

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 229 of 2014****Reserved on: 22.09.2026****Date of Decision: 06.10.2026****Krishan Chand****.... Appellant****Versus****State of Himachal Pradesh****.... Respondent****Coram*****Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.***

For the appellant : Mr N.S. Chandel, Senior Advocate, with Ms Kanika Verma, Advocate.

For the Respondent/ : Mr P.K. Nadda, Additional State Advocate General.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 13.06.2014, passed by learned Special Judge, Kinnaur, Sessions Division at Rampur Bushahr, District Shimla, H.P. (learned trial Court), vide which the appellant (accused before learned trial Court) was convicted and sentenced as under: -

¹. Whether reporters of the local papers may be allowed to see the judgment? Yes

Section(s)	Sentence(s)
7 of the Prevention of Corruption Act	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹5000/- and, in default of payment of the fine amount, to further undergo simple imprisonment for two months.
13(2) of the Prevention of Corruption Act	The accused was sentenced to undergo simple imprisonment for two years, pay a fine of ₹5000/- and, in default of payment of the fine amount, to further undergo simple imprisonment for two months.
Both the substantive sentences of imprisonment were ordered to run concurrently.	

(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 7 and 13 (2) of the Prevention of Corruption Act (PC Act). It was asserted that the informant Dawa Lama (PW-1) was a Contractor with Himachal Pradesh Public Works Department (HPPWD). He

had taken the contract for constructing Leo bye Pass road. The accused Kishan Chand was posted as Junior Engineer (J.E.) in PWD Section Hurling. The accused was to prepare a bill worth ₹24,00,000/-. The accused demanded ₹1,00,000/- as a commission for preparing the bill and stated that he would not prepare the bill till the payment of the money to him. The informant requested the accused to prepare the bill and assured to pay the money after the preparation of the bill. The accused agreed but threatened that in case of non-payment of money to him, he would not prepare any future bill. The accused asked the informant to bring ₹1,00,000/- to his home. The informant had pending work with the PWD, and many bills were to be prepared. He did not want to pay any bribe to the informant. Hence, he reported the matter to the police. The police recorded the informant's statement (Ext.PW-1/A) and sent it to the police station, where FIR (Ext.PW-6/A) was registered. Jog Raj (PW-12) constituted a raiding party. He requested ADC Kaza to provide some witnesses to him. Ram Nath (PW-8) and Guman Singh were deputed as witnesses. Jog Raj treated the currency notes produced by the informant Dawa Lama with phenolphthalein

powder and noted their serial numbers. He put the phenolphthalein powder in one glass of water and sodium carbonate powder in another glass of water. The water did not change its colour. He mixed the water from both glasses, and the water changed its colour to pink. He handed over the currency notes to Dawa Lama with a direction to put them in his left pocket and not to touch them. Dawa Lama (PW-1) and the police team left for the house of the accused. Dawa Lama (PW-1) was sent to the house of the accused with a direction to signal the police party after delivering the bribe money. Dawa Lama signalled the police, and the police entered the room of the accused. The accused had currency notes in his hand. He threw them on the bed. Jog Raj caught hold of the accused from his left wrist and Ram Kumar caught hold of the accused from his right wrist. A Thali was procured from the house of the accused, and the hands of the accused were washed in it. The water did not change its colour. Jograj procured a nip and put the water in it. He also added sodium carbonate powder to it. The water did not change its colour. He added the water containing sodium carbonate into the thali, and the water changed its colour to pink. The pink water

was put into a nip, and the nip was sealed with a seal 'T'. The serial numbers of currency notes were tallied with the numbers noted earlier, and these were found to be identical. The currency notes were put in an envelope, and the envelope was sealed with a seal 'T'. The seal was handed over to witness Ram Nath after use. The search of the house of the accused was conducted. A file was found on the rack in which currency notes worth ₹1,40,000/- of the denomination of ₹1,000/- each were found. These notes were put into an envelope, and the envelope was sealed with seal 'T'. The envelope was seized vide memo (Ext. PW8/B). A sample seal (Ext.PW-8/C) was taken on a separate piece of cloth. Jog Raj conducted the investigation and prepared the site plan (Ext.PW-10/A). Ashok Kumar (PW-5) sent the samples to FSL, Junga, through Constable Rajesh Kumar (PW-4), and received the result of the analysis, which mentioned that phenolphthalein and sodium carbonate were detected in the nip. The documents were taken into possession. The prosecution sanction (Ext.PW7/A) was issued, and the challan was prepared and presented before the learned trial Court after the completion of investigation.

