

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

CRL.A.No. 840 of 2001 (C)

AGAINST THE JUDGMENT IN CC 7/1998 of SPL.COURT (SPE/CBI)-I,
ERNAKULAM, DATED 25-08-2001

APPELLANT/ ACCUSED NO.1:

D. DINESAN, S/O. DIVAKARAN,
AGED 55 YEARS, KUKKAYIL VEEDU,
MAMPUZHAKARA, RAMANGIRI PANCHAYATH,
ALAPPUZHA DISTRICT..

BY ADVS. SRI.B. RAMAN PILLAI
SRI. S. VIJAYA KUMAR

RESPONDENT/ RESPONDENT(S):

C.B.I., KOCHI, REPRESENTED BY THE
STANDING COUNSEL FOR C.B.I.,
HIGH COURT OF KERALA, ERNAKULAM.

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2015,
ALONG WITH CRA. 883/2001 AND DELIVERED THE FOLLOWING JUDGMENT ON
17.08.2015.

K. RAMAKRISHNAN, J.

Crl. Appeal No.840 of 2001 &
Crl. Appeal No.883 of 2001

Dated this the 17th day of August, 2015

JUDGMENT

Criminal Appeal No.840/2001 was filed by the first accused, while Crl.Appeal No.883/2001 was filed by the 2nd accused, both in C.C.No.7/98 of Special Judge, (SPE/CBI)-I, Ernakulam. Both the appellants were charge-sheeted by the Superintendent of Police, (SPE/CBI), Cochin, in R.C.No.6(A)/98, alleging offences under Section 120-B of the Indian Penal Code and Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. The case of the prosecution in nut shell was that, accused Nos. 1 and 2 were working as Telecom Technical Assistant and Lineman cum Sub Inspector (Operational) respectively in the office of the Junior Telecom Officer, Outdoor (South), Alappuzha. While working as such as public servants on 26.06.1998 when PW2 Sri.Joseph Joseph went to the office of the Joint Telecom Officer, Alappuzha South, to enquire about the

application filed by him for shifting of his telephone to his new house and when he met the Telecom authorities, it was revealed that it reached that office and on that basis he contacted PW8, the Junior Engineer, Telephones South, and as instructed by him, he met the first accused and he told that it required some work of preparing estimation for which the help of 2nd accused lineman was also required and both the accused were present at that time and they demanded ₹250/- each, as illegal gratification for preparing the estimate and to submit the report to PW8 and wanted PW2 to come to their office on 29.06.1998 for that purpose and instructed him to pay the amount at the work spot on that day. Accordingly on 29.06.1998, PW2 came to the office of the accused Nos.1 and 2 and took them to his house and when they reached the house to which the telephone No.61610 has to be shifted, they asked whether the amount was brought and accordingly he handed over the amount and it was received by them and thereby both

the accused had as public servants committed the offence punishable under Section 120-B of Indian Penal Code and Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

3. After investigation, final report was filed before the Special Judge, CBI-I, Ernakulam and it was taken on file as C.C.No.7/1998. When the appellants appeared before the court below, after hearing both sides, charge under Section 120-B of the Indian Penal and Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act was framed 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 12 were examined and Exts.P1 to P38, P15(a) P16(a), P16(b), P18(a) and P23(a) were marked on their side. After closure of the prosecution evidence, accused were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against

them in the prosecution evidence. First accused had further submitted that he had not demanded any illegal gratification or received any amount from PW2. There were 11 linemen under the Joint Telecom Officer of Alappuzha South and when Phone Inspector was transferred, that section was being handled directly by Joint Telecom Officer and it was under the Phone Inspector that the area of PW2's house is situated. On 29.06.1998, PW8 asked him to do the necessary things for shifting the telephone of PW2 and for that purpose he had asked him to take the 2nd accused also for his help. On 29.06.1998, when PW2 came, since it was raining, he told that it was not convenient for him to come on that day, but he was compelled to accompany them. PW2 had contacted the 2nd accused over phone and he was also brought to that place. Thereafter they went to the house of PW2 and asked him as to where the phone will have to be shifted. Thereafter he along with 2nd accused and PW1/Jawahar went out side the house and when he was

