

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

CRL.A.No. 434 of 2001 ()

AGAINST THE JUDGMENT IN CC 29/1998 of SPECIAL COURT (SPE/CBI-II),
ERNAKULAM DATED 28-04-2001

APPELLANT/IST ACCUSED:

K. MANI,
PRINCIPAL,
R.V.T.I FOR WOMAN,
KAZHAKKOOTTAM,
THIRUVANANTHAPURAM

BY ADVS.SRI.GEO PAUL

SRI. K.SIJU
SRI.C.R.PRAMOD
SRI.S.ASHOK KUMAR.
SRI.NOEL JOSEPH
SRI.M.B.SANDEEP
SRI.K.V.REJANISH
SMT.P.RADHIKA

RESPONDENT:

INSPECTOR OF POLICE,
SPECIAL C.B.I., KOCHI,
REP.BY THE STANDING COUNSEL OF
C.B.I, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
BY ADV. SRI.M.V.S.NAMBOOTHIRY,SC, C.B.I.
BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
BY P.P.SRI.K.K. RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28.10.2015,
ALONG WITH CRL.A.NO. 439/2001, THE COURT ON 16-12-2015 DELIVERED THE
FOLLOWING:

“CR”

K. RAMAKRISHNAN, J.

.....
Crl.A.Nos. 434 & 439 of 2001

.....
Dated this the 16th day of December, 2015

JUDGMENT

The first accused in C.C.No.29/1998 on the file of the Special Judge (SPE/CBI-II), Ernakulam is the appellant in Crl.A.No.434/2001, while Crl.A.No.439/2001 was filed by the second accused in the same case. Both the accused were charge sheeted by the Inspector of Police, (SPE/CBI), Kochi in R.C.5/A/95/CBI/SPE/KER under section 120 B of the Indian Penal Code read with sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the P.C.Act') and section 13(2) read with section 13(1)(d) of the P.C.Act.

2. The case of the prosecution in nutshell was that the first accused was working as the Principal in Regional Vocational Training Institute for Woman, Kazhakkootam (hereinafter referred to as 'RVTI' in short), while the second accused was his friend and both of them conspired together to demand bribe from PW1 for the purpose of providing employment of peon in the institution for which he was shortlisted for appointment and on account of the conspiracy, they went to the residence of PW1 on 19.3.1995 and demanded

bribe originally of Rs.30,000/- and then fixed the amount to Rs.15,000/- and asked him to bring and deliver the amount to the first accused on or before 26.3.1995 and thereafter, after getting employment in the institution, on 3.5.1995, 4.5.1995 and 5.5.1995 the first accused demanded the amount and threatened him that unless the amount was paid, he would have to face consequences of not declaring his probation and even termination from service assigning misconduct and on 5.5.1995, again he demanded to pay the first instalment of Rs.4,000/- and received the amount and on account of that, he had abused his official position and received illegal gratification from PW1 and committed misconduct and thereby both of them have committed the offences punishable under section 120 B read with sections 7 and 13(1)(d) of the P.C.Act and first accused had further committed the offence under section 13(2) read with section 13(1)(d) of the P.C.Act.

3. After investigation, final report was filed before the Court of Special Judge (CBI/SPE)-I, Ernakulam where it was originally taken as C.C.No.16/1996. Thereafter it was transferred to the Court of Special Judge (SPE/CBI)-II, Ernakulam where it was renumbered as C.C.No.29/1998.

4. When the accused appeared before the court below, after hearing both sides, charge under section 120 B of the Indian Penal Code read with Sections 7 and 13(1)(d) of the P.C. Act was framed against both the accused and section 13(2) read with section 13(1)(d) of the P.C. Act was framed against the first accused and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 18 were examined and Exts.P1 to P34, P7(a),P10(a) to (g), P11(a), P14 (a) to (j), P16(a), P20(a) to (h), P25(a) to (c), P26 to 34 and Mos 1 to 4, Mo1(a), Mo2(a) and Mo3(a) were marked on the side of the prosecution. After closure of the prosecution evidence, the accused were questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and they denied all the incriminating circumstances brought against them in the prosecution evidence. The first accused had stated that he had not committed any offence and he had not demanded any amount as illegal gratification. Since PW1 wanted to recommend to the landlord for getting a rented house for his stay at Thiruvananthapuram, he came to his house with an amount of Rs.4,000/- to be given as advance to the landlord as landlord

told him that he would be coming to his house and waited for sometime and since the landlord did not come, he kept the amount there in the teapoy and went outside and thereafter he came with police officials, and he was made to take the amount and he was arrested from the spot and the case has been falsely foisted against him. The second accused had further stated that he had not committed any offence and he had gone to Calicut along with the first accused as requested by him and he had no role in the commission of the offence. In order to prove the defence case, Exts.D1, D1(a), D2 and D2(a), all contradictions in the evidence of prosecution witnesses and Exts.D3,D4 and D4(a) were marked after recalling PW15. Cws1 and 2 were examined and Exts.C1and C2 were marked as court witnesses and court documents respectively. After considering the evidence on record, the court below found the appellants guilty for the offence under section 120 B of the Indian Penal Code read with sections 7 and 13(1)(d) of the P.C.Act and further convicted the first accused for the offence under section 7 and section 13(2) read with section 13(1)(d) of the P.C.Act and convicted them thereunder and sentenced the first accused to undergo rigorous imprisonment for three years and also to pay a

fine of Rs.5,000/-, in default to undergo simple imprisonment for three months under section 7 of the P.C.Act and further sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months under section 13(1)(d) read with section 13(2) of the P.C.Act and directed the substantive sentences to run concurrently. The second accused was sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for two months under section 120 B of the Indian Penal Code read with sections 7 and 13(1)(d) of the P.C. Act. Aggrieved by the same, the above appeals were filed by the respective appellants/accused before the court below.

5. Heard Smt.P.Radhika, counsel representing counsel appearing for the appellant in Crl.A.No.434/2001 and Sri.P.R. Venkitesh, counsel appearing for the appellant in Crl.A.No.439/2001 and Sri.P.Chandrasekhara Pillai, standing counsel for Central Bureau of Investigation.

6. Counsel for the appellant in Crl.A.No.434/2001 attacked the findings of the court below on several grounds. Learned counsel submitted that though the complaint was alleged to

have been given on 5.5.1995 in the morning at 10.30 a.m, it had reached Kochi office at 5.40 p.m on 5.5.1995 and the First Information Report was registered on the same day, but it reached the court only at 10 a.m on 8.5.1995 and there was no explanation forthcoming regarding the delay in forwarding the First Information Report to court. In the absence of such explanation, it can only be presumed that it was anti timed and it could not have been registered at the time and date on which it was said to have been registered. Further, the evidence of Pws 1, 9 and 14 will go to show that there were discrepancies in their evidence regarding the time at which they reached the house of the first accused and the trap was laid and the manner in which the trap was laid etc. So all these things will go to show that Ext.P3 complaint said to have been given by PW1 would have been prepared only after the alleged trap was completed after due deliberation and discussion with PW14, the trap laying officer and not prior to laying the trap as claimed by the prosecution. So, that benefit ought to have been given to the accused.

7. Further, there is discrepancy in the evidence of PW1 regarding the manner in which he had raised the amount.

According to him, he went to his place for raising the amount by pledging gold ornaments on the night of 29.4.1995 and returned on 1.5.1995 and he was having the money with him. If that be the case, there was no necessity for him to keep the amount with him till 5.5.1995 for giving a complaint and laying the trap as claimed by the prosecution, as even according to the prosecution, the demand persisted by the first accused on 10.4.1995, 13.4.1995, 4.5.1995 and also on 5.5.1995 apart from the initial demand made on 19.3.1995. These demands said to have been made by the first accused have not been supported by any corroborative evidence adduced on the side of the prosecution except the interested testimony of PW1. Further, delay on the part of PW1 in filing Ext.P3 complaint in spite of alleged demands made by the first accused on different occasions throws suspicion about the conduct of PW1 and it cannot be said that the trap was legal and there were prior attempts on the part of the investigating agency to lay the trap and since they failed, they had continued their attempt of laying the trap till they could succeed on 5.5.1995 during night at 7.30 p.m and as such, it cannot be said that the trap was legal and it is only an attempt on the part of PW1

to illegally trap the first accused, who is an innocent person, at the instance of somebody, who were playing against him, and as such no conviction can be based on such illegal trap.

8. Learned counsel also argued that the evidence of PW6, though hostile examined on the part of the prosecution to prove that the accused had approached him to give evidence in support of his case projected by him in Ext.P33 anticipatory bail application, that PW1 approached him for letting out a portion of his house, for which he wanted recommendation of the first accused and he demanded Rs.4,000/- as advance and as requested by PW1, he was asked to come to the house of the first accused on 5.5.1995 and by the time he reached there, the first accused was arrested by the CBI, denied that he was approached by the first accused for that purpose but deposed in support of the case of defence and this will go to show that he has supported the case of the defence and there is nothing to disbelieve him on this aspect and that probablises the case of the accused that the amount was brought by PW1 as advance payable to get a house belonging to PW6 and not as any illegal gratification as claimed by the prosecution. This aspect has not been properly considered by the court below and the

appreciation made by the court below on this aspect is unsustainable in law.

