Court.

3. Facts in brief are:

The Inspector of Police, Karnataka Lokayukta, Davanagere, filed a charge sheet against the accused, who was serving as Deputy Director in the office of the Joint Director, District Industries Centre, Davanagere, alleging offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The

prosecution case was that the father of CW1, A.M. Veeresh, was the owner of a taxi registered as KA-29/9347, which was hired by the District Industries Centre, Davanagere, at a monthly rent of Rs.15,000/-. Since the father of PW1 was elderly and unable to personally collect the rent cheques, PW1 was deputed to collect the payments. On 16.09.2006, PW1 visited the office of the District Industries Centre to collect the cheque for the taxi rent. It was alleged that the accused, who was serving as Deputy Director, demanded Rs.2,000/- from PW1 as illegal gratification in exchange for issuing the cheque. Following this alleged demand, PW1 filed a written complaint at the Lokayukta office, Davanagere, on 22.9.2006, which was received by PW17 and registered the case against the accused and proceeded to conduct an investigation. As part of the investigation, PW17 secured PW2 and PW3 as panch witnesses to supervise an entrustment proceeding. The procedure involved giving PW1 a bait amount of Rs.2,000/- smeared with phenolphthalein powder, with instructions to hand it over to the accused if a bribe was demanded. The police also demonstrated the reaction of phenolphthalein powder with sodium carbonate solution to show that the powder would produce a visible pink color. Subsequently, CW1 and CW2

proceeded to the office of the accused. PW1 inquired about the cheque, and the accused allegedly reiterated the demand for Rs.2,000/-. PW1 handed over the bait money, which the accused accepted and placed in the almirah near his seat. PW1 then gave a signal to PW17, following which the police, accompanied by PW3, entered the office. The accused was identified, apprehended, and a phenolphthalein test was conducted on his hands, which turned pink, confirming receipt of the bait money. The police seized the bait amount from the accused and recorded his written explanation. Recovery mahazar was prepared in the office of the accused, and relevant documents pertaining to the complainant were also seized. PW17 continued the investigation, obtained necessary sanction for prosecution, and filed the charge sheet before the trial Court.

4. The accused was produced before the trial Court on 23.09.2006 along with a remand application and was subsequently released on bail. After the charge sheet was filed, copies were furnished to the accused, and the trial proceeded. The prosecution examined 11 witnesses in support of its case, marking 30 documents and producing 14 material objects. The prosecution evidence was closed on 18.2.2010,

after which the accused was examined under Section 313 Cr.P.C. on 11.3.2010. Thereafter, arguments were heard from the Special Public Prosecutor and the defense counsel.

5. During the trial, the prosecution relied on the testimony of PW1 (the complainant), PW2 (shadow witness), PW3 (panch witness), and police officials, along with documentary evidence and phenolphthalein tests, to establish that the accused had demanded and accepted illegal gratification in his official capacity. The trial Court noted that the evidence of PW1 to PW3 was clear and convincing, demonstrating the demand and acceptance of the bribe and corroborating the recovery of the bait amount. The defense argued that the sanction for prosecution was defective, PW1 lacked locus standi, and there were discrepancies in witness accounts regarding entrustment procedures and recovery of the bait money. However, the trial Court found these objections insufficient to discredit the prosecution's evidence. The trial Court found that the prosecution had successfully proved the case beyond reasonable doubt that the accused, while serving as Deputy Director in the office of the Joint Director, District Industries Centre, Davanagere, had demanded and accepted Rs.2,000/- as illegal gratification for issuing the taxi rent

cheque and had misused his official position to obtain pecuniary advantage. Accordingly, the trial Court held the accused guilty of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

6. Being aggrieved by the judgment of conviction and order of sentence, the accused has preferred Criminal Appeal No.366 of 2013. Criminal Appeal No. 861 of 2013 has been preferred by the State, seeking enhancement of the sentence.

Arguments rendered by Appellant/Accused counsel:

7. Learned counsel appearing for the appellant/accused in Crl.A. No.366 of 2013 would contend that the judgment of the trial Court is akin to an ex-parte judgment in a civil case. It is submitted that the trial Court has merely reproduced the examination-in-chief of PWs1 to 5, 7, and 9 to 11 without proper appreciation. The examination-in-chief of PW1 is reproduced at pages 10 to 13 under paragraph No.9; PW2 at pages 13 to 16 under paragraph 10; PW3 at page No. 16 under paragraph 11; PW4 at pages 16 to 19 under paragraph 12; PW5 at page 19 under paragraph 13; PW7 at pages 19 and 20 under paragraph 14; PW9 at page 20 under para 15; PW10 at page 20 under paragraph 16; and of PW11 at

pages 20 to 22 under paragraph 17 of the impugned judgment. It is further submitted that the Trial Court has selectively extracted certain sentences from the examination-in-chief of PWs1, 2, 4 and 11, while completely ignoring the cross-examination of these witnesses. Without adverting to or appreciating the material elicited during cross-examination, the trial Court has conveniently concluded that the evidence of the said witnesses stands corroborated.

8. Further, learned counsel would submit that the sanction has not been properly obtained. The concerned authority did not place Ex.P2 and Ex.P3 pre-trap mahazar and post-trap mahazars respectively, both drawn on 22-09-2006, before the sanctioning authority. Instead, Ex.P26, the sanction order, reveals that the Additional Inspector General of Police, Karnataka Lokayukta, submitted pre-trap and post-trap mahazars dated 11-10-2006. In the body of Ex.P26, the trap mahazar date is mentioned as 22-10-2006. Both mahazars dated 11-10-2006, referred to under Item Nos. 3 and 4, do not relate to the case on hand.