about to write in his diary, PW2 came and put the money in his pocket. While he tried to return the amount, PW5 and party came and took them into custody. Dy.S.P. Sri.Vijayakumar was dictating something to PW2 to write and it was the complaint that has been produced in court. A telephone was there on the table in the house and when a call came Dy.S.P. Vijayakumar attended the same and then contacted Telecom Office. 2nd accused when inspected the spot earlier, he came to understand that PW2 had already shifted the telephone without permission and that was informed to Sub Divisional Office and on account of that, the Joint Telephones Officer called PW2 and informed that action will be taken. It is on account of that enmity that PW2 had falsely implicated them in the case. 2nd accused had stated that the area where PW2's house is situated is coming within his jurisdiction and he was in good terms with PW2. One week prior to the alleged incident, he got a complaint regarding a new telephone connection given in

that area and when he went to the place, he saw that PW2 had shifted the post by cutting the wire. When he asked PW2 about the same, he told that it was not done by him, but it was done by telephone officials of the Telecom Department. He heard the ringing sound of the telephone from the new house of PW2, when he went there, he abused him and threatened him that he would take action and teach a lesson. He reported the same to Junior Engineer after two days PW2 came to the office and saw him and asked whether he had made any complaint to the Junior Engineer. When he told that he had made the complaint, there was some altercation occurred between them and he told that he would teach a lesson and left the place. It was on account of that enmity that a false case was foisted against him. He never demanded any amount and not received any amount as illegal gratification from PW2. When they reached the house of PW2, he put the amount in his pocket and when he was about to return the amount, the

CBI officials came and arrested them. In order to prove their case, DWs 1 to 4 were examined and Ext.D1 to D8 contradictions in the 161 statement of PW2, PW8, PW5 and PW11 were marked through the investigating officer and Ext.D9 to D14 and D13(a) were marked through DWs 1 to 4. After considering the evidence on record, the Special Judge found both the accused guilty for the offence under Section 120-B of the Indian Penal Code and Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and convicted them thereunder and sentenced them to undergo rigorous imprisonment for two years each and also to pay a fine of ₹2,000/- each, in default to undergo rigorous imprisonment for two months each under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and further sentenced to undergo rigorous imprisonment for one year each for the offence under Section 7 of the Prevention of Corruption Act and no separate sentence was awarded for the offence

under Section 120-B of the Indian Penal Code and directed the substantive sentences to run concurrently. Aggrieved by the same, the above appeals were filed by the respective appellants namely accused Nos. 1 and 2 before the court below.

4. Head the counsel for the appellants and Standing counsel for CBI, Sri.P.Chandrasekhara Pillai.

5. The points that arise for consideration are:

(i). Whether the sanction accorded by the authorities is proper and legal?

(ii). Whether the court below was justified in holding that prosecution has proved beyond reasonable doubt that the accused persons have demanded illegal gratification from PW2 on account of the conspiracy hatched between them?

(iii). Whether the court below was justified in holding that the accused persons while working as public servants demanded illegal gratification and received the same for discharging their official duty?

(iv). Whether the court below was justified in convicting them for the offence under Section 120-B of the Indian Penal Code and Section 7 and Section 13(1)(d) read with Section 13(2) of the

Prevention of Corruption Act?

(v) If so the sentence imposed is proper and legal?

6. Point No. (i): The counsel for the appellants submitted that the authorities who issued the sanction are not competent to issue sanction and in fact the Divisional Manager, Telecoms is the appointing authority and they are the persons competent to remove them from service and as such the sanction given by PWs 9 and 10 are not competent to issue sanction and sanction under Section 19 of the Act is bad and they are entitled to get acquittal on that ground.