9. The learned counsel also argued that there was no acceptable evidence adduced on the side of the prosecution to prove the alleged conspiracy between the first and second accused to make a demand for payment of illegal gratification for providing the job to PW1 in RVTI, Kazhakoottam as peon and went to the house of PW1 for that purpose on 19.3.1995 and made the demand. The evidence of Pws 1 and 2 on this aspect is not believable and identification of second accused by PW2 from the office of CBI is also doubtful. So identification of the accused persons from court as the persons who came to their house enquiring about PW1 and taking them to the house of PW1 at Mavoor are suspicious in nature. PW18, the investigating officer has given a report including the name of the second accused on June, 1995, though he questioned PW10, the daughter of the second accused, only during July 1995, till then there was no information available to PW18 regarding the involvement of the second accused in the commission of the crime. Further, the evidence of PW10 cannot be relied on for this purpose as she had only hear-say

knowledge about the same and second accused had not disclosed these facts prior to the arrest of the first accused came in the newspaper and as such, her evidence on this aspect cannot be accepted and it cannot be used against the first accused. Further, none of the staff of the lodge in which they were said to have resided on 18th and 19th March, 1995 were examined to prove the identity of the first and second accused to connect them with the offence. The evidence of PW17 is not helpful to prove this aspect except the fact that the entries in Ext.P26 visitors' register maintained in the lodge were written by one Sreenivasan and nothing more.

10. Further, the court below had not properly appreciated the fact that on 19.3.1995, the first accused was in his office which is evident from Ext.P7(a) entry in Ext.P7 register that he had checked the register on 19.3.1995 and if that be the case, there was no possibility for the first accused accompanying the second accused to Kozhikode as claimed by the prosecution. Further, PW12 had stated that there was some discrepancy in the date mentioned while writing Ext.P7 (a) entry which was accepted by the court but at the same time the explanation given by the first accused on that aspect

regarding the genuineness of Ext.P7(a) entry made by the first accused to prove his presence in the office on that day was not accepted by the court below which is illegal. Further, there were entries in Ext.P6 register which were proved through PW13 also will go to show that the duties of PW13 on 19.3.1995 and 20.3.1995 were verified by the first accused.

11. Though PW1 had a case that PW12 also came with the first accused on the night of 10.4.1995 to the room where he was staying as permitted by the first accused and made the demand for the amount, but that was not supported by PW12. So there is no corroboration of evidence given by PW1 regarding the alleged demand made on 10.4.1995 and 13.4.1995. Further, there is no corroboration of the evidence of PW1 regarding the fact that he had opportunity to go to the residence of the first accused on the morning of 4.5.1995 on which date he had said to have made the demand for the amount is not supported by the evidence of any of the witnesses examined to prove that such a practice was available of the night duty peons going to the residence of the first accused to take the key and deliver the key on the next day.

12. Further, the trap said to have been conducted by

PW14 is also doubtful as there was no proper handwash conducted. The manner in which the amount was paid by PW1 and received by the first accused was not properly proved as well. It will be seen from the recovery mahazer that both the hands dipped by the first accused in Phenolphthalein Sodium Carbonate Solution turned only light pink and not dark pink as usual in such cases and this will go to show that the manner in which the first accused had handled the amount when it was given by PW1 as spoken to PW1 and PW9 are not believable, whereas the version given by the first accused that happened only because he had not handled the amount and the money kept by PW1 on the teapoy was compelled to be taken by the accused when he returned along with the CBI officials is more probable. Further, the manner in which the articles for laying the trap were brought by PW14 was also doubtful. Further, PW9 being an employee of Central Public Sector Unit, he cannot be treated as an independent witness to the trap. Further, there were material omissions on the part of PW9 regarding the manner in which the amount was handled by the first accused after receiving the same from PW1` from the statement given by him in court. So those aspects will go to

show that he could not have been in the place as claimed by him.

13. Further, the discrepancy in Ext.P6 register regarding working of PW1 on 29.4.1995, 30.4.1995, 1.5.1995 and 2.5.1995 will go to show that there was no possibility of PW1 going to Kozhikode to arrange the amount as claimed and there is discrepancy in the evidence of PW1 on this aspect. That will go to show that he is not a trustworthy witness to be believed without corroboration to prove the case of the prosecution. Further, according to PW5, his house was rented out to PW1 through a broker by name Pournami and not by Bhaskaran as stated by PW1 and the said Bhaskaran was not examined as a witness in the case. Further, it is difficult to believe the evidence of PW1 that he had brought his wife and child accompanied by brother-in-law from Kozhikde to Thiruvananthapuram without arranging a house for their stay. Further, for the purpose of paying advance of Rs.1,500/-, there was no necessity for him to raise an amount of Rs.6,000/- by selling gold ornaments and borrowing and such, an evidence was made to let in by PW1 so as to suit the case that the first accused demanded atleast Rs.4,000/- to be paid on 5.5.1995

which is artificial cannot be believable. So from this it will be seen that there is no possibility for any demand and acceptance made by the first accused as claimed by the prosecution and it is an illegal trap and that benefit ought to have been given to the accused.

14. The learned counsel had also argued that the sanction was not proper. There was no proper application of mind by the sanctioning authority before granting Ext.P19 sanction. The evidence of PW15 could not have been believed on this aspect as court below also came to the conclusion that there was no possibility of any discussion being made by PW15 as claimed with the concerned Minister, the sanctioning authority, to grant sanction. It will be seen from Exts.D4 and D4(a) file that statement of witnesses and all the relevant documents relied by the investigating agency to make out a case against the accused warranting sanction were not made available to the Minister. Further, the translated copies of the statement of witnesses were not provided. So it cannot be said that the relevant materials were before the sanctioning authority for the purpose of applying mind before granting sanction. Further, the mistake in the draft sanction order provided by

the CBI regarding the discrepancy in the presence of cupboard/showcase from where the amount was said to have been taken by the first accused and delivered to PW14, the detecting officer when he demanded the amount which was paid by PW1 and accepted by him were crept in the draft sanction order said to have been drafted by the officer by name Om Praksh Garg and there is no possibility for the sanctioning authority applying his mind before issuing sanction and that has caused prejudice to the accused and thereby it cannot be said that there is valid sanction and prosecution is bad on account of the same. The learned counsel has relied on the decisions reported in **Central Bureau of Investigation v. Ashok Kumar Aggarwal** [2014 (2) KLT SN 14(C.No.19 (SC)], **State of T.N v. M.M. Rajendran** (1998 (9) SCC268) and **State of Punjab v. Madan Mohan Lal Verma** [2013(3) KLT SN 91 (C.No.96) SC] in support of her case.

15. Counsel for the appellant in Crl.A.No.439/2001 argued that except the alleged extra judicial confession said to have been made by the second accused to PW10, her daughter, there is no acceptable evidence adduced on the side of the

prosecution to prove the conspiracy alleged and the second accused accompanying the first accused to Kozhikode to help him to make the demand as claimed by the prosecution. Further, the first accused was not convicted for the offence of criminal conspiracy and as such, the court below was not justified in convicting the second accused for the offence of conspiracy. He had relied on the decisions reported in **Bhagat Ram v. State of Rajasthan** (1972 (2) SCC 466), **B.H. Narasimha Rao v. Government of A.P., represented by C.B.I** (1995 Supp (4) SCC 704), **Virendranath v. State of Maharashtra** (AIR 1996 SC 490), **Saju v. State of Kerala** (2001 (1) SCC 378), **Girja Shankar Misra v.State of U.P** (1994 Supp (1) SCC 26), **K.R. Purushothaman v. State of Kerala** (JT 2005 (9) SC 38) and **Topandas v. State of Bombay** (AIR 1956 SC 33) in support of his case and prayed for acquittal of second accused.

16. The Standing Counsel for C.B.I argued that the evidence of Pws 1 and 2 will go to show that on 19.3.1995 accused 1 and 2 came to Kozhikode enquiring about PW1 to his tharavadu house and thereafter they came to the rented house of PW1 at Mavoor along with PW2 from where they made

demand originally for Rs.30,000/- and demand was made by first accused through the second accused and when they expressed their inability to raise the amount on account of their financial position, they reduced the amount to Rs.15,000/- and wanted to bring that amount on or before 26.3.1995 at the address given in Ext.P1 slip as instructed by the first accused and prepared in the handwriting of second accused and handed over to PW1 by the second accused. Since PW1 was not willing to pay the amount, he did not go and he received the appointment order dated 1.4.1995 and joined duty in the morning of 10.4.1995. At that time, the first accused was not in the office. From 10.4.1995 onwards it is clear from the evidence of PW1 that the first accused was continuing his demand for the amount and ultimately on the night of 4.5.1995, he insisted to pay the amount on the next day in three instalments and first instalment of Rs.4,000/- has to be paid on the next day namely 5.5.1995 as he wanted to go to Calcutta in connection with his official duty. Since PW1 was not interested in payment of the amount on the morning of 5.5.1995, he went to the office of the CBI and informed about the same and gave Ext.P3 complaint to PW14 and PW14

instructed PW1 to get duty change and asked him to come in the evening with the money. PW14 instructed PW18 to register a crime. Accordingly PW18 registered Ext.P29 First Information Report as R.C.5/A/95 of CBI, Kochi under section 7 of the P.C.Act against the first accused and another identifiable person.

17. Thereafter PW1 got his duty change and went to the office of PW14 along with money and thereafter PW14 obtained the assistance of PW9 and another Central Government employee by name Joseph and laid the trap on 5.5.1995 at about 7.30 p.m and the trap was successful as first accused demanded and received the amount and thereafter he arrested the accused and recovered tainted money after conducting Phenolphthalein Sodium Carbonite Solution test. So this will go to show that there was demand and acceptance and there is nothing to disbelieve the evidence of Pws 1 and 14 on this aspect. Further PW9, the decoy witness had corroborated the evidence of Pws 1 and 14 in this regard.