9. The prosecution has produced a corrigendum dated 13-04-2007, which states that Item 3 and 4 of the pre-trap and

post-trap panchanama should be read as dated 22-09-2006 instead of 11-10-2006. However, the said corrigendum has not been marked in evidence. The sanctioning authority, Sri S.S. Vasan, Under Secretary to Government, examined as PW9, has not deposed anything as to the date of the pre-trap and post-trap mahazars, or as to the corrigendum.

10. Without due application of mind, the sanctioning authority has granted sanction for prosecution, which is not sustainable in law. The sanction for prosecution is, therefore, illegal, and consequently amounts to a failure of justice.

11. Learned counsel would vehemently contend that the trial Court has committed a serious error in not properly considering the crucial testimony of PW6-N. Hiriannappa. It is submitted that PW6 has unequivocally admitted, both in his examination-in-chief and cross-examination, that he was working in the cash section of the office of the accused and that it was his duty to prepare the bills, forward them to the Treasury, obtain the cheque, and issue the same to the claimant. It is further contended that PW6 has specifically admitted that he prepared the bills marked as Exs.P9 and P10 relating to the complainant and that it was his responsibility to forward the same to the Treasury along with Exs.P6 to P8 for

obtaining the cheque and delivering it to the complainant. It is also elicited in evidence that PW6 had kept the said bills pending for nearly 18 days prior to the alleged date of the trap. According to the learned counsel, this evidence clearly establishes that the duty of preparing the bills, forwarding them to the Treasury, securing the cheque, and issuing it to the complainant was not that of the accused, but of PW6-N. Hiriannappa. The only role attributed to the accused was that of affixing his signature on the fully prepared bills after they were processed by the Deputy Director and made ready for submission to the Treasury.

12. It is therefore contended that this vital and material piece of evidence, which goes to the root of the prosecution case, has been completely overlooked by the Trial Court. The prosecution case is that the accused demanded illegal gratification for issuing the cheque towards the bill amount. However, when the issuance of the cheque was neither the duty nor the responsibility of the accused, the very foundation of the allegation stands shaken. Despite such cogent evidence indicating that the duty of issuing the cheque was not entrusted to the accused, the Trial Court has erroneously observed that the accused did not deny, during the cross-examination of

PW1, that he was dealing with the work relating to issuance of the cheque for the rental amount due to PW1, and that he had not adduced any defence evidence in that regard. Learned counsel submits that such an observation reflects non-application of mind and a failure to properly read and appreciate the entire evidence available on record.

13. Learned counsel would vehemently contend that the Trial Court erred in placing implicit reliance upon the self-serving testimony of PW-1 (complainant). The Court accepted as gospel truth the version that the complainant approached the accused and that the accused demanded Rs.2,000/- for issuing rental cheque. Such acceptance was made without any independent corroboration and without any substantive basis on record. To support this contention, learned counsel placed reliance on the decision of this Court in STATE OF KARNATAKA v. CHANDRAHASA reported in 2024 SCC ONLINE SC 3469 wherein it has been held that '*... Section 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 Section 7, 11, or 13(1)(b) of the Act.*' The Court also held that the presumption under Section 20 of

the PC Act is similar to the presumption under Section 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.

14. The learned counsel for the appellant further submits that the Trial Court gravely erred in relying solely upon the examination-in-chief of PW1, PW2, PW4, and PW11 in respect of the alleged entrustment, raid and incident, while completely ignoring the material contradictions and inconsistencies elicited during cross-examination. The cross-examination of these witnesses exposed serious discrepancies and contradictions, thereby demolishing the prosecution case. The Trial Court failed to properly scrutinize both oral and documentary evidence before concluding that the demand and acceptance of bribe had been established. It neither considered nor discussed the contradictions affecting the credibility of key witnesses (PW1, PW2, PW4, and PW11), all of whom failed to withstand effective cross-examination.

15. Learned counsel would contend that the Trial Court erroneously held that the entrustment and raid proceedings were proved despite the absence of cogent and corroborative evidence. The Court also erred in not accepting Exhibit P3, the

reply by the accused appellant. The evidence of PW11, which was not proved in accordance with law and was not admitted by the accused. Learned counsel further contends that the sanction for prosecution was not properly obtained. The sanctioning authority was not furnished with the relevant mahazars and materials necessary for proper consideration. The sanction appears to have been granted mechanically and without due application of mind, rendering it invalid and unsustainable in law. It is further submitted that the accused was not a "raiding officer" and therefore, had no authority or occasion to demand any bribe. Hence, the impugned judgment of the Trial Court is arbitrary, illegal, capricious, and unsustainable in law and suffers from lack of sound reasoning, non-application of mind, material irregularities, and is therefore liable to be set aside.