7. On the other hand, learned Standing Counsel for CBI submitted that the evidence of PWs 9 and 10 coupled with Exts.P27 and 28 and DW4 and Ext.P38 and Ext.D9 coupled with Ext.P36 will go to show that they are the competent persons to issue sanction and PW9 is the then Divisional Engineer, Kayamkulam and PW10 was the Sub Divisional Engineer, Alappuzha at the relevant time,

who are competent to grant sanction and so the sanction is proper and valid.

8. It is an admitted fact that first accused was working as Telecom Technical Assistant and 2nd accused was working as lineman cum Sub Inspector (Operational) in Junior Telecom Office, Outdoor (South), Alappuzha. PW9 is the Divisional Engineer, Kayamkulam and PW10, the Sub Divisional Engineer, Alappuzha, are the authorities competent to remove accused Nos. 1 and 2 respectively from service. First accused was working as Telecom Technical Assistant at Vallikkunnu Exchange and PW9, who issued Ext.P27 sanction order dated 23.10.98 had deposed that he is competent authority to remove a Telecom Technical Assistant from service. DW4 testified that the appointing authority of Telecom Technical Assistant is Divisional Engineer and Ext.P38 is the copy of the order issued by the Ministry of Communication, Department of Telecommunication shows that the authority competent to

appoint and remove from service of Telecom Technical Assistant is Divisional Engineer. Further the evidence of PW9 will go to show that he had verified the relevant documents produced for the purpose of according sanction to prosecute the first accused and he had applied his mind and only thereafter accorded sanction to prosecute the first accused. He denied the suggestion that he had only approved the draft sanction letter given by the investigating officer and he had not applied his mind before issuing sanction.

9. Similarly the evidence of PW10 the Sub Divisional Engineer, Telephone Bhavan, Alappuzha, will go to show that 2nd accused was lineman cum Sub Inspector (Operational) in the main distribution Section at Alappuzha, which is the Section under him and he is the competent authority to remove the lineman from service. He had further stated that as per Ext.D9, dated 11.03.1998, the 2nd accused was given Higher Grade by the order issued by the

Deputy General Manager. DW1, the Deputy General Manager, Telecom, District Alappuzha, examined on the side of the accused to prove Ext.D9 to show that he is the appointing authority entitled to remove the 2nd accused from service had deposed that Ext.D9 is not actually a promotion order, but by virtue of Ext.D9, 2nd accused was given only a higher grade and even thereafter he continued to be lineman and Sub Divisional Engineer is the competent authority to remove the lineman from service. He had proved Ext.P36, the copy of the pages 394 to 396 of Chapter 1 of Volume II of P&T Manuel in which it has been stated that the appointing authority of lineman cum Sub Inspector is Telecom Engineer(Service), Group-B and that Sub Divisional Engineer is the Telecom Engineer(Service) Group-B officer. So it is clear from this evidence that PW10 is the competent authority to remove the 2nd accused from service and competent to issue sanction order to prosecute him under Section 19 of the Prevention of Corruption Act.

10. PW10 had deposed that he had verified the documents including the statement of witnesses recorded and after application of mind accorded Ext.P28 sanction order under Section 19 of the Prevention of Corruption Act, to prosecute the 2nd accused. He had denied the suggestion that he had only approved the draft sanction letter given by the investigating authority without application of mind. So the evidence of PWs 9 and 10 will go to show that they are the competent authorities to issue sanction and Exts.P27 and P28 sanction letters were given by them after application of mind and considering the necessary documents required for issuing sanction and they are valid in law and not vitiated as submitted by the counsel for the appellants. So the court below was perfectly justified in coming to the conclusion that PWs 9 and 10 are competent authorities to issue Exts.P27 and 28 sanction letters for prosecution of accused Nos. 1 and 2 respectively and they are valid and proper in law. The point is answered

accordingly.