3. Learned trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Section 7 and 13 (2) of the PC Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 13 witnesses to prove its case. Dawa Lama (PW-1) is the informant. L.N. Bodh (PW-2) produced the appointment and posting order of the accused. Constable Prakash Chand (PW-3) carried the Rukka to the police station. Constable Rajesh Kumar (PW-4) carried the case property to FSL Junga. HC Ashok Kumar (PW-5) was posted as MHC, who sent the case property to FSL Junga. SI Ravi Kumar (PW-6) registered the FIR. Ramesh Kumar (PW-7) accorded the prosecution sanction. Ram Nath (PW-8) and Ram Kumar (PW-11) were members of the raiding party. ASI Narender Singh (PW-9) was working as MHC, with whom the case property was deposited. Taranjeet Singh (PW-10) recorded the statements of some of the witnesses. Jog Raj (PW-12) investigated the matter. HC Mansa Ram (PW-13) registered the F.I.R.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC), admitted that he was posted as a Junior Engineer in Hurling Sub Division at Kaza. He admitted that he was supervising the development activities being carried out by the Government in his area. He admitted that Dawa Lama was the Contractor of the HPPWD and he had taken the contract for the Leo bypass road. He denied the rest of the prosecution case. He claimed that the witnesses had deposed falsely against him. He did not produce any evidence in his defence.

6. Learned trial Court held that the informant had not supported the prosecution case; however, this was not significant. He was a Government Contractor. He takes contracts worth crores of rupees from the Government. He was a literate person and would not have put his signature on the document without reading it. The statements of other witnesses proved that the accused was caught with the money. His hand wash turned pink on addition of sodium carbonate, corroborating that the accused had accepted the money. A presumption arises under Section 20 of the P.C. Act that the money was taken as motive for reward, and the burden shifted

upon the accused to rebut this presumption. However, there was no evidence to rebut the presumption; hence, the learned trial Court convicted and sentenced the accused as mentioned above.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused has filed the present appeal, asserting that the learned trial Court erred in appreciating the material on record. The informant had not supported the prosecution case. He specifically denied that he had paid any money to the accused as a bribe; therefore, the fundamental requirement that the money should have been paid on demand was missing. The statements of the other prosecution witnesses contradicted each other on a material aspect. The prosecution version that the accused was holding the money in his hand was also not supported because some of the witnesses stated that the money was lying on the bed. The currency notes were not sent to the FSL to determine whether they were treated with phenolphthalein; therefore, it was prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside.

8. I have heard Ms N.S. Chandel, learned Senior Advocate, assisted by Ms Kanika Verma, learned counsel for the appellant and Mr P.K. Nadda, learned Additional Advocate General, for the respondent/State.

9. Mr N.S. Chandel, learned Senior Advocate, for the appellant/accused, submitted that the learned trial Court erred in convicting and sentencing the accused. The informant had not supported the prosecution version, and there was no evidence of any demand and acceptance. Mere recovery of tainted money from the accused is not sufficient in the absence of demand and acceptance. The Presumption under Section 20 of P.C. will only trigger when the prosecution proves the fundamental requirement of demand and acceptance. The informant has not supported the prosecution's version. The demand and acceptance were not proved. The statements of witnesses contradicted each other regarding the reason for the demand. It was the specific case of the prosecution that the bill had been passed with the condition that a sum of ₹1,00,000/- would be paid after passing of the bill; otherwise, the future bills would not be prepared. However, this version was changed in the Court to

say that the reason for demand was the passing of the bill. The benefit of every doubt has to be given to the accused, and the learned trial Court failed to adhere to this fundamental principle. Hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside. He relied upon the following judgments in support of his submissions:

- *Balwinder Singh vs. State of Punjab; MANU/PH/4184/2015;*
- *Dileepbhai Nanubhai Sanghani vs. State of Gujarat & Anr. 2025: LiveLaw (SC) 273;*
- *Soundarajan vs. State 2023 (16) SCC 141;*
- *State of Lokayuktha Police Davanagere vs. CB Nagaraj 2025 LiveLaw (SC) 620;*
- *Mil Mustafa Ali Hasmi vs. State of A.P. 2024 INSC503;*

10. Mr P. K. Nadda, learned Additional General, for the respondent/State submitted that the learned trial Court had rightly held that the informant had a reason not to support the prosecution case. He admitted his signatures on his statement, and the learned trial court had rightly noticed that he would not have put the signatures without reading the contents of the statement. The statements of other witnesses

duly proved that the accused was found in possession of the tainted money, his hands were washed, and the hand wash turned pink, showing that he had dealt with the money. The learned trial Court had rightly relied upon the presumption, and the accused had not led any evidence to rebut the presumption. There is no infirmity in the judgment and order passed by the learned trial Court. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The police have presented the present challan for the commission of an offence punishable under Section 7 of the Prevention of Corruption Act. The ingredients of Section 7 were explained by the Hon'ble Supreme Court in *Devinder Kumar Bansal v. State of Punjab*, (2025) 4 SCC 493: 2025 SCC OnLine SC 488 at page 498:

11. Thus, in an offence under Section 7 of the 1988 Act, the points requiring proof are:

(i) that the accused at the time of the offence was, or expected to be, a public servant;

(ii) that he accepted or retained or agreed to accept, or attempted to obtain from some person a gratification;

(iii) that such gratification was not a legal remuneration due to him;

(iv) that he accepted such gratification as a motive or reward, proof of which is essential for

(a) doing or forbearing to do an official act, or

(b) showing or forbearing to show favour or disfavour to someone in the exercise of his official functions, or

(c) rendering or attempting to render any service, or disservice to someone, with the legislative or executive government, or with any public servant.