16. To substantiate his argument, learned counsel for the appellant/accused has relied on the decisions of the Hon'ble Supreme Court in the following cases:

- (i) NARENDRA CHAMPAKLAL TRIVEDI v. STATE OF GUJARAT¹
- (ii) RAJESH BHATNAGAR v. STATE OF UTTARKHAND²

¹ (2012) 7 SCC 80

² (2012) 7 SCC 91

- (iii) RAGHBIR SINNG v. STATE OF PUNJAB³
- (iv) M/S. BHARAT IRON WORKS v. BHAGUBHAI BALUBHAI PATEL AND OTHERS⁴
- (v) DARSHAN LAL v. THE DELHI ADMINISTRATION⁵
- (vi) CHANDRAKANT LUXMAN, v. STATE OF MAHARASHTRA⁶
- (vii) SURAJ MAL v. THE STATE (DELHI ADMINISTRATION)⁷
- (viii) STATE OF MAHARASHTRA v. ANNAPPA BANDU KAVATAGE⁸
- (ix) ERINITI SEETHAYYA AND OTHERS ETC. v. REVENUE DIVISIONAL OFFICER ETC.⁹
- (x) SUBASH PARBAT SONVANE v. STATE OF GUJARAT¹⁰
- (xi) UNION OF INDIA AND ANR. v. VENKATESHAN S. AND ANR.¹¹

17. The learned counsel has also relied upon the following decisions:

- i. STATE OF KARNATAKA V. AMEERJAN - 2007 AIR SCW 6217¹²
- ii. STATE OF RAJASTHAN V. MOHANLAL- AIR 2009 SC 1872 / 2009 AIR SCW 3352¹³

³ AIR 1976 SC 91

⁴ AIR 1976 SC 98

⁵ AIR 1974 SC 218 (V 61 C 35)

⁶ AIR 1974 SC 220 (V 61 C 36)

⁷ AIR 1979 SC 1408

⁸ AIR 1979 SC 1410

⁹ AIR 1979 SC 1411

¹⁰ (2002)5 SCC 86

¹¹ (2002)5 SCC 285

¹² (2007)11 SCC 273

¹³ (2009)12 SCC 515

- iii. JAGTAR SINGH V. STATE OF PUNJAB - CRIMINAL APPEAL NO. 2136 OF 2010 DECIDED ON 23-03-2023¹⁴
- iv. NEERAJ DUTTA V. STATE (NCT OF DELHI) - 2023¹⁵ (4) SCC 731 (CONSTITUTION BENCH OF FIVE JUDGES, SUPREME COURT OF INDIA)
- v. P. SATYANARAYANA MURTHY V. STATE OF A.P., - (2015) 10 SCC 152¹⁶
- vi. CBI V. ASHOK KUMAR AGARWAL - CRL. APPEAL NO. 1838 OF 2013 DECIDED ON 31-10-2013;¹⁷
- vii. STATE (LOKAYUKTA, DAVANAGERE) V. C.B. NAGARAJU- CRL. APPEAL NO. 1157 OF 2015 DECIDED ON 19-05-2025;¹⁸
- viii. SUBAIR V. STATE OF KERALA, 2009 CRI LJ 3450 (SC)¹⁹

18. Although the prosecution contends that this case is identical on facts, the appellant/accused in the present case had no official role in the preparation of bills or in securing cheques from the treasury. That duty belonged solely to PW-6, N. Hiriyanappa — a fact established both in his examination-in-chief and in cross-examination. This citation is, therefore, not applicable to the facts of the present case.

¹⁴(2023)19 SCC 498

¹⁵(2023)4 SCC 731

¹⁶(2015)10 SCC 152

¹⁷(2014)14 SCC 295

¹⁸2025 SCC OnLine SC 1175

¹⁹(2009)6 SCC 587

19. The decision in M. Sheshanna v. State of Karnataka, Crl.A. No. 1078 of 2010, Page 20, Para 13 is not applicable to the case on hand, as the appellant/accused in the case on hand was wholly unrelated to the preparation of bills and treasury procedures, which fell within the duties of PW-6, N. Hiriyanappa.

20. Learned counsel for the respondent-State would submit that the trial Court has properly appreciated the evidence on record in accordance with law and facts, absolutely there are no materials to interfere with the impugned judgment of conviction. However, the trial Court has taken lenient view in imposing sentence only for one year.

21. Learned counsel for the respondent-State has relied upon the following judgments to substantiate his arguments:

- (i) STATE OF BIHAR & OTHERS v. RAJMANGAL RAM²⁰
- (ii) STATE BY POLICE INSPECTOR v. T.VENKATESH MURTHY²¹
- (iii) GANGADHAR JANARDAN MHATRE v. STATE OF MAHARASHTRA AND OTHERS²²
- (iv) STATE BY MADHYA PRADESH v. VIRENDER KUMAR TRIPATHI²³

²⁰ (2014) 11 SCC 388

²¹ (2004) 7 SCC 763

²² (2004) 7 SCC 768

²³ (2009) 15 SCC 533

- (v) V.PADMANABHAM v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS²⁴
- (vi) THE STATE OF KARNATAKA v. CHANDRASHA²⁵
- (vii) MR.M.SHESHANNA v. STATE BY LOKAYUKTA²⁶

22. Heard the learned counsel appearing for the appellant–accused and the learned counsel appearing for the respondent–State. Perused the records, documents produced, and the impugned judgment of conviction. In view of the rival contentions urged by the learned counsel on both sides, the following point arises for consideration:

- 1. Whether the impugned judgment of conviction passed by the Trial Court suffers from perversity, illegality, or material irregularity so as to warrant interference by this Court?
- 2. Whether the State has made out a ground to enhance the sentence as sought for?
- 3. What order?