11. Point Nos. (ii) to (iv):-

The counsel for the appellants in both the cases submitted that there is no acceptable evidence adduced on the side of the prosecution to prove the actual demand of illegal gratification and also the acceptance in order to attract the presumption under Section 20 of the Act. Further the counsel for the first accused argued that the evidence of PW1 will go to show that on 29.06.1998 when PWs 1 and 2 came to the office and met the first accused, he told that 2nd accused had gone outside and when 2nd accused came and wanted first accused also to accompany them, he showed his reluctance to come along with them and only when they compelled him, he accompanied them. Further the evidence of PW1 also will go to show that PW2 had only mentioned the name of the 2nd accused, as the person who demanded bribe. Even in the re-examination, he had stuck to that statement. Further except on 26.06.1998,

PW2 had no occasion to have any acquaintance with the first accused and it will be seen from the evidence that PW8, the Joint Telecom Officer, is the person who has to prepare the estimate and it is not the duty of the first accused to do the same and as such there was no possibility of any demand being made by first accused as claimed by the prosecution. Further the evidence will go to show that PW1 had not stated about any demand made by the first accused, when they reached the house of PW2. So merely because some tainted notes were recovered from the possession of the accused, is not a ground to come to the conclusion that he had demanded and received illegal gratification, unless it is proved by the prosecution, and as such in this case, the alleged demand and acceptance, the presumption will not be available, the prosecution has failed to prove demand and acceptance of illegal gratification by the first accused. He had also argued that the entire procedure adopted is suspicious. Though the decoy

witnesses and PW2 and the trap laying officer, PW5 along with his team had reached the Alappuzha Rest House, they have not prepared Ext.P1 entrustment mahazar from there. According to them, the demonstration and procedure was explained from the house of PW2, it is not the normal procedure adopted by the trap laying officer. Before going to the place of trap, they used to explain the procedure and make demonstration about the phenolphthalein test of the currency notes to be handed over to the person who demanded the bribe. Further according to PW5, they did not do anything from there, as no room was available, but the evidence adduced on the side of the defence witness will go to show that the Deputy Superintendent of Police, Sri.Vijayakumar had taken a room in the Guest House, that probabalises the case of the accused that, everything was manipulated later at the instance of Sri.Vijayakumar. He had also argued that though PW4, the Inspector of C.B.I., who registered Ext.P12 had stated that he received Ext.P8

complaint as entrusted by the Superintendent of Police on 28.06.1998 itself, but it will be seen from Ext.P12 that it reached the court only at 4.30 p.m., on 29.06.1998, that is after the trap was completed and Ext.P1 and P3 mahazars were prepared. That will probabilise the case of the accused that Ext.P8 was a subsequent creation of implicating accused Nos. 1 and 2 falsely in the case, as they were not sure about the person who was expected to come at the residence of PW2. Further it also will go to show that in fact they wanted to book PW8, but unfortunately accused Nos. 1 and 2 had happened to come to that place and they have been falsely implicated in the case. The court below had failed to appreciate the defence of the accused that when PW2 had thrust the money into his pocket and he took the same and was trying to hand over the same to PW2 and it was at that time that CBI officials came and arrested him after seizing the currency notes.

12. The counsel for the 2nd accused argued that,

the evidence of decoy witnesses and the investigating officer and trap laying officer are contradictory regarding the place where they were concealing at the time when the alleged transaction of demand and acceptance of money had taken place. Further PW11 the other decoy independent witness selected for the purpose of conducting the trap had no occasion to see either the demand or the acceptance and the evidence of PW1 will go to show that he had not heard what was spoken to by accused Nos. 1 and 2 before the alleged acceptance of the amount. Further the evidence will go to show that, though the application for transfer was made on 15.06.1998 itself, the delay on the part of PW2 to go to the office and enquire about the same threw suspicion about his conduct. Further there is nothing to disbelieve the suggestion given by the 2nd accused that PW2 had unauthorizedly shifted the phone to his new residence without permission and when this was found out by the 2nd accused and informed the same to PW8 and PW8

called PW2 to warn him, PW2 was agitated on account of the same and even threatened the 2nd accused that he would teach a lesson. So it is on account of that enmity that a false case has been foisted against him. This was more probable according to the counsel for the 2nd accused and that ought to have been accepted by the court below. He had also reiterated the proposition canvassed by counsel for the first accused that mere recovery of some tainted currency note from the possession of the accused alone is not sufficient to convict them and the burden is on the prosecution to prove the demand and acceptance knowing the amount offered was bribe and only if they prima facie proved that fact, then only the presumption under Section 20 of the Act can be attracted. So according to him, the entire prosecution case was a manipulated and fabricated story, so as to save the real culprits and falsely implicated the innocent persons and they are entitled to get acquittal.