18. The fact that he got employment and he joined duty, the amount was paid and the amount was recovered etc were not in dispute. So the burden is on the accused to disprove the

fact proved by the prosecution by adducing cogent evidence.

19. Though he had a case that he had arranged for a rented house and for payment of advance to the landlord, he came with the money and since the landlord did not reach, he kept the money in the teapoy kept in the hall and thereafter he along with the CBI official came and he was made to take the amount etc, the same was not proved by him. So the presumption under section 20 of the Act will be attracted.

20. He had also argued that Exts.D4 and D4(a) files along with the evidence of PW15, the Secretary who signed the sanction order on behalf of the President, the sanctioning authority, will go to show that the Minister has approved the sanction after having discussion on the basis of the materials produced before him and as such there is application of mind. Further once it is found by the lower court that there is valid sanction, the irregularity or defect in sanction cannot be a ground for acquittal by the appellate court unless failure of justice has been established by the accused in view of section 19(3) of the PC Act. There is no proper application of mind and defect in the sanction has resulted in failure of justice has not been established by the accused and as such it cannot a

ground for acquittal. He had relied on the decisions reported in **Villa Nagul v. State of A.P** (2010 (11) SCC 575), **P.Noha v. State of Kerala and another** (2006(12)SCC 277), **Narasimharao v. State of A.P** (2001 (1) SCC 691) and **Krishna Pillai v. State of Kerala** (1989 (1) Crimes 701) in support of his case.

21. The points that arise for consideration are:

i. Whether the court below was justified in holding that the prosecution established conspiracy between the first and second accused for the purpose of making demand of illegal gratification in respect of appointment of PW1 to the post of Peon in RVTI, Kazhakkooottam?

ii. Whether the court below was justified in holding that the prosecution has proved that in pursuance of the conspiracy accused 1 and 2 went to the house of Pw1 and made the demand?

iii. Whether the court below was justified in holding that the first accused had continued in making demand or persisted his demand and compelled PW1 to pay the amount as illegal gratification?

iv. Whether the court below was justified in holding that

the prosecution has proved that the first accused had made demand and accepted the illegal gratification in abuse of his official position to get unlawful gain while discharging as a public servant?

v. whether the court below was justified in coming to the conclusion that the sanction accorded is valid?

vi. Whether the conviction entered by the court below can be set aside even if there is some defect or irregularity in granting sanction by the appellant in view of section 19(4) of the P.C.Act?

vii. whether the court below was justified in holding that the first accused has committed the offence punishable under section 120B of the P.C.Act read with section 7 of the P.C. Act?

viii. Whether the court below was justified in holding that the first accused had committed the offence punishable under section 13(1)(d) read with section 13(2) of the P.C.Act?

xi. If so the sentence imposed is proper and legal?

Points i to iii and vi and vii:

22. Before going into the facts of the case, let me consider the legal aspects and precedents in the matter of

proving the offence under sections 7 and 13(1)(d) of the P.C. Act and also materials to be considered for the purpose of considering the question of sanction etc. Section 20 of the P.C. Act deals with presumption, which reads as follows:

20. Presumption where public servant accepts gratification other than legal remuneration:- (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that the accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be

presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn”.

23. In order to succeed, the prosecution has to prove the demand and acceptance of illegal gratification by the accused in abuse of his official position as a public servant for making unlawful gain to him in discharging his official duty. If demand and acceptance are proved by the prosecution, then the presumption under section 20 of the P.C.Act will be attracted and the court shall presume that the accused had demanded and accepted the reward or illegal gratification for doing his official duty abusing his official position as a public servant and the burden is on the accused to rebut the same.

24. It is also settled law that mere recovery of tainted

amount from the possession of the accused alone is not sufficient to attract the offence and it is proved by the prosecution the demand and acceptance of the amount. Only if the demand and acceptance are proved by the prosecution, then only the presumption under section 20 of the P.C Act will be attracted. The burden on the accused is not so onerous as that cast on the prosecution to prove the case beyond reasonable doubt and he can prove the same by preponderance of probabilities as well. This was so held in the decision reported in **Suraj Mal v. State of Delhi Administration** (AIR 1979 (SC) 1408), **A. Subair v. State of Kerala** [(2009) 6 SCC 587], **Parameswaran Pillai R. (Dr.) v. State of Kerala** (2011(4) KHC 411), **State of West Bengal v. Kailash Chandra Pandey** (AIR 2005 SC 119), **State of Andrapradesh v. Kommaraju Gopala Krishna Murthy** [(2000) 9 SCC 752], **Dhanvantrai Balwantrai Desai v. State of Maharashtra** (AIR 1964 SC 575), **Sita Ram v. State of Rajasthan** (AIR 1975 SC 1432), **Mahesh Prasad Gupta v. State of Rajasthan** (1974 Crl.L.J. 509), **Balakrishnan v. State by Special Police Establishment,**

Madras Branch (1994 Crl.L.J. 1258), **State of Assam v. Krishna Rao, M.D. Bajid** (AIR 1973 SC 28), **Chaturdas Bhagwandas Patel v. State of Gujarat** (AIR 1976 SC 1497), **Sat Paul v. Delhi Administration** (AIR 1976 SC 294), **State of Tamil Nadu v Rajendran** (2000 SCC (Cri) 40), **Sitaramacharya v. Gururajacharya** (AIR 1997 SC 806), **Sarup Chand v. State of Punjab** (AIR 1987 SC 1441), **Ayyasami v. State of Tamil Nadu** (1992 Crl.L.J. 608), **Mohammed Nazeeruddin v. State of Andhrapradesh** (1994 Crl.L.J. 2304), **V. Sebastian v. State** (1988 Crl.L.J. 1150), **M.O. Shamsudhin v. State of Kerala** (JT 1995 (3) SC 367), **Laxmi Narain Goyal v. State of Rajasthan** (1997 (3) Crimes 541), **Prakash Chand Jain v. State** (1968 Crl.L.J.391), **Sultan Ahmed v. State of Bihar** (1974 Crl.L.J. 895), **State of Kerala and Another v. C.P.Rao** (AIR 2012 SC (Crl.) 911), **Banarsi Dass v. State of Haryana** (AIR 2010 SC 1589), **B. Jayaraj v. State of Andhrapradesh** (2014(4) SCALE 81), **Narendra Champaklal Trivedi v. State of Gujarat**

[(2012) 7 SCC 80], **Punjabrao v. State of Maharashtra** [(2002) 10 SCC 371], **Mohmoodkhan Mahboobkhan Pathan v. State of Maharashtra** (1997 (10) SCC 600).

25. Further in the decision reported in **Vinod Kumar v. State of Punjab** [2015 (1) KHC SN 17 (SC)], the Supreme Court has held that it is settled principle of law that mere recovery of tainted money is not sufficient to record conviction unless there is evidence that bribe has been demanded or money has been paid voluntarily as bribe. In the absence of demand and acceptance of any amount as illegal gratification, recovery would not alone be a ground for convicting the accused. If the factum of recovery of the amount coupled with demand and acceptance of amount were proved by the prosecution, merely because the complainant turned hostile alone is not sufficient to discard the prosecution case. If the witnesses to the trap and the police party who accompanied the trap had deposed about the demand and acceptance and recovery of the amount, if there is no explanation forthcoming from the side of the accused as to how it had come into his shirt's pocket, then legitimately a presumption can be drawn that he had received or accepted the said currency notes on his

own volition. With this principles in mind, the case in hand has to be considered.

26. The case of the prosecution as emerged from the prosecution witnesses was as follows:

PW1, Subramonian, was a resident of Mavoor in Kozhikode. He had applied for the post of peon in RVTI, Kazhakoottam of which the first accused was the Principal during 1995. He was shortlisted for appointment after interview for that post. He attended the interview on 14.3.1995 and interview was conducted by a panel consists of PW1 Principal and PW8. The second accused is the father of PW10, who was an employee in that institution. As requested by the first accused and as decided by both of them to approach PW1 and to demand bribe for providing employment to PW1, on 18.3.1995 evening they went to Kozhikode and took a room in Delma Tourist Home of which PW17 was the Manager. After making necessary entries in Exts.P15 and P26 visitors register maintained in that tourist home, they stayed in the tourist home on that night and on 19.3.1995 in the morning, they went to the tharavadu house of PW1 and met PW2 Pennootty, sister of PW1 who told that PW1 was residing in a rented

house at Mavoor and as requested by them, Pennootty accompanied them in an auto rickshaw to the house of PW1 at Mavoor. When they reached there, PW1 was not there in the house. He went for some employment and they told his wife about them and the purpose of their arrival to meet PW1 and his wife went outside and informed PW1 about the arrival of accused 1 and 2 and he came along with his wife to the house. At that time, the second accused introduced the first accused as the Principal of the institution in which PW1 had applied for the post of peon on the basis of the advertisement made and attended the interview and he told that he could recollect him and at that time the second accused told that if he pays Rs.30,000/- to the first accused, he will take all steps to get employment for him. Both Pws 1 and 2 expressed their inability to raise the amount on account of their pathetic financial position. Thereafter there was some bargaining between them and ultimately the first accused through the second accused fixed the amount for Rs.15,000/- and wanted to bring the amount and pay the same to the first accused on or before 26.3.1995 otherwise he will be losing the job and the second in the list was likely to get the same as

he was prepared to offer more. Further the first accused had prepared Ext.P1 slip writing the address of the first accused where PW1 had to come and pay the amount and he also appraised him all the prospects of the employment and if the amount was paid, even the first accused was capable of providing employment for his wife also in the same institution and they could arrange the amount by sharing the amount between siblings of PW1. Thereafter they left the place. PW1 was not willing to pay the amount and so he did not go there as requested by the accused persons.