23. My answer to the above point for consideration are:

Point No 1; in Affirmative;

Point No.2: in the negative;

Point No.3 : As per the final order for the following:

²⁴ (2009) 15 SCC 537

²⁵ Crl.A.No.2646/2024

²⁶ Crl.A.No.1078/2010

REASONS

Regarding Point No.1:

24. Before appreciating the evidence in a Lokayukta trap case, it is well known that a trap case involves a systematic evaluation of all relevant factors to establish the offences under the Prevention of Corruption Act, 1988. The first pillar is **initial demand**, where evidence must clearly show that the public servant demanded a bribe before the trap, which can be established through oral testimony, often corroborated by a shadow witness, or by electronic recordings. The second pillar is **acceptance**, requiring proof that the accused voluntarily received the bribe, typically demonstrated by the phenolphthalein test, which detects handling of the bait money. The third pillar is **recovery**, where the tainted currency must be recovered from the accused's possession, supported by a properly drawn and signed mahazar documenting the seizure. The fourth consideration is **procedural and corroborative integrity**, which requires that the evidence, including witness testimonies, mahazars, photographs, and chemical tests be consistent, contemporaneous, and procedurally sound, ensuring minor contradictions do not undermine the prosecution's case, taken together, these four

elements form the foundation for proving demand, acceptance, and recovery of illegal gratification beyond reasonable doubt.

25. Keeping in mind the above mentioned principles, I have meticulously gone through the impugned judgment and entire prosecution papers. On perusal of the charge-sheet and the evidence recorded by the prosecution, in order to establish the commission of offences alleged against the accused, examined eleven witnesses and marked thirty documents along with fourteen material objects. The complainant A M Veeresh, examined as PW1, has deposed that he and his father A.N. Mallappa examined as PW3, had given a taxi bearing registration number KA-29/9347 on hire to the office of the Joint Director, District Industries Centre, Davanagere, at a monthly rent of Rs.15,000/-. Due to the advanced age of his father, PW1 was deputed to collect the rent cheques from the office of the District Industries Centre. PW1 stated that the rent for July and August 2006 was due and that on 16.3.2006, he visited the office of the accused to collect the cheque, at which time the accused demanded Rs.2,000/- as illegal gratification for issuing the cheque. He has further stated that he returned after 4-5 days and subsequently, lodged a written complaint before the Lokayukta Police, Davanagere, on

22.09.2006, which was received by Sri H.S.Ganagadharappa, Police Inspector the Investigating Officer-PW11. The investigation proceeded with the securing of PW2-L.Chadraseskhar and PW4-M. Dakshinamurthy as panch witnesses for the entrustment and recovery mahazars. A bait amount of Rs.2,000/- was prepared and smeared with phenolphthalein powder, the serial numbers were recorded, and a sodium carbonate solution was prepared to demonstrate the presence of the powder. PW4 counted the currency notes and his fingers were dipped in the solution, which turned light pink. The bait amount was then entrusted to PW1, with directions to hand it over to the accused if a bribe was demanded. A mahazar of entrustment was prepared, and PW1 signed the same. On the instructions of the investigating officer, PW1 and PW2 proceeded towards the office of the accused, where PW1 inquired about the cheque. The accused allegedly instructed PW1 to hand over Rs.2,000/- at his residence, but later accepted the same in the office, receiving it with his right hand, placed it in the almirah kept near his seat. PW1 then signaled the investigating officer by wiping his head with his hand. The police entered the office, identified the accused, and conducted the phenolphthalein test on his fingers, which turned pink,

thereby confirming contact with the bait currency notes. The key to the almairah was obtained from the accused, and the bait amount was recovered. The serial numbers of the recovered currency notes tallied with the numbers recorded earlier. The area where the money had been kept was wiped with cotton swab, which, upon dipping in sodium carbonate solution, also turned pink. A written explanation was recorded from the accused. Relevant documents pertaining to the taxi were seized, and photographs of the proceedings were taken.

26. PW2 corroborated the testimony of PW1, stating that he accompanied the complainant to the office of the accused, witnessed the delivery of the bait amount, and confirmed the phenolphthalein test results.

27. PW3 father of PW1, stated that he owned the taxi and authorized his son to supervise the receipt of rent, further confirming the demand for Rs.2,000/- by the accused.

28. PW4 testified as a panch witness, verifying the entrustment and recovery procedures, the phenolphthalein test, and seizure of the bait amount and documents.

29. PW5 and PW6, officials of the District Industries Centre, confirmed handing over the bills submitted by PW3 for the taxi rent.

30. PW7, the superior officer of the accused, verified the bills and assisted the police in handing over the same.

31. PW8, a Junior Engineer, prepared a sketch of the office scene.

32. PW9, the Under Secretary in the Finance Department, sanctioned prosecution against the accused.

33. PW 10 took photographs of the entrustment and recovery proceedings.

34. PW11, the investigating officer, conducted the entire trap operation, prepared mahazars, conducted phenolphthalein tests, seized the bait amount and documents, recorded statements, obtained prosecution sanction, and filed the charge sheet before the trial Court.

35. The trial Court, after examining the evidence of PWs1 to 11, perusing the marked documents and material objects, and hearing the arguments of both the prosecution and the defense, found that the prosecution had established beyond

reasonable doubt that the accused, while serving as Deputy Director in the office of the Joint Director, District Industries Centre, Davanagere, had demanded and accepted Rs.2,000/- as illegal gratification for issuing the taxi rent cheque. The trial Court noted that the phenolphthalein test, the recovery of the bait amount, corroborative evidence of shadow and panch witnesses, and the contemporaneous documents including mahazars and photographs, left no scope for doubt regarding the demand and acceptance of the bribe. The objections raised by the defense regarding locus standi of PW1, procedural discrepancies, or authenticity of mahazars and photographs were found to be insufficient to discredit the prosecution evidence. Accordingly, the trial Court concluded that the accused was guilty of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and upheld the charges framed against him.