13. The case of the prosecution as emerged from

the prosecution witnesses was as follows:

First accused Sri.Dineshan was working as Telecom Technical Assistant and 2nd accused Sri.M.M.Mohammed Sayed was working as lineman cum Sub Inspector (Operational) in the Junior Telecom Office, Outdoor (South), Alappuzha, during the relevant time. PW8 Radhakrishnan was the Joint Telecom Officer in that office at the relevant time and accused Nos. 1 and 2 were working under him at that time. PW2 Joy Joseph was a Contractor and residing in Palliparambil House Palace Ward, Alappuzha, and he was having a telephone connection with No.61610, which was later changed to 261610, during 1997-1998. He shifted his residence to the newly constructed house, bearing Door No.C-45 of the same ward. He filed Ext.P6 application for shifting his telephone to his new residence on 15.06.1998 and this petition was filed in the Commercial Section of District Manager (Telephones), Alappuzha. After two or three days when he enquired in the

office of the Commercial Section of District Manager, he was told by Smt.R. Sabitha/PW6, the then telecom Office Assistant in the Commercial Section that the application had been sent to the office of Divisional Engineer for further action, and she give Ext.P7 slip showing the reference number. When he enquired in the office of the Divisional Engineer, he was asked to enquire about the same in the Sub Divisional Office which is in the ground floor of the building. When he enquired in the Sub Divisional Office, he was told that, necessary order was passed in the petition and the same was sent to the Junior Engineer Telephones (South) for further action. On 26.06.1998 PW2 went to the office of Junior Engineer Telephones(South) and enquired with Sri.Radhakrishnan, the then Junior Engineer(PW8), and he asked PW2 to meet first accused whose room is adjacent to the office of PW8. When he enquired with the first accused, he told that shifting the telephone was an expensive affair and an amount of ₹600/- had to be remitted

to the Government and 2nd accused was the person who had to help him, who was also present there at that time. When PW2 wanted them to effect shifting immediately, first accused told that he had to pay ₹250/- each to them and 2nd accused told PW2 that on Monday they would come to the house to prepare the estimate and at that time, the amount had to be paid. So PW2 left the place, but he had no intention to pay the bribe. So he left the office stating that he will come on Monday.

14. Since PW2 did not want to pay the bribe and he wanted to make complaint about the same, he enquired about the authorities to whom the complaint had to be given and came to understand that, Central Bureau of Investigation were the person to take action against them. So on 28.06.1998 Sunday, at about 1.30 P.M., he went to the office of CBI at Cochin with Ext.P8 complaint and gave the same to the Superintendent of Police, CBI. He asked him to wait in the visitors room. At about 3.30 p.m., one of

the officers came and asked PW2 to come to PWD Rest House, Alappuzha, on the next day and told that Sri.Gills P.Mathrew and CBI party will be there at that time.

15. On receipt of Ext.P8 complaint from PW2, the Superintendent of police, CBI, directed PW4 Sri.Govindan Nair, Inspector of CBI, Thiruvananthapuram, to register a case against the accused persons and as per the instructions, PW4 registered Ext.P12 first information report as R.C.No.6(A)/1998, against both the accused persons for the offences under Section 120-B of the Indian Penal Code and Section 7 and 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act and it was forwarded to the court. He had made enquiries regarding the contents of the complaint and integrity of the accused persons before registering Ext.P12 first information report as per rules.