13. The informant, Dawa Lama (PW-1), stated that he had taken the contact of Leo bypass Road. The accused Kishan Chand was to prepare the bill for this road. The accused never said anything to him regarding the preparation of the bill. He was permitted to be cross-examined. He denied that the accused had demanded ₹1,00,000/- from him as a bribe/commission for the preparation of the bill. He denied that he had promised to pay the bill after the preparation of the bill. He denied that the accused demanded ₹1,00,000/- and asked him to bring the money to his room. He denied that he had made a complaint to the police. However, he admitted his signature on the statement. He denied that he went to the

house of the accused, where he had handed over ₹1,00,000/- to the accused. He denied that a demonstration was given to the raiding party. He denied that he was caught by the police and his hands were washed. He denied that the handwash turned pink after adding the sodium carbonate solution. He denied his previous statement recorded by the police or that he was making a false statement to save the accused. He stated in his cross-examination that he had never seen phenolphthalein and sodium carbonate powders. Witnesses Ram Nath and Guman Singh were not with the police. He had no dispute with the accused, and he had not filed any complaint to the police.

14. It is apparent from the statement of this witness that he has not stated anything about the demand and the acceptance. It was rightly submitted on behalf of the accused that the prosecution is required to prove the demand and acceptance for proving the offence punishable under Section 7 and 13 (2) of the PC Act. It was laid down by the Hon'ble Supreme Court in *State through the Central Bureau of Investigation Vs. Dr Anup Kumar Srivastava*, 2017(15) SCC 560,

that demand and acceptance are essential to prove offences under Sections 7 and 13 (1)(d) of the PC Act. It was observed: -

“7. The essential ingredients of Section 7 are:

(i) that the person accepting the gratification should be a public servant;

(ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.

8. Insofar as Section 13 (1) (d) of the Act is concerned, its essential ingredients are:

(i) that he should have been a public servant;

(ii) that he should have used corrupt or illegal means or otherwise abused his position as such a public servant; and

(iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

9. In the case of *C.K. Damodaran Nair v. Government of India* 1997 (9) SCC 477, this Court had an occasion to consider the word "obtained" used in Section 5(1)(d) of the Prevention of Corruption Act, 1947 (now Section 13(1)(d) of the Act, 1988), and it was held:

"12. The position will, however, be different so far as an offence under Section 5(1) (d) read with Section 5(2) of the Act is concerned. For such an offence, the prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) -- and not under Section 5(1)(c), (d) or (e) of the Act. "Obtain" means to secure or gain

(something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment, the initiative vests in the person who receives, and in that context, a demand or request from him will be a primary requisite for an offence under Section 5(1) (d) of the Act, unlike an offence under Section 161 IPC, which, as noticed above, can be established by proof of either "acceptance" or "obtainment."

10. The legal position is no more *res integra* that the primary requisite of an offence under Section 13(1)(d) of the Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant. *In other words, in the absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under Section 13(1) (d) cannot be held to be established.*" (Emphasis supplied).

15. A similar view was taken in *Aman Bhatia v. State (NCT of Delhi)*, 2025 SCC OnLine SC 1013, wherein it was observed:

52. It is well-settled that mere recovery of tainted money, by itself, is insufficient to establish the charges against an accused under the PC Act. To sustain a conviction under Sections 7 and 13(1)(d) of the Act, respectively, it must be proved beyond a reasonable doubt that the public servant voluntarily accepted the money, knowing it to be a bribe. The courts have consistently reiterated that the demand for a bribe is *sine qua non* for establishing an offence under Section 7 of the PC Act.

53. A five-Judge Bench of this Court in *Neeraj Dutta v. State (Government of NCT of Delhi)*, (2023) 4 SCC 731, categorically held that an offer by the bribe-giver and the demand by the public servant have to be proved by the prosecution as a fact in issue for conviction under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. Mere acceptance of illegal gratification without proof of

offer by the bribe-giver and demand by the public servant would not make an offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. The relevant observations are reproduced herein below:

“88.4. (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 Sections 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 Sections 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 and 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 Sections 13(1)(d)(i) and (ii) of the Act.”
(Emphasis supplied)

54. It was further explained by this Court in *P. Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152, as follows:

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in the absence thereof, unmistakably the charge therefor would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.” (Emphasis supplied)

55. From the above exposition of law, it may be safely concluded that mere possession and recovery of tainted currency notes from a public servant, in the absence of proof of demand, is not sufficient to establish an offence under Sections 7 and 13(1)(d) of the PC Act, respectively. Consequently, without evidence of demand for illegal gratification, it cannot be said that the public servant used corrupt or illegal means, or abused his position, to obtain any valuable thing or pecuniary advantage in terms of Section 13(1)(d) of the PC Act.