36. As per Ex.P1, the complaint dated 22-09-2006 lodged before the Lokayukta Police. The PW1-complainant, who is the son PW2-A.N. Mallappa, the proprietor of Shiva Travels, alleged that the accused demanded a sum of Rs.2,000/- for issuing a cheque towards the payment of

Rs.30,000/- due for the services rendered by Shiva Travels to the department for the months of July and August 2006 under the agreement. It is the specific case of the prosecution that on 16-09-2006 at about 12:00 noon, when PW1 entered the chambers of the accused, the accused reiterated the demand for Rs.2,000/- as illegal gratification for issuing the cheque. The Trial Court, upon appreciation of the oral and documentary evidence, believed the prosecution version holding that the testimony of PW1 regarding demand was consistent and cogent, stood corroborated by PW2 with respect to the pending payment, and was further strengthened by the recovery of tainted currency notes from the accused and the positive phenolphthalein test, thereby establishing demand and acceptance and giving rise to the statutory presumption against the accused, which remained unrebutted. The trial Court, at paragraph 19 of the judgment, has observed thus:

"19. In the present case, the complainant, who is examined as PW 1, has stated that the taxi owned by his father by name A.N. Mallappa ,has given the taxi to District Industries Centre, Davanagere on rent and the District Industries Centre, Davanagere was paying rent and since his father is aged, he used to go to the office to bring the cheque. The complainant has further stated that for the month of July and August 2006, the rent amount

was due from the department and therefore, he went to the office of the accused and met the accused who was dealing with the file and requested for the cheque and at that time accused demanded him to Rs.2,000/-for issuing cheque and afterwards he went and gave complaint to Lokayukta police. It is to be noted that, absolutely there is nothing to suggest that there was any ill will between the complainant and the accused. In fact, it is argued on behalf of the accused that the complainant is not connected with the taxi left by one Mallappa to District Industries Centre, Davanagere. Therefore, absolutely there was no reason for PW1 to depose falsely against accused stating that the accused had demanded him to pay illegal gratification of Rs.2,000/- for handing over the rental cheque payable to the father of PW1. Prosecution has examined the father of PW 1, who had left the taxi to the department on rent as PW3, the witness has clearly deposed that he had authorised his son to go and collect the rental cheques from District Industries Centre, Davanagere. Therefore, it is crystal clear that PW1 had been to the office of the accused to receive the cheque from the accused in respect of the rental amount payable to his father. PW7 Vasudeva is the Joint Director of District Industries Centre, Davanagere, working at the relevant point of time and he has deposed that PW3 Mallappa had given Tata Indica car No.KA-28/9347 on rent to his office and he had submitted bill in respect of two months rent due to him. The witness has further stated that he had countersigned the bill and afterwards he came to know that Lokayukta police trapped the accused. It is significant to note that the accused has not denied the fact that he was dealing with the work of

issuance of cheque for the rental amount due to PW3.
During the cross-examination of PW1 he has not given
any evidence in that regard. Therefore, I am of the view
that the evidence given by the complainant that he went
and met the accused for issuing of the cheque and at that
time accused asked him to pay Rs.2,000/- for issuing of
rental cheques can be safely believed. It is not in dispute
that the accused in this case was working as Deputy
Director in the office of the Joint Director, District
Industries Centre, Davanagere and therefore he was a
public servant within the meaning of Sec. 7 and Sec.
13(1)(d) of Prevention of Corruption Act 1988. If the
evidence of PW 1 is carefully scrutinized and also if his
evidence is compared with the complaint lodged by him
with Lokayukta police as per Ex. P 1, it is crystal clear
that there was demand for illegal gratification by the
accused, when PW 1 had been to the office of accused to
receive the cheque in respect of the rental amount
payable to his father.”

37. The genesis of the entire case is the demand of
bribe on 16-09-2006 to pass the cheque related to
payment travel service as per agreement Ex.P5 between
accused and the District Industries Centre, Davanagere.
Even in the examination-in-chief of PW2, he has adduced
that 22-09-2006 his son went to the office of accused to
collect cheque. The evidence of the PW2 is that he do not
know the contents of the agreement Ex.P5 and all the

business was run by the PW1 without any authorization. In the Ex.P27-FIR dated 22-09-2006, demand was made on 16-09-2006 at 12 noon. It is to be borne in mind that the duty of the prosecution to prove not only the recovery of the bait money from the possession of accused, but it should also prove the other circumstances relied in the case to show that the accused had demanded illegal gratification to show official favour to the complainant.

38. Coming to the deposition of the Complainant himself read with his complaint, for it to be taken as fully reliable and made the sole basis to convict the Respondent, the same would require greater scrutiny apropos its veracity and reliability. In the considered opinion of this Court, such conduct is sufficient to render the complainant's testimony unreliable.

39. It is the specific contention of the learned counsel for the appellant that the prosecution has failed to establish the foundational requirement of **demand** of illegal gratification. It is submitted that mere recovery of tainted currency notes and a positive phenolphthalein test are insufficient to sustain conviction in the absence of clear

and cogent proof of demand. Reliance is placed upon the judgments of the Hon'ble Supreme Court in B. JAYARAJ v. STATE OF ANDHRA PRADESH reported in (2014)13 SCC 55, P. SATYANARAYANA MURTHY v. DISTRICT INSPECTOR OF POLICE reported in (2015)10 SCC 152, KRISHAN CHANDER v. STATE OF DELHI reported in (2016)3 SCC 108, and in the case of C.M. GIRISH BABU v. CBI reported in (2009)3 SCC 779.