27. He got appointment order dated 1.4.1995 and accordingly he went there and joined duty in the morning of 10.4.1995 evidenced by Ext.P2 joining report. At the time when he joined duty, the first accused was not there in the office. He came in the afternoon and asked PW1 as to whether he had brought the amount and he told that he had not brought the amount. Thereafter as requested by him he stayed in the institution itself in a room provided by the first accused. Thereafter during night PW1 along with PW12 came there and wanted him to pay the amount. According to PW1, the demand continued on subsequent dates also and on

3.4.1995 and 4.4.1995 when he went to the house of the first accused for taking key of the office, he insisted for payment of the amount and on 4.4.1995 he told that he had to bring the amount of Rs.15,000/- agreed and he could pay the amount in three instalments and first instalment has to be paid on 5.5.1995 as he was going to Calcutta in connection with his official duty and he would be back only after few days. He wanted to bring Rs.4,000/- on that date. He reminded this fact to PW1 when he came there in the morning of 5.5.1995 also. He had further threatened him that if PW1 did not pay the amount, he would not declare his probation and PW1 would be terminated on the ground of misconduct by showing some false reasons. Since PW1 did not want to pay the amount, he went to the office of PW14 at 10 a.m on 5.5.1995 and told PW14 about the same and gave Ext.P3 complaint. PW14 instructed to get change of duty on that day and asked him to come at 3.30 p.m with the amount. Accordingly PW1 applied for change of duty and got the same and went to the office of PW14 along with the money at 3.45 p.m.

28. For the purpose of laying trap, PW14 applied to the Telecom Department and obtained the assistance of PW9,

Rajendran, and one Joseph of the same department and both of them reached the office of PW14 by 3.30 p.m on 5.5.1995. Thereafter PW14 readout Ext.P3 complaint to the witnesses in the presence of PW1 and he admitted the contents of the same and handed over MO4 series currency notes to PW14. Thereafter he demonstrated the phenolphthalein test to the witnesses as per rules and collected the solution turned pink in MO1 bottle and assigned Mark A for the same and sealed the same using MO1(a) wrapper made of cloth. Thereafter he prepared Ext.P4 entrustment mahazer after describing the denomination of MO4 series notes and also describing the denomination of phenolphthalein test shown to the witnesses and also prepared a trap plan as to how that had to be implemented. Thereafter PW14 along with PW1, PW9 and the other witness Joseph and police party came to the house of PW1 at about 7.30 p.m and asked PW1 to go to the house accompanied by PW9 and told them that if the first accused asked anything about PW9, introduce him as his brother-in-law. Accordingly Pws 1 and 9 went to the house of the first accused and pressed the calling bell and at that time, the first accused came outside and asked them to come inside

and asked about PW9. At that time PW1 introduced him as his brother-in-law came from Kozhikode. Thereafter the first accused asked as to whether he had brought the amount. Accordingly, he took the amount and handed over the same to the first accused which he received with his right hand and then changed over to the left hand and kept in the cupboard in the hall cum dinning room. The first accused offered tea for them but they told that they were tired and wanted to go and thereafter both Pws 1 and 9 came outside and PW1 gave signal as instructed by PW14 and thereafter Pws 1,9, 14 and party came and pressed calling bell. At that time, wife of the first accused came and opened the door. They told her that they wanted to see the first accused and accordingly they went inside and got introduced to the first accused and PW14 asked as to whether he had received the bribe amount from PW1 and he confessed and told that he may be pardoned and he had committed the mistake for the first time. Thereafter he asked where he kept the money and asked him to take the money and accordingly the first accused took the money from the cupboard and handed over the same to PW9. On verification, it tallied with the descriptions mentioned in Ext.P4

entrustment mahazer. He conducted phenolphthalein Sodium Carbonate Solution test on both hands of the first accused and the solution turned light pink and he had collected the solution in Mos 2 and 3 bottles and sealed the same after putting marks B and C, packed using Mos2(a) and MO3(a) wrappers. Thereafter he came to his office and released him on bail.

29. On getting Ext.P3 complaint, PW14 as instructed by his superior officer forwarded the same to their Kochi office, which was received by PW18 and he registered Ext.P29 First Information Report as R.C.5/A/95 of CBI-Kochi under section 120 B of the Indian Penal Code and section 7 of the P.C.Act against the first accused and another identifiable person. Thereafter he had undertaken the investigation of the case. As per his request, PW4 prepared Ext.P8 layout of the place of occurrence and Ext.P9 sketch plan of the house. He questioned the witnesses and recorded their statements. He seized Ext.P6 attendance register, Ext.P7 security register and Ext.P12 H.O.D order dated 17.3.1995. He conducted search of the house of the first accused and prepared Ext.P17 search list. He conducted search of the office of the first accused in RVTI, Kazhakkootam and prepared Ext.P18 search list. He had seized

Ext.P20 file relating to the selection process of the peon of that office. Ext.P21 is the file relating to the minutes of the committee constituted for the purpose of conducting selection. Ext.P22 is the letter sent by the first accused informing recommendation of the committee. Exts.P23 and 24 are correspondence in respect of the appointment. Ext.P25 is the personal file of the first accused. He seized the same as per the mahazers. Thereafter he arrested the second accused as it was revealed during investigation that he had also involved in the commission of the crime and it was he who had accompanied the first accused to Kozhikode to make the first demand after hatching conspiracy for that purpose. He collected Ext.P14 series specimen handwriting of the second accused. He collected Ext.P15 register of Delma tourist home, Calicut. Ext.P26 visitors book and Ext.P27 bill book as produced by PW17 as per Ext.P28 receipt. Thereafter he sent Ext.P1 slip, Ext.P15 register, Ext.P14 series and Ext.P26 for getting expert opinion to Government Examiners Questioned Documents at Hyderabad along with Ext.P13 letter and these documents were examined by PW11 who issued Ext.P16 opinion along with Ext.P16(a) detailed reasons for his opinion in which he had

opined that the standard handwriting and handwriting in Exts.P1 and 15 tallies. He gave Ext.P32 report to add second accused also. He had also given a report to add section 13(1) (d) read with section 13(2) of the P.C.Act. He collected Ext.P33 application filed by the first accused seeking anticipatory bail. He sent Mos 1 to 3 for examination as per Ext.P30 forwarding note and obtained Ext.P34 chemical examiner's report to show that phenolphthalein test was positive. He made a request to the Ministry of Labour, who is the authority to sanction for prosecution of the first accused and obtained Ext.P19 sanction letter signed by PW15. He had questioned PW5 to prove that PW1 had taken the house on rent from him. PW6 was examined to disprove the case put forward by the accused in Ext.P33 application. He had questioned PW3 to prove that the first accused was residing in the house rented out by him. He also questioned Pws 8 and 9 to prove the appointment process and issuance of appointment order to the first accused. Pws 12 and 13 were examined to prove the procedure and also attempt of the first accused to manipulate in the security register to show that he was present in the office on 19.3.1995 as an alibi. PW10, who is the daughter of the second accused,

was questioned to prove the extra judicial confession made by the second accused about his going to Kozhikode along with the first accused when the arrest of first accused came in the newspaper. He completed the investigation and submitted final report.

30. Prosecution relies on the evidence of Pws 1, 2 and Ext.P1 and entries in Exts.P15 and P26 and also the evidence of PW10 and the admission of second accused made when he was questioned under section 313 of the Code regarding the incriminating circumstances put to him brought in the prosecution evidence for the purpose of proving the conspiracy and prior demand made on 19.3.1995. The prosecution also relies on the evidence of Pws1, 9 and 14 coupled with Ext.P3 complaint, Ext.P4 entrustment mahazer and Ext.P5 recovery mahazer to prove the demand and acceptance of the illegal gratification by the first accused. The fact that there was vacancy for the post of peon in RVTI, Kazhakkuttom and arrangements were made to call for applications for filling the vacancy and interview was conducted by acommittee constituted with PW8 as its Chairman and the first accused as one of the members and PW1 had applied for the same and

attended the interview on 14.3.1995 and the committee had recommended the name of PW1 for that purpose and appointment order dated 1.4.1995 was issued to him and he joined duty on the forenoon of 10.4.1995 and at that time, the first accused was not in the office, are not in dispute. So there is no necessity to go into the evidence adduced on the side of the prosecution on all these aspects through Pws 8 and 9 and documents produced relating to the same as well.

31. It is also in a way admitted by the first accused that, on 5.5.1995, at about 7.30 p.m, PW1 came to his house along with PW9 and delivered Rs.4,000/- which was accepted by him and immediately thereafter PW1 went outside, after sometime he along with the CBI officials came to his house and recovered the amount and he was arrested in connection with the same, are also not in dispute. Then the question as to whether it was offered as illegal gratification or it was some other amount which has been offered as claimed by the first accused and that has to be evaluated from the nature of evidence adduced in this case.