56. The present case is not one of an “offer to pay by the bribe-giver” where, in the absence of any demand from the public servant, the mere acceptance of illegal gratification would constitute an offence under Section 7 of the PC Act. The expression “offer” indicates that

there is a conveyance of an intention to give, which must be communicated and understood by the recipient, leading to the meeting of minds. Consequently, the offer is accepted. For such an acceptance to constitute an offence under Section 7, there must be clear and cogent evidence establishing that the public servant was aware of the offer and accepted it voluntarily, knowing it to be illegal gratification. In other words, even where there is no express demand, the bribe-giver and the bribe-taker must be shown to have been *ad idem* as regards the factum of the offer of a bribe.

16. A similar view was taken in *Balwinder (supra)*, *Dileepbhai (supra)*, *Soundrajan (supra)*, *CB Nagaraj (supra)*, *Mir Mustafa Ali Hasmi (supra)*.

17. Ram Nath (PW-8) stated that the informant was instructed by the police to signal them after delivery of money to the accused. He and the informant entered the room of the accused; the accused took the currency notes and threw them on the bed. The serial numbers of the currency notes were checked and were found to be the same as were noticed earlier. He stated in his cross-examination that he and the informant had gone to the house of the accused. The informant went to the house of the accused all alone on foot. The informant left the house of the accused after 3-5 minutes. He volunteered to say that the informant gave the signal to

the police and went away. The police personnel entered first, and he went after the police.

18. The statement of this witness does not show that the money was paid in his presence. He simply stated that the informant went to the house of the accused, returned, signalled the police and went away. He went (Ram Nath) to the house of the accused after the police. Thus, his testimony does not prove the demand.

19. Learned trial Court heavily relied upon the recovery of the money from the house of the accused and the presumption contained in Section 20 of the PC Act. It was laid down by the Hon'ble Supreme Court in *Paritala Sudhakar v. State of Telangana*, 2025 SCC OnLine SC 1072, that the presumption under Section 20 of the PC Act will not be triggered without the evidence of the demand. It was observed:

“21. As far as the submission of the State is that the presumption under Section 20 of the Act, as it then was, would operate against the Appellant is concerned, our analysis *supra* would indicate that the factum of demand, in the backdrop of an element of *animus* between the Appellant and the complainant, is not proved. In such circumstances, the presumption under Section 20 of the Act would not militate against the

Appellant, in terms of the pronouncement in *Om Parkash v. State of Haryana*, (2006) 2 SCC 250:

‘22. In view of the aforementioned discrepancies in the prosecution case, we are of the opinion that the defence story set up by the appellant cannot be said to be wholly improbable. Furthermore, it is not the case where the burden of proof was on the accused in terms of Section 20 of the Act. *Even otherwise, where demand has not been proved, Section 20 will also have no application. (Union of India v. Purnandu Biswas [(2005) 12 SCC 576: (2005) 8 Scale 246] and T. Subramanian v. State of T.N. [(2006) 1 SCC 401: (2006) 1 Scale 116])*’ (emphasis supplied)”

20. It was specifically stated by the informant that he had submitted the bills. The accused was to prepare the bill for the work done by him. The accused was not doing so, and he demanded ₹1,00,000/- for preparing the bill. No record was produced by the prosecution to demonstrate that any bill was prepared by the accused around the time of the incident. This would have corroborated the informant's version that the accused had prepared the bill on the understanding that the bribe would be paid after the preparation of the bill. Thus, the reason for the demand has also not been established.

21. Learned trial Court was swayed by the fact that the informant was literate and would have an interest not to depose against the department. But these considerations were irrelevant to determine the guilt/innocence of the accused.

The guilt of the accused can only be proved by evidence that the accused had demanded and accepted the bribe. Such evidence was missing in the present case, and the learned trial Court erred in convicting the accused.

22. In view of the above, the present appeal is allowed, and the judgment and order passed by the learned trial Court in Corruption case No. 0100001 of 2011 are set aside, and the accused is acquitted of the charged offence. Fine amount, if any, be refunded to the appellant/accused after the expiry of the period of appeal, if no appeal is preferred, and in case of appeal, the same be dealt with as per the orders passed by the Hon'ble Supreme Court of India.

23. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the appellant/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the

appellant/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

24. A copy of this judgment, along with the record of the learned trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

06th October, 2026.
(Ravinder)