40. On perusal of the evidence of PW-1-complainant, it is noticed that the alleged initial demand is not supported by independent corroboration. Though PW1 has spoken about demand, his testimony suffers from inconsistencies and material omissions. More importantly, the alleged demand said to have been reiterated at the time of trap is not convincingly established. The shadow witness-PW2 does not clearly depose to having heard the specific demand, in unequivocal terms. His evidence appears to be more inferential than direct. The prosecution has not produced any electronic recording or other independent material to substantiate the alleged demand.

41. It is now well settled that **proof of demand is sine qua non for conviction** under the Prevention of Corruption Act. In B. JAYARAJ (supra), the Hon'ble Supreme Court has categorically held that mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence. Similarly, in P. SATYANARAYANA MURTHY (supra), it has been held that proof of demand is an indispensable essentiality and that recovery of tainted money divorced from proof of demand cannot sustain conviction. In KRISHAN CHANDER (supra), the Court reiterated that in the absence of reliable evidence of demand, even if recovery is proved, conviction cannot be maintained. The same principle is echoed in C.M. GIRISH BABU (supra), wherein it was held that presumption under Section 20 of the PC Act arises only after demand and acceptance are proved.

42. In the present case, while recovery of Rs.2,000/- from the almirah of the accused and the positive phenolphthalein test have been proved, these circumstances, by themselves, do not establish the essential ingredient of demand. The prosecution has failed to place convincing and reliable evidence demonstrating

that the accused consciously demanded illegal gratification as a motive or reward for an official act. The possibility of alternative explanations, in the absence of clear proof of demand, cannot be ruled out.

43. Further, the presumption under Section 20 of the Act cannot be invoked mechanically. As held by the Apex Court, such presumption arises only after foundational facts of demand and acceptance are proved. In the absence of proof of demand beyond reasonable doubt, the statutory presumption does not operate.

44. Criminal jurisprudence mandates that suspicion, however strong, cannot substitute proof. The prosecution is required to establish the guilt of the accused beyond reasonable doubt. Where two views are possible, the view favorable to the accused must be adopted. In view of the foregoing discussion and applying the settled principles laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that the prosecution has failed to prove the essential ingredient of demand of illegal gratification beyond reasonable doubt. Consequently, the conviction recorded by the trial Court cannot be sustained.

45. The trial Court, at paragraph 21 of the judgment, has observed thus:

"21. Ex.P3 marked in the case is the written explanation given by the accused at the time of trap and in that explanation he has confirmed that the bait amount was inside the almirah in which he used to keep the files. Accused has stated in Ex. P 3 that when he had gone outside the chambers, the complainant might have kept the amount in the almirah and afterwards while placing the files in the almirah his hand might have come in contact with the amount and therefore the colour of the solution in which his fingers were dipped had changed. This makes it abundantly clear that the bait amount, which was entrusted to the complainant at the time of drawing mahazar was later found in the almirah of the accused and further the sodium carbonate solution in which the right hand fingers of accused were dipped had turned to pink colour confirm that the accused had touched the bait amount. The fact that the bait amount was found in the almirah of the accused in the office is confirmed by the evidence of PWs 1, 2 and 4 and also the evidence of Investigating officer, who is examined as PW 11. The evidence of these witnesses further discloses that the phenolphthalein test conducted on the accused was found positive. Therefore, the say of the complainant that accused had received the bait amount in his hand and afterwards he had kept the amount in the almirah can be safely believed...."

46. Again at paragraph 26 of the judgment, the trial Court has observed thus:

"26. Learned counsel for the accused vehemently submitted that the sanction order passed by PW9-L.S. Vasan as per Ex.P26 is defective as the date mentioned in the sanction order do not tally with the date of trap and therefore, it is clear that the official has not applied his mind while passing the sanction order and therefore the entire case of the prosecution is vitiated. Learned Public Prosecutor on the other hand submitted that even though there is mistake in the date mentioned in the first sanction order, PW 8 has issued corrigendum correcting the date of trap and therefore, it cannot be said that the witness had not applied his mind. Learned Public Prosecutor further submitted that the Government Officer working as Under Secretary of the Government of Karnataka has passed the sanction order in the name of Governor under Business Transaction Rules prescribed by the Government after following procedure and therefore, it cannot be said that the sanction order passed by PW 9 is defective. PW 9 has stated that there is procedure for granting sanction by the Government, after receiving requisition from Lokayukta Police officer and by following that procedure, he has issued the sanction order. It is to be noted that in the Government level, several procedures are followed while issuing Government orders and Government orders will not be signed by the concerned Minister or the Governor himself. The sanction order and Corrigendum to the sanction order marked as Ex. P 26 discloses that the same is issued in the name of Governor

of Karnataka. The Hon'ble High Court of Karnataka in the decision reported in 2009 Cri.L.J. 629 (KAR) has observed that "In the sanction order accorded by the Governor itself, it is recited that it is 'by order and in the name of Governor of Karnataka' – plea that sanction is only by Under Secretary to Government and therefore, it is not a sanction in the eye of law – Note tenable – there is presumption that official acts have been done in proper manner and in accordance with the procedure". In the present case also since the sanction order at Ex.P26 is issued in the name of Governor of Karnataka by PW9, who was working as Under Secretary in the Government, there is presumption that it is done in proper manner and in accordance with procedure. A Corrigendum is issued by PW9 after the sanction order was issued, and both the orders are marked as Ex.P26 discloses that though there was mistake in the original sanction order with regard to the date of trap, the same was corrected by issuing corrigendum. Merely because there was mistake in mentioning the date of trap in the sanction order, it cannot be concluded that PW9 or the concerned officer did not apply his mind while granting sanction to prosecute the accused. Therefore, the arguments advanced on behalf of the accused cannot be accepted."