32. PW1 had deposed that, on 19.3.1995, while he was in his workplace at Kozikode, his wife came and told that two

persons from Thiruvananthapuram along with his sister-PW2 came to their house and they wanted to see him and accordingly, he went to the house at Mavoor where he was residing on rent along with his wife and children and at that time he saw accused 1 and 2 there along with his sister, PW2 Pennooty. He had also deposed that second accused introduced the first accused to him as Principal of the institution and he could recognize him as he was present at the time when he attended the interview and second accused told that he along with the first accused came there for the purpose of providing employment to him, for which he had to pay Rs.30,000/- and unless this amount was paid to the first accused, there was possibility of losing the employment as others were offering more amount. This demand was made by the second accused for and on behalf of the first accused after they making consultation with each other. PW1 told that he was not able to raise the amount and it was very difficult for him to raise so much amount on account of their financial position. Thereafter, after due deliberation with the first accused, he wanted at least Rs.15,000/- for that purpose and as instructed by the first accused, he had prepared Ext.P1 slip and handed over the

same to him asking him to go to the address mentioned therein along with the money and pay the same to the first accused on or before 26.3.1995 otherwise he would likely to lose his employment. He had told him his inability to raise the amount. Even at that time both of them advised to raise the amount with the help of his brother-in-law or relatives and pay the same.

33. This part of the evidence of PW1 was corroborated by the evidence of PW2, his sister. She had deposed that on 19.3.1995 both first and second accused came to the tharavadu house of PW1 and enquired about PW1 and she told that he was not residing in the tharavadu house and residing in a rented house at Mavoor. Then they wanted to show that house and requested her to accompany with them to show the house. Accordingly, she accompanied them in an auto-rickshaw and reached the house of PW1 at Mavoor. At that time PW1 was not there and his wife went to fetch him from his workplace and after some time, both of them came back and first and second accused had discussions with him about the amount payable. They first demanded for an amount of Rs.30,000/- and when both Pws1 and 2 expressed their inability to raise the

amount and pay the same on account of their financial position, they insisted to pay atleast Rs.15,000/- on or before 26.3.1995. Though PW1 has expressed his inability to raise that amount also, they told that it was better for him to raise the amount and pay the same and after PW1 joining the post, his wife was also likely to get some employment in the same institution for which first accused could help him. They also explained the prospects in the employment and if PW1 did not pay the amount, he would likely to lose the employment.

34. Though they were cross examined at length, except some minor discrepancies in the evidence, nothing was brought out to discredit their evidence in this aspect. Further Pws 1 and 2 have deposed that later from the office of the CBI at Kochi, they have identified both the accused before they could identify them in court at the time of trial. It may be mentioned here that there was some discrepancy in the evidence of PW2 regarding the time at which she was made to identify the second accused from the office of CBI at Kochi. But a reading of the entire evidence of Pws 1 and 2 will go to show that the discrepancy happened due to lapse of time and that is not a material contradiction so as to discard their evidence on this

aspect. This was magnified by the defence counsel on the ground that PW10, the daughter of the second accused, was questioned only during July, 1995 till then they have no idea about the involvement of second accused. They have got only an information that another person also accompanied the first accused for the purpose of making demand and he was implicated in the case only later. So, according to the defence counsel, this is an improbability. But reading of the evidence of Pws 1 and 2 coupled with the evidence of PW18, investigating officer, it will be seen that the identification of the second accused from the office of PW18 had happened and there is nothing to disbelieve the evidence of Pws1 and 2 on this aspect.

35. Further, it will be seen from the evidence of PW10, the daughter of second accused, that when the arrest of first accused came in the newspaper, the second accused, who is her father, disclosed her about his acquaintance with the incident and accompanying the first accused to Kozhikode to see PW1 and make the demand. It is also deposed by her that prior to going to Kozhikode, he had occasion to meet the first accused and he wanted him to accompany him and he made

arrangements for the ticket also and accordingly both of them went to Kozhikode in the evening of 18.3.1995 and took a room in Delma tourist home, Kozhikode and room was taken in the name of the second accused. Though some suggestions were given to PW10 that she has got some enmity towards the first accused and at the instance of some employees in the institution, she had deposed against him, she had denied the same. The reason for her enmity towards the first accused to give evidence inculcating her own father for this purpose has not been established by the first accused. Further, it is quite unnatural that a daughter will be implicating her own father in a case like this knowing that her disclosure of the fact confessed to her by her father is likely to end in punishment for her father in order to take vengeance against the first accused as claimed by the first accused and it is not believable as well.

36. There is no advantage for PW10 to give such an evidence against her own father as well. Further in the 313 examination when incriminating circumstances were put to second accused, he had admitted those facts relating to he accompanied the first accused for going to Kozhikode and

meeting PW1 and making discussion on behalf of the first accused on the basis of instruction given by him and giving Ext.P1 slip in his handwriting etc. The possibility of second accused making extra judicial confession to PW10, his own daughter, is also probable and it cannot be said that there was no possibility of him disclosing this fact to PW10. The fact that PW10 was working in the institution at the relevant time and second accused used to come and meet the first accused occasionally whenever he came there to see PW10 is also spoken to by PW10 and that also cannot be said to be an improbable one in the circumstances of the case.

37. Further it will be seen from Ext.P16 report given by PW11, the Handwriting Expert from Questioned Document Examiner at Hyderabad along with his reasonings in Ext.P16 (a) and comparing Ext.P15 and Ext.P1 slip with Ext.P14 series specimen handwriting of second accused will go to show that the writings in Ext.P15 and P1 tallies with the specimen handwriting of the second accused namely Ext.P14 series and he had opined that authorship of both will be by the one and the same person and he had given the reasonings for arriving at such a conclusion as well. He had proved these aspects

when he was examined in court as well.

38. Further, the evidence of PW17 coupled with the entries in Ext.P26 register and Ext.P27 bill book will go to show that the second accused had come to their lodge along with his friend and took room on 18.3.1995 and vacated the room on 19.3.1995 and this will strengthen the case of the prosecution that accused 1 and 2 had gone to Kozhikode and taken a room in that lodge for the purpose of meeting PW1 and thereafter went together to the house of PW1 and made initial demand. Further, their evidence will also go to show that there was a meeting of mind of accused 1 and 2 for the purpose of making the demand and for that purpose, they conspired together and then on the basis of the conspiracy hatched, they went to Kozhikode and made the demand. It is very difficult to prove the conspiracy as normally there will be no direct evidence to prove this fact. This can only be inferred from the circumstantial evidence adduced from the side of the prosecution coupled with attended circumstances.

39. Section 10 of the Evidence Act deals with evidentiary value of the confession given by one of the co-accused, who is a party to the conspiracy, which reads as follows:

S.10. Things said or done by conspirator in reference to common design:-Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

40. Further in the decision reported in **Jeyendra Saraswathi Swamigal v. State of T.N** (AIR 2005 SC 716) it has been observed that if prima facie evidence of existence of a conspiracy is given and accepted, the evidence of acts and statements made by any one of the conspirators in furtherance of the common object is admissible against all. The same view has been earlier expressed and also the purpose of enacting section 10 in the Evidence Act has been considered by the Apex Court in the decision reported in **Badri Rai and another v. State of Bihar** (AIR 1958 SC 953).

41. Further section 30 of the Evidence Act deals with

confession of one of the accused, extent of its admissibility against others which reads as follows:

S.30. Consideration of proved confession affecting person making it and others jointly under trial for same offence:- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

[Explanation:- "Offence", as used in this section, includes the abetment of, or attempt to commit the offence.]

42. In order to use this section for the purpose of considering the admission of one of the accused in respect of the commission of the offence when they were jointly tried, both must face the same offence and they must be tried in the same trial for the same offence. So in view of sections 10 and 30 of the Evidence Act also extra judicial confession made by the second accused to PW1 regarding the circumstances leading to both of them going to Kozhikode and making the demand for providing employment for PW1 is admissible not only against the second accused but also against the first accused

for proving the conspiracy and also factum of making first demand to PW1 on this aspect.

43. It is settled law that it is not possible for the witnesses to speak about the minute details of the transaction and there is possibility of discrepancy occur in their evidence on certain aspects due to lapse of time. It is for the court to appreciate these aspects while appreciating evidence of witnesses examined in court. Merely because there were some discrepancies in the evidence which are natural discrepancies caused on account of natural character of the witnesses or likely to occur due to lapse of time affecting the memory of a person, then it is not a ground to disbelieve the evidence of such witnesses on this aspect. So even assuming that there were some discrepancy in the evidence of Pws 1 and 2 or PW10, that alone is not sufficient to disbelieve their evidence on the question of conspiracy hatched between accused 1 and 2 and on the basis of the conspiracy, going to Kozhikode and demanding amount with PW1 for providing the employment to him for which he had been shortlisted for appointment and that too misusing the position of the first accused as its Principal with the aid of the second accused. So court below

was perfectly justified in coming to the conclusion that on the basis of the evidence adduced on the side of the prosecution, they have succeeded in proving the fact of conspiracy hatched between the accused 1 and 2 and they going to the house of PW1 and making demand of illegal gratification for the purpose of providing employment to him for which he has already been shortlisted as a first rank holder in the selection process conducted for that purpose with first accused as one of the members of the committee beyond reasonable doubt and thereby they have committed the offence punishable under section 120 B of the Indian Penal Code and Section 7 of the P.C.Act and rightly convicted them for the said offence.