47. Learned counsel would vehemently contend that the Trial Court has committed a serious error in not properly considering the crucial testimony of PW6–N. Hiriannappa. It is submitted that PW6 has unequivocally admitted, both in his examination-in-chief and cross-examination, that he was

working in the cash section of the office of the accused and that it was his duty to prepare the bills, forward them to the Treasury, obtain the cheque, and issue the same to the claimant. It is further contended that PW6 has specifically admitted that he prepared the bills marked as Exs.P9 and P10 relating to the complainant and that it was his responsibility to forward the same to the Treasury along with Exs.P6 to P8 for obtaining the cheque and delivering it to the complainant. It is also elicited in evidence that PW6 had kept the said bills pending for nearly 18 days prior to the alleged date of the trap. According to the learned counsel, this evidence clearly establishes that the duty of preparing the bills, forwarding them to the Treasury, securing the cheque, and issuing it to the complainant was not that of the accused, but of PW6-N. Hiriannappa. The only role attributed to the accused was that of affixing his signature on the fully prepared bills after they were processed by the Deputy Director and made ready for submission to the Treasury. It is therefore contended that this vital and material piece of evidence, which goes to the root of the prosecution case, has been completely overlooked by the Trial Court. The prosecution case is that the accused demanded illegal gratification for issuing the cheque towards the bill

amount. However, when the issuance of the cheque was neither the duty nor the responsibility of the accused, the very foundation of the allegation stands shaken.

48. Despite such cogent evidence indicating that the duty of issuing the cheque was not entrusted to the accused, the Trial Court has erroneously observed that the accused did not deny, during the cross-examination of P.W.1, that he was dealing with the work relating to issuance of the cheque for the rental amount due to P.W.1, and that he had not adduced any defence evidence in that regard. Learned counsel submits that such an observation reflects non-application of mind and a failure to properly read and appreciate the entire evidence available on record.

QUESTION OF VALIDITY OF SANCTION (EX.P.26)

49. With respect, the reasoning that the discrepancy in the sanction order is a mere "clerical error" cured by the corrigendum does not withstand scrutiny, for the following reasons.

50. Ex.P26 is riddled with unresolved discrepancies as to date. Ex.P2, the pre-trap mahazar, and Ex.P13, the post-

trap mahazar, are both dated 22-09-2006. However, Ex.P.26, the sanction order itself records that the Additional Inspector General of Police, Karnataka Lokayukta, forwarded pre-trap and post-trap mahazars dated **11-10-2006**, while the body of Ex.P.26 separately records the date of trap as **22-10-2006**. Three different dates thus appear across the sanction record for what is, admittedly, a single trap proceeding. This is not a trivial or typographical slip; it goes to the very foundation of what the sanctioning authority was asked to apply its mind to the mahazars evidencing the trap itself.

51. The corrigendum has not been proved and cannot cure the defect. The prosecution relies upon a corrigendum dated 13-04-2007 to contend that the reference to "11.10.2006" ought to be read as "22.09.2006." However, this corrigendum has admittedly not been marked in evidence. An unproved document cannot be relied upon to rehabilitate a defective sanction order; a corrigendum that itself has no evidentiary existence on record cannot logically be said to have cured anything. The sanction must be judged on the material that was validly before the sanctioning authority and validly proved before the trial Court and not on an unmarked document produced from the bar.

52. PW9 has failed to depose to the discrepancy or to the corrigendum. PW9-L.S. Vasan, Under Secretary to Government, who is the sanctioning authority, has not deposed a single word explaining the discrepancy in dates, nor has he spoken to the existence, issuance, or effect of the corrigendum. It is well settled that where the validity of a sanction is challenged, it is not sufficient for the prosecution to point to the formal recital that the order was issued "by order and in the name of the Governor of Karnataka." The sanctioning authority must be examined to demonstrate that the relevant material was, in fact, placed before, and considered by, the authority according sanction. The presumption of regularity attaching to official acts under Section 114 of the Evidence Act is a rebuttable presumption, and stands rebutted the moment the face of the sanction order itself discloses an unexplained and unreconciled factual discrepancy going to the root of the transaction. Before dealing with the facts, it would be useful to remind myself why the law treats sanction with such seriousness. A public servant cannot be dragged into a criminal trial on the strength of an allegation alone; before that trial can even begin, a designated authority must independently satisfy itself, on the material placed before it, that a prosecution is warranted. This Court

has kept that standard in mind while examining the challenge raised here, drawing guidance from ASHOK KUMAR AGARWAL; AMEERJAN, STATE OF RAJASTHAN V. MOHANLAL, and JAGTAR SINGH (supra), all of which speak to the same underlying requirement that sanction must reflect real application of mind, not mechanical concurrence.

53. Judged against that standard, the sanction order in this case does not inspire confidence. The mahazars Ex.P2 and Ex.P13 are both dated 22-09-2006. Yet the sanction order, Ex.P26, tells a different story. It records that the mahazars placed before the sanctioning authority were dated 11.10.2006. That is not a minor slip of the pen. It is a discrepancy the prosecution itself has been forced to concede, through a corrigendum dated 13.04.2007, which candidly admits that the mahazars of 11-10-2006 "do not relate to the case on hand." In other words, on the prosecution's own showing, the sanctioning authority was looking at the wrong documents while granting sanction.