44. The submission made by the counsel for the second accused, the appellant in Crl.A.No.439/2001, was that there was no conviction entered against the first accused for conspiracy and as such the conviction against the second accused for the said offence is not sustainable relying on the decisions reported in **Bhagat Ram v. State of Rajasthan** (1972 (2) SCC 466), **B.H. Narasimha Rao v. Govt.of A.P** (1995 suppl (4) SCC 704), **Virendranath v. State of Maharashtra** (AIR 1996 SC 490), **Girija Shankar Misra v. State of U.P**

(1994 suppl (1) SCC 26), **K.R. Purushothaman v. State of Kerala** (JT 2005 (9) SCC 38) and **Topandas v. State of Bombay**(AIR 1956 SC 33) has no substance. In this case, the court below while answering the question found that both the accused had conspired together for the purpose of making demand and made the demand on 19.3.1995 and arrived at a conclusion on this aspect and found them guilty for the offence. But the court below had not provided separate sentence to the first accused for the offence under section 120 B of the Indian Penal Code though he was convicted for the offence under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act. In all the decisions relied on by the counsel for the second accused, it was found that if there is no finding of guilt of conspiracy hatched against of a conspirator and if there is no conviction of the co-accused who was said to be a conspirator for committing crime along with others, then the other accused who has been charged for the offence of section 120 B is not liable to be convicted for the offence. In all those cases conspiracy was not proved against some of the accused persons and they were acquitted of that charge. In such circumstances, convicting some of the accused persons alone,

who were said to be part of the said conspiracy in such circumstances was said to be unsustainable and they were acquitted of the charge for the offence under section 120 B of the Indian Penal Code. That was not a case in hand. So conviction entered by the court below against the appellant in both the cases for the offences under section 120 B of the Indian Penal Code and section 7 of the P.C.Act are perfectly justifiable and the same does not call for any interference.

45. As regards the second part played by the first accused is concerned, prosecution relies on the evidence of Pws 1, 9 and 14 and the recovery effected. There is no dispute regarding the proposition of law that mere recovery of tainted notes in the absence of proof of demand and acceptance alone is not sufficient to convict the accused for the offence under section 7 or under section 13(1)(d) read with section 13(2) of the P.C. Act. In this case, the fact that PW1 had paid Rs.4,000/- and it was received by the first accused and later it was recovered from his possession by the CBI Officials was not disputed even by the first accused. So under such circumstances, the question as to how PW1 had raised Rs.4,000/- for the purpose of paying the same to the first accused as projected by the defence counsel as

a material aspect to disbelieve the evidence of PW1 has no significance. Even, according to the first accused, he had brought Rs.4,000/- to be payable as advance to PW6, the landlord with whom the first accused had some acquaintance, who wanted recommendation of the first accused for providing the building to PW1. Further the discrepancy regarding position of the cupboard from where the amount was taken and produced by the first accused also has no much significance in such circumstances. So discrepancy in the evidence of presence of cupboard mentioned in the recovery mahazer and some discrepancy in the evidence of PW4, who prepared the location plan and sketch plan of the house are not having any impact on the recovery effected. In such circumstances, the burden is on the accused to prove and account for the amount to the satisfaction of the court though by preponderance of probabilities.

46. PW1 had categorically stated that after making the demand from Kozhikode on 19.3.1995, the demand for payment of the amount continued even after he joined duty on several dates. He had deposed that even on the evening of 10.4.1995 when he joined duty, he had made the demand from

the room provided by him in the institution for stay on that day. The fact that the first accused came to that room on that day night was proved by the evidence of PW12 though he did not state anything about the conversation happened between the first accused and PW1. Further the possibility of PW1 going to the house of the first accused on 3.4.1995 and 4.4.1995 was also proved by the evidence of PW1 and some extent by the employees namely Pw12 that on certain occasions they used to go and get key from the residence of the Principal for the purpose of doing their security duty on night.

47. Merely because PW1 did not make complaint immediately regarding the demand made is not a ground to disbelieve his evidence. It may be mentioned here that he had joined duty only recently and he may not be interested in promoting enmity with superior officer within such short time. Further the case of the first accused was that he was projected as a tool to grind vengeance against him by some of the employees of the institution who are against him is without any substance as PW1 had no occasion to have acquaintance with such persons so as to act as a tool in the hands of others to

implicate the first accused in a case like this. One cannot believe for a moment that PW1 will be going to the extent of filing a false complaint against a person like the first accused within a short period of joining his duty for the purpose of satisfying some other persons with whom he had no close acquaintance, alleged to have some enmity, towards the first accused as claimed by the first accused. Further there is no evidence adduced on the side of the first accused to prove that any of the employees in the institution was having any enmity towards him so as to make use of PW1 as a tool for implicating him in a case like this.

48. The evidence of PW1 will go to show that when the demand persisted from the first accused which even included threatening him for continuing in post, perhaps would have made him to make a complaint to the CBI against the first accused. There is nothing to disbelieve the evidence of Pw1 on this aspect.

49. Further, the evidence of PW14 will go to show that on 5.5.1995 at about 10.30 a.m, PW1 came to the office of PW14 and gave Ext.P3 complaint regarding the same. Further the evidence of PW1 will also go to show that as he got change of

duty on that day and went to the office of PW14 with the amount of Rs.4,000/- demanded by the first accused as first instalment on 5.5.1995 and this is proved by the evidence of PW14 also. Further the evidence of Pws 1 and 9 will go to show that after reaching the office with the money, demonstration regarding phenolphthalein test was conducted and Ext.P4 entrustment mahazer was prepared in their presence. It is also evident from the evidence of Pws 1 and 9 that as instructed by PW14, they went to the house of the first accused on 5.5.1995 at about 7.30 p.m and they were received by the first accused and in their presence first accused had asked PW1 as to whether he had brought the money and he handed over the same to the first accused which he received by using his right hand and then shifted to his left hand and keep the same in the cupboard in the dining hall. It is also proved by their evidence that after handing over the money, first accused offered some tea and that was declined by PW1 and thereafter they came outside and gave signal to PW14. Thereafter they came and recovered the amount. The fact that the amount was recovered on that day was admitted by the first accused as well.

50. The evidence of Pws 1 and 9 will further go to show

that when PW14 asked as to whether he had received the amount, he confessed about the fact of acceptance of the amount and he had also stated that it was for the first time he was committing such thing and prayed for leniency. This fact was proved by the evidence of Pws 9 and 14 as well. At that time there is no explanation given by the first accused that the amount was brought by PW1 as advance to be paid to PW6, the landlord, who agreed to give a building to him, for rented to the first accused. Such a case was projected by him only when he filed Ext.P33 application for anticipatory bail on 22.5.1995. There the name of the person mentioned as one Velayudhan, S/o. Asokan, Durga Bhavana Synik School, Post Kazhakkootam.

51. It is true that the said person was examined on the side of the prosecution to disprove his case. But quite naturally, he did not support the case of the prosecution as he was examined to disprove the fact mentioned in Ext.P33 and as expected he had only supported the first accused. On the other hand, the prosecution had examined PW5 as the person who had let out the house to PW1 on 3.5.1995 after taking advance of Rs.1,500/- So, there is no necessity for him to pay advance of Rs.4,000/- to the prospective landlord, PW6, as claimed by the first

accused for that purpose going to his house and handing over the amount as claimed by the first accused. Further merely because phenolphthalein test became only light pink alone is not sufficient to disbelieve the case of the prosecution and to believe the case of the first accused that he was forced to take the amount as directed by PW14 which was placed by PW1 on the teapoy. But the discrepancies in the evidence of Pws 1 and 9 regarding the manner in which test was conducted, demonstration was made etc are only natural discrepancies in their evidence as they were examined after the lapse of nearly six years and that is not a ground to disbelieve their evidence especially when it is admitted by the first accused that the amount was brought by PW1 and it was paid to him and it was recovered from him. So, under the circumstances, the discrepancies in the evidence of Pws 1 and 9 on this aspect alone is not sufficient to disbelieve their case regarding the demand and acceptance of illegal gratification by the first accused.

52. It is true that the First Information Report was registered on 5.5.1995, but the First Information Report reached the court only on 8.5.1995. It is settled law that mere

delay in First Information Report reaching the court alone is not sufficient to disbelieve the case of the prosecution or to presume that the First Information Report was anti timed in all such cases. There is nothing to disbelieve the evidence of PW1 on the question of going to the office of PW14 and filing Ext.P3 complaint regarding the demand made by the first accused. Merely because he did not file any complaint immediately after 19.3.1995 itself is not a ground to disbelieve his case as he might have ignored the same and he got employment later even without payment of the same and joined duty on 10.4.1995. So he might have thought of not filing of the complaint on the previous incident happened on 19.3.1995. But when the demand persisted from the side of the first accused, even resulted in threatening of losing his employment, he was compelled to make the complaint. So delay in filing the complaint has been explained and that is convincing as well. Once a complaint has been filed in time and First Information Report has been registered on that basis, mere delay in First Information Report reaching the court alone is not a ground to acquit the accused unless prejudice has been caused on account of such delay which has to be

established by the accused. In this case, admittedly the accused was arrested on 5.5.1995 itself, after recovering amount from him. So even if there is delay in First Information Report reaching the court is not going to affect the prosecution case on that ground and it cannot be said that any prejudice has been caused to him on account of the delay so as to entitle him to get acquittal of that ground. So under the circumstances the court below was perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the first accused had abusing his official position demanded and accepted illegal gratification from PW1 which amounts to misconduct and thereby he had committed the offence punishable under sections 7 and 13 (1)(d) read with section 13 (2) of the P.C. Act and rightly convicted for the said offence as such the conviction does not call for any interference. So the court below was perfectly justified in convicting both the accused for the offence under section 120 B of the Indian Penal Code and section 7 of the P.C. Act and further convicting the first accused for the offence under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act are perfectly justifiable and that finding does not call for any interference. The points are

answered accordingly.

53. Point Nos. v and vi:

The counsel for the appellant in Crl.A.No.434/2001 argued that there is no application of mind on the part of the sanctioning authority before issuing Ext.P19 sanction order. Further, the evidence of PW15 has not been accepted by the court below regarding the factum of all records reaching the hands of the sanctioning authority, the Minister, before according sanction to prosecute the first accused. Exts.D4 and D4(a) will go to show that all the materials collected by the investigating agency have not been placed before the Minister for granting sanction. In such circumstances, it cannot be said that there was application of mind. Even mistakes found in the draft sanction order supplied by the CBI were crept in the final sanction order. That also will indicate that there is no proper application of mind and the sanction is vitiated as interest of the accused has been prejudicially affected. Further, the first accused had challenged the sanction order even at the earliest possible time and when that was not accepted by the trial court, that was challenged by the petitioner by filing a revision before this Court and this Court has directed the

court below to consider the same. So it cannot be said that the petitioner has not challenged the same at the earliest possible time. If there is no proper application of mind, then the sanction is not valid and as such taking cognizance of the case against the first accused is bad in law and he is entitled to get that benefit.

54. On the other hand, the standing counsel for the CBI submitted that the evidence of PW15 coupled with Exts.D4 and D4(a) and Ext.P19 sanction order will go to show that necessary particulars were produced before the sanctioning authority after due deliberation and discussion and after perusing the material placed and after satisfying the order, sanction has been accorded by the sanctioning authority and signed by PW15 for and on behalf of the President and as such the sanction is valid.

55. Section 19 of the P.C. Act deals with sanction which reads as follows:

19. Previous sanction necessary for prosecution:-

(1) No court shall take cognizance of an offence of an offence punishable under sections 7,10,11,13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal

and Lokayuktas Act, 2013]-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government.

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government, or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of , or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a

failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation:- For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

56. In the decision reported in **Nanjappa v. State of Karnataka** (2015 (5) Supreme 25) while considering the scope

of sanction and also difference between sections 19 (1) and 19 (3) and 19(4) of the Act, it has been observed as follows:-

“A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that a sanction is bad save and except in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub-section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under section 19(1). Sub-section (3) in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for

want of a valid order sanctioning the same. The language employed in sub-section (3) is , in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub-section (4) according to which the appellate or the revisional Court shall, while examining whether the error, omission or irregularity in the sanction had occasion in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher Court and not before the Special Judge trying the accused. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an

earlier state of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision”.

57. So it is clear from this that the conviction entered by the court below should not be lightly interfered by the appellate court even if there is any error or omission in the order of sanction granted unless the appellate or revision court is satisfied that on account of the same, failure of justice has been caused. Unless this has been established, the court must be slow in reversing the order of conviction and sentence passed by the court below on the ground of defect in sanction. If the accused had taken such plea in the lower court, then the appellate court also consider the same and if the trial court has considered those aspects in detail and come to the conclusion that the sanction is valid, then also appellate court should be slow in reversing that finding unless the finding is so perverse and resulted in failure of justice to the accused.

58. The first accused had filed an application as Crl.M.P.No.103/2000 before the trial court challenging the sanction and that was dismissed by the trial court and the first accused challenged the same before this court by filing

Crl.R.P.No.965/2008 and this Court by order dated 14.11.2008 dismissed the revision leaving open the right of the accused to challenge the maintainability of the prosecution on the ground of want of sanction at the stage of final arguments and directed the court below to consider the same untrammelled by the observations made in the impugned order.

59. Total want of sanction and total want of sanction on account of incompetence of the person granted is different from proper sanction granted but there was some defect in the sanction. Further, on reading the sanction order, if the court is satisfied that there is application of mind on the part of the sanctioning authority, then merely because certain documents which the defence thought necessary for the sanctioning authority to consider is not sufficient to come to the conclusion that there is no proper application of mind which is sufficient to invalidate the sanction.

60. In the decision reported in **State of Rajasthan v. Tarachand Jain** (AIR 1973 SC 213) it has been observed that;

“The burden of proof that the requisite sanction had been obtained rests upon the prosecution. Such burden includes proof that the sanctioning authority had given the sanction in

reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be proved by independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority.

Where the facts constituting the offence appear on the face of the sanction accorded by the Chief Minister, it is not necessary for the prosecution to lead separate evidence to show that the relevant facts were placed before the Chief Minister. Hence it cannot be said that the prosecution has failed to prove that the Chief Minister has accorded his sanction after applying his mind to the facts of the case. The fact that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in the Court, which bears the signature of Special Secretary to the Government, makes no material difference.

61. In the decision reported in **Biswabhusan Naik v. The State of Orissa** (AIR 1954 SC 359), the Supreme Court has held that:

“It is not necessary for the sanction under the Prevention of Corruption Act to be in any particular form, or in writing or for it to set out the facts in respect of which it is given. The desirability of such a course is obvious because when the facts are not set out in the sanction proof has to be given alinude that

sanction was given in respect of the facts constituting the offence charge, but an omission to do so is not fatal so long as the facts can be and are, proved in some other way”.

62. In the same decision it has been held that:

“It was evident from the evidence that the facts placed before the Government could only relate to offences under S.161 of the Indian Penal Code and Clause (a) of S.5(a) of the Prevention of Corruption Act. They could not relate to Cl.(b) or (c). When the sanction was confined to S.5(2) it could not, in the circumstances of the case., have related to anything but Cl. (a) of Sub-S.(1) of S.5. Therefore, the omission to mention Cl. (a) in the sanction did not invalidate it.

63. In the decision reported in **Indu Bhusan Chatterjee v. State of West Bengal** (AIR 1958 SC 148) it has been observed that:

“A sanction for prosecution granted by a competent authority under S.6 Prevention of Corruption Act, clearly stated that the accused had demanded on May 12, 1952 as bribe the sum of Rs.100 from Doraiswamy had accepted the sum as a motive or reward for speedy and favourable settlement of the claim cases, that the sanctioning authority had applied his mind to the facts and the circumstances of the case and was satisfied that in the interests of justice, the accused should be put on his trial in a Court of competent jurisdiction for offences under

S.161 of the Indian Penal Code and S.5(2) of the Act, alleged to have been committed by him, In his evidence in Court the sanctioning Authority stated that the sanction was prepared by the police and put before him by the personnel branch of his office and that before according sanction he went through all the relevant paper put before him.

Held, that the sanction granted under S.6 was perfectly valid. The statement of the sanctioning authority did not prove that he merely put his signature on the ready made sanction presented by the police without applying his mind to the facts of the case. It was not for him to judge the truth of the allegations made against the accused by calling for the records of the connected claim cases or other records in connection with the matter from his office. The papers which were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction.

64. In the decision reported in **State of Bihar and others v. Rajmangal Ram** (AIR 2014 SC 1674), the Hon'ble Supreme Court has held that:

“Even assuming Law department was not competent and sanction order was invalid, criminal proceedings cannot be interdicted mid-course by High Court invoking S.482, unless failure of justice has been occasioned”.

65. In that decision the Hon'ble Supreme Court has relied on an earlier decision of the same Court in **State by Police Inspector v. T. Venkatesh Murthy** (2004 (7) SCC 763) where it has been observed that:

“... Merely because there is any omission, error or irregularity in the matter of according sanction, that does to affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice”.

66. The same view has been reiterated in the decision reported in **Prakash Singh Badal and another v. State of Punjab and others** (2007 (1) SCC 1), **R. Venkatkrishnan v. Central Bureau of Investigation** (2009 (11) SCC 737) and **State of Madhya Pradesh v. Virender Kumar Tripathi** (2009 (15) SCC 533) which was decided by a three Judge Bench of the Supreme Court.

67. In the decision reported in **State of Maharashtra through Central Bureau of Investigation v. Mahesh G. Jain** (2014 (1) SCC (Cri) 515), the Hon'ble Supreme Court has, after relying on several decisions of the same court on this aspect, culled out following principles regarding the

question of sanction to be considered in paragraph 14 of the judgment as follows:

“14. From the aforesaid authorities the following principles can be culled out:

14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been

proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity.

68. So it is clear from the above decision that it is for the sanctioning authority to consider what are all materials required for the purpose of satisfying itself as to whether the materials placed before him prima facie constituted an offence for which sanction has to be accorded. Courts are not expected to sit in appeal on the order of sanction granted by the sanctioning authority and pedantic approach should not be taken to invalidate the sanction granted by the sanctioning authority on hyper technical reasons found out by the court for that purpose. What is required to be considered by the court while considering the question of validity of sanction is that the court need only to ascertain as to whether on going through the sanction order passed it can be inferred that the sanctioning authority had the opportunity to peruse the

required material evidence and documents for the purpose of forming the opinion as to whether prima facie evidence is available to prosecute the public servant for the offence alleged and it is not necessary for the sanctioning authority to further investigate into the genuineness of the allegations made and the evidence collected by the investigating agency on this aspect.

69. In the decision reported in **CBI v. Ashok Kumar Aggarwal** (AIR 2014 SC 827), the Hon'ble Supreme Court has held that:

“Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other

material placed before it. In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memo, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the Court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind.”

70. The following principles have been laid down in paragraph 8 of the judgment regarding the aspect which reads as follows:

“8. In view of the above, the legal propositions can be summarized as under:

(a). The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the

material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b). The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c). The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d). The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e). In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law".

71. Further in the same decision relying on the decision of the Apex Court in **Ashok Tshering Bhutia v. State of Sikkim** (AIR 2011 SC 1363) it has been held that:

“.... while dealing with the issue whether invalid sanction goes to the root of jurisdiction of the Court which would vitiate the trial and conviction, held that in the absence of anything to show that any defect or irregularity therein caused a failure of justice, the contention was without any substance. The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.