54. One would expect, at the very least, that the corrigendum meant to fix this problem, would find its way into evidence, and that the officer who granted sanction would say

something about how the error crept in and whether it was ever actually corrected before he put his signature to the order. Neither happened. The corrigendum was never marked. PW9, who accorded the sanction, stepped into the witness box and left the entire episode unaddressed. He was not asked to explain it, and he did not volunteer to. That silence matters. It is one thing to have a clerical mismatch that everyone can see was inadvertent and immaterial, a wrong page number, perhaps, or a name mis-spelt. It is quite natural to have the sanctioning authority relying on mahazars from an entirely different transaction, with no proof that anyone went back and set the record straight before sanction was finally granted.

55. The prosecution sought refuge in the decision in the case of T.A. RAMBABU v. STATE OF KARNATAKA reported in 2009 Cri.LJ 629 (KAR), but that case answers a different question altogether. It dealt with whether an Under Secretary had the authority to sign a sanction order on the Governor's behalf. It says nothing about a situation where the contents of the sanction order itself are internally inconsistent and admittedly refer to the wrong set of documents. A presumption that an order was properly issued in the Governor's name cannot be pressed into service to presume that its contents

were also correct, especially once the prosecution's own corrigendum concedes otherwise. Taking the record as a whole, the unproved corrigendum, and failure on the part of PW9 to say anything that might have salvaged the situation, this Court is unable to hold that the sanctioning authority applied its mind to the facts of this case before granting sanction. The defect is not cosmetic; it strikes at the very foundation on which the appellant came to be tried at all, and that failure has occasioned real prejudice, satisfying the requirement under Section 19(3) of the Prevention of Corruption Act, 1988. The trial and conviction that followed The discrepancy is not a "clerical error" but evidences non-application of mind. A clerical error is one that is self-evidently a slip and does not affect the substance of the authority's satisfaction a misspelt name or a wrong page number. Here, the discrepancy concerns the **date of the very trap proceeding** that forms the subject matter of the prosecution sanctioned. Where the sanctioning authority is shown two mahazars bearing a date (11-10-2006) that, by the prosecution's own admission, "do not relate to the case on hand," and grants sanction on that basis, it cannot be said that the authority applied its mind to the correct facts of the case at

all. The subsequent, unproved corrigendum is at best an attempt at post-facto repair and does not establish that the sanctioning authority's mind was, at the time sanction was accorded, applied to the correct material.

56. The law on this point is well settled. In CBI v. ASHOK KUMAR AGARWAL, CrI. Appeal No.1838 of 2013 decided on 31-10-2013, the Hon'ble Supreme Court laid down that the sanctioning authority must apply an independent mind to the entire material placed before it, and a sanction granted mechanically or without due application of mind to the relevant facts is not sanction in the eye of law. This principle has been consistently reiterated in STATE OF KARNATAKA v. AMEERJAN, 2007 AIR SCW 6217, wherein it was held that mere production of the sanction order is not sufficient; the prosecution must further prove that the sanctioning authority had applied its mind to the relevant facts placed before it, which proposition is reiterated in the case of RAJASTHAN V. MOHANLAL reported in AIR 2009 SC 1872.

57. It is submitted that the decision in T.A. RAMBABU (supra), relied upon by the prosecution, is distinguishable on facts. That case dealt with a challenge to the *authority* of the

Under Secretary to sign the sanction order on behalf of the Governor, a question of delegation and formal competence. It did not deal with a situation, as here, where the sanction order on its own face discloses an unreconciled factual discrepancy as to the date of the very trap proceeding sanctioned, coupled with an unproved corrigendum and a sanctioning-authority witness who does not depose to either. The ratio of that decision, addressed to a wholly different point, cannot be stretched to cover the present facts.

58. For these reasons, it is submitted that the sanction under Ex.P26 was accorded without application of mind to the correct and relevant material, is accordingly invalid, and its invalidity has occasioned a failure of justice within the meaning of Section 19(3) of the Prevention of Corruption Act, 1988, thereby vitiating the entire prosecution.

59. In view of the above, this Court is of the opinion that the sanction order at Ex.P26 be held to be invalid, particularly when the same has been rectified by a corrigendum, which is proved by its author. The prosecution has to prove the beyond reasonable doubt. The contention urged by the appellant on

this ground does merit acceptance. Accordingly, Point No.1 is answered in the affirmative.

Regarding Point No.2:

60. Since this Court has held Point No.1 in the affirmative, the question of enhancing the punishment as sought for by the State does not arise and accordingly, the same is answered in the negative.

61. For the reasons aforementioned, I found it is just and proper to interfere in the impugned judgment of conviction. Accordingly, I proceed to pass the following:

ORDER

1. Criminal Appeal No. 366/2013 preferred by the Appellant/accused is allowed. The judgment of conviction and order of sentence dated 26.03.2013 passed in Special (LOK) Case No.6 of 2007 by the Principal District and Sessions Judge and Special Judge (Lokayukta), Davanagere, is set aside.
2. Criminal Appeal No. 861/2013 preferred by the State against the very same judgment of conviction and order of sentence, seeking enhancement of the sentence, is dismissed.
3. The appellant/accused is acquitted of the offences punishable under Sections 7 and

13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

4. Fine amount, if any deposited by the accused, shall be refunded to the accused in accordance with law;
5. The bail bond, if any, stand cancelled.

**Sd/-
(G. BASAVARAJA)
JUDGE**

Inn