72. In the same decision it has been observed that:

“The Court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any case. The Court must endeavour to find out the truth. There would be 'failure of justice' not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal

jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the Court."

With these principles in mind, the the question raised by the defence counsel has to gone into court.

73. Ext.P19 is the sanction order issued by the sanctioning authority to prosecute the first accused. In Ext.P19 the details of all the material particulars collected on the basis of the evidence have been reiterated with material particulars. But a reading of Ext.P19 will go to show that each and every material particulars mentioned in the complaint filed by PW1 and the sequences of event happened and the recovery mahazer, entrustment mahazer etc were gone into by by the sanctioning authority. Further in page 3 of the sanction order it has been mentioned that, the Central Government after carefully examining the materials such as FIR, statement of witnesses, documents etc before the Government with regard to the said allegation and the circumstances of the case consider that the said Mani should be prosecuted in court for liability

for the said offence namely Section 120 B of the Indian Penal Code and Sections 7 and 13(2) read with section 13(1)(d) of the P.C.Act, 1988 and the substantive offence thereof. So it is clear from the sanction order that the sanctioning authority had the opportunity to verify all the documents required for the purpose of considering the prima facie question as to whether offence has been made out against the accused for granting sanction to prosecute him and the offence for which sanction has to be accorded. A reading of Ext.P19 will go to show that the sanctioning authority had applied mind before granting sanction.

74. Further it will be seen from the evidence of PW15 and Exts.D1 and D4(a) that all the necessary documents including the statement of witnesses questioned with the particulars and gist of evidence collected have been placed before the sanctioning authority and the sanctioning authority had proper discussion with the concerned Secretary namely PW15 and it is only thereafter that the sanction was accorded. Merely because certain documents like chemical analysis report etc were not placed before the sanctioning authority alone is not sufficient to come to the conclusion that there was no proper application of

mind by the sanctioning authority and thereby it is vitiated. That can, only at the most, be an error or omission to place one of such material which may be relied on by the prosecution at the time of trial. What is required as to whether on the basis of the materials available whether demand and acceptance of illegal gratification has been made out for the sanctioning authority to come to a prima facie conclusion regarding this aspect. Further it is seen from the file that statement of witnesses were also furnished along with the documents and evidence of PW18, the investigating officer, will go to show that he had sent the entire file to the Superintendent of Police for the purpose of forwarding the same to the sanctioning authority for getting sanction and that will be clear from the letter sent by the Superintendent of Police to the department for granting sanction as well. Further the court below had considered all these aspects in detail and come to the conclusion that relevant materials have been placed before the Minister and he had discussion with PW15, the Under Secretary and it is only after discussion, he had decided to accord sanction and accordingly sanction was issued in the name of President of India through PW15, Under Secretary to

Minister of Labour. It was dated 7.5.1996. Further it will be seen from Exts.D4 and D4(a) that Ext.D4(a) consists of the entire documents and materials received with request to accrued sanction with notes file put by the Secretary and placed before the concerned Minister for according sanction. It is settled law that the application of mind can be proved by the prosecution by producing sanction order or by adducing further evidence on this aspect. It is also settled law that the Minister need not sign the sanction order but he need only sign the file according sanction and thereafter as per the conduct of business rules, it is for the concerned Secretary to prepare the sanction order and sign the same for and on behalf of the President of India who is the competent authority to accord sanction. If the entire file relating to grant of sanction were produced before the court, then court is entitled to peruse the same so as to ascertain whether necessary materials were placed before the sanctioning authority to consider the question of granting sanction and whether the sanctioning authority had considered these materials and after application of mind, decided to accord sanction. So under the circumstances it cannot be said that there was no application of mind on the part of the

sanctioning authority while granting sanction.

75. Further there is nothing on record to show that any document or material collected which may favour the accused has not been placed before the sanctioning authority to come to a contra opinion that the defence taken by the accused is also probable and there is no necessity to issue sanction to prosecute him for the offences alleged and such a case has not been made out by the accused so as to come to the conclusion that there was any failure of justice to the accused in granting sanction to prosecute the first accused in this case.

76. In view of Section 19(3) of the P.C.Act mere irregularity or defect or omission in sanction or omission on the part of the investigating agency of not placing some material alone is not sufficient to interfere with the order of conviction entered by the court below unless it is established by the accused that failure of justice has been caused to him on account of such error or omission which goes to the root of the sanction itself to prima facie come to the conclusion that there was no application of mind by the sanctioning authority and it has only simply approved the draft sanction order without application of mind or perusing documents as such. It is also

seen from the file that the opinion of the Central Vigilance Commission was also obtained and those things were placed along with the documents and discussions were held and only thereafter the sanction was accorded. Further merely because there was some mistake in the evidence of PW15 regarding the period during which discussions were held, if it shows otherwise from the documents produced, then such a mistake alone is not sufficient to come to the conclusion that there is no possibility for the sanctioning authority to verify the documents and materials and there is non application of mind in granting sanction which goes to the root of the sanction itself as contended by the defence counsel. It will be seen from the file Ext.D4(a) that the entire document had been placed before the Minister for Labour by PW15 and he had accorded sanction to prosecute on 26.4.1996 and signed the file for this purpose and it is thereafter draft sanction order was prepared and approved by PW15 after making necessary modification and issued Ext.P19 sanction order in the name of the President as per the rules relating to conduct of business in such cases. This is clear from the evidence of PW15 and the entries in the files namely Exts.D4(a) and D4 as well. So, under the

circumstances, it can be safely concluded that the court below was perfectly justified in coming to the conclusion that Ext.P19 sanction order issued by the sanctioning authority is perfectly valid and it does not suffer from any illegality to come to the conclusion that there was no valid sanction and there is no application of mind of the sanctioning authority before issuing sanction so as to give that benefit to the accused as claimed by the defence. Further, even assuming that there were some omissions, that is not sufficient for the appellate court to come to the conclusion that it has resulted in failure of justice as claimed by the defence counsel so as to give the benefit of acquittal to the first accused on that ground. So the sanction does not suffer from any illegality warranting interference at the hands of this Court to give the benefit to the first accused and to acquit him on that ground. The points are answered accordingly.

77. Point Nos.vii & viii

In view of the discussions made above, the court below was perfectly justified in convicting both the accused for the offence under section 120B of the Indian Penal Code read with section 7 of the P.C.Act and further convicting the first accused

for the offences under sections 7 and 13(1)(d) read with section 13(2) of the P.C.Act and the finding on these aspects did not call for any interference. The points are answered accordingly.

78. Point No.ix:

The court below had sentenced the first accused to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/- under section 7 of the P.C.Act and further sentenced to undergo rigorous imprisonment for three years and also to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three years each and directed the sentences to run concurrently. The second accused was sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for two months under section 120 B of the Indian Penal Code read with sections 7 and 13(1)(d) of the P.C.Act.

79. In the decision reported in **Narendra Champaklal Trivedi v. State of Gujarat** (2012 (7)SCC 80), the Hon'ble Supreme Court has considered the sentencing policy regarding the offences under the P.C.Act relying on the decisions reported in **Vishweshwaraiah Iron & Steel Ltd v. Abdul Gani** (1997 (8) SCC 713), **Keshabhai Malabhai Vankar v. State of**

Gujarat (1995 SCC(Cri) 1151) and **Laxmidas Morarji v. Behrose Darab Madan** (2009 (10) SCC 425) and held that :

“In view of the aforesaid pronouncements of law, where the minimum sentence it would not be at all appropriate to exercise jurisdiction under Article 142 of the Constitution to reduce the sentence on the ground of the so-called mitigating factors as that would tantamount to supplanting statutory mandate and further it would amount to ignoring the substantive statutory provision that prescribes minimum sentence for a criminal act relating to demand and acceptance of bribe. The amount may be small but to curb and repress this kind of proclivity the legislature has prescribed the minimum sentence. It should be paramountly borne in mind that corruption at any level does not deserve either sympathy or leniency. In fact, reduction of the sentence would be adding a premium. The law does not so countenance and, rightly so, because corruption corrodes the spine of a nation and in the ultimate eventuality makes the economy sterile.”

80. In this case the Principal of the institution, who should be a modal for others had indulged in demanding bribe for providing employment of peon which was reserved for Scheduled Castes and from a person belonging to that category abused his official position and the second accused

had helped him in making the demand for hatching conspiracy with him. The amount originally demanded was Rs.30,000/-. Thereafter it was reduced to Rs.15,000/- and the demand continued even after PW1 joined duty and he was reluctant to pay the same which even resulted in threatening of loosing of his employment at the hands of the first accused. It is true that the incident occurred in the year 1995. But, that alone is not a ground for reducing the sentence as such. In this case, considering the background of the case, this Court does not feel that it should be confined to the minimum sentence provided as stood at that time. The court below has considered all these aspects and the gravity of the offence and the person who had committed the crime etc and rightly exercised the discretion of imposing sentence. Considering these aspects, this Court does not find any reason to interfere with the sentence imposed by the court below as well as it appears to be just and proper. So considering the circumstances, there is no necessity to interfere with the sentence imposed by the court below as well. The point is answered accordingly.

In the result, both the appeals fail and the same are

hereby dismissed. The order of conviction and sentence passed by the court below against both the appellants are hereby confirmed.

Office is directed to communicate a copy of this judgment to the court below at the earliest.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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K. RAMAKRISHNAN, J.

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Crl.A.Nos. 434 & 439 of 2001

.....
16th December, 2015

JUDGMENT