16. The Superintendent of Police, CBI, on 28.06.1998 instructed PW5/ Sri.Gills P.Mathew, to lay the trap in the case. Accordingly PW5 constituted a team

consisting of Sri.Vijayakumar, Dy.S.P., Sri.K.P.George, Assistant Sub Inspector of Police and Sri.K.C. Krishnankutty, Constable and Sri.Sasidharan, Driver. After instructing PW2 came to PWD Rest House at Alappuzha at 8.30 a.m. on the next day, PW5 and other CBI officials proceeded to the Rest House on the same day. On 29.06.1998 at about 8.15 a.m., PW2 came to PWD Rest House at Alappuzha. Before reaching the Rest House PW5 had requested the Assistant Commissioner of Income Tax, Alappuzha, to depute two persons to act as independent witnesses for the trap and accordingly PW1 Sri.Paul Jawahar and PW11 Sri.Sreekumar were deputed by the Assistant Commissioner of Income Tax, Alappuzha, for that purpose who also reached the Guest House as requested by PW5.

17. Thereafter all of them went to the new house of PW2 and from the hall cum dining hall of the house, PW5 introduced all of them to each other. He read over Ext.P8

complaint to all of them present there. He asked PW2 as to whether he had brought the money as demanded by the accused persons and PW2 handed over four 100 rupee notes and two 50 rupee notes to PW5. He showed the number of the currency notes to all of them and noted the numbers in Ext.P1 entrustment mahazar. He made demonstration of the proposed plan of laying trap and also significance of sodium carbonate-phenolphthalein test. He asked PW1 to dip his right hand fingers in the sodium carbonate solution which did not show any colour change. Thereafter he asked one of the CBI officials to smear the currency notes given by PW2 with phenolphthalein powder and asked PW1 to handle the same and then dip his right hand fingers in the solution and at that time the solution turned pink. He had collected the solution in a bottle and sealed the same and marked as 'A' and that was identified as MO1 in court. Thereafter PW5 asked one of the officials to divide the amount given into two sets of ₹250 each. PW2

took out five 10 rupee notes from his waist and he was asked to keep it there itself. He showed his left side pocket of his shirt which was empty and PW5 put the phenolphthalein smeared currency in his left shirt pocket and asked him not to touch the same, till it was handed over to the accused persons when they made the demand. After completing the demonstration, he prepared Ext.P1 entrustment mahazar in the presence of witnesses present and obtained their signature therein. He instructed PW1 to accompany PW2 to the Junior Telecom Office South, Alappuzha and he asked to introduce him as his brother-in-law. He instructed PW1 to be with PW2 and over hear all the conversations between PW2 and accused persons and watch all the transactions between the accused persons and PW2. He had also instructed PW2 to make arrangements for the conveyance of the accused persons if they demanded and after bringing them to the house and entrusting the amount on demand, he asked PW2 to give a signal by saying

“chaya edukkam, kudichittu pokam”. After preparing Ext.P1 mahazar and conducting body search of all, they washed their hands with soap and water.

18. Thereafter PWs 1 and 2 went to Junior Telecom Office (South), Alappuzha, in the motor cycle of PW2. Meanwhile as decided earlier, PW5, Sri.Sreekumar/PW11 and other CBI officials concealed themselves in a bath room of the bed room on the north eastern side of the dining hall. Sri.George ASI/CW7 was kept outside the house to prevent the accused persons from going away from that place. When PWs 1 and 2 reached the Junior Telecom Office, they saw first accused alone there and when he met him, he told that 2nd accused had gone outside and he would come back soon. As it was raining at that time, PWs 1 and 2 waited outside for the 2nd accused to come in the scooter shed situated there. At about 11 a.m., 2nd accused came and thereafter PWs 1 and 2 went to the room of first accused and as demanded by them, they

arranged an autorickshaw and all of them came to the new house of PW2 in that autoricksha. After reaching the house, they entered the dining hall and first accused asked whether it was the place where the phone had to be shifted and PW2 answered in the affirmative. Thereafter the first accused asked as to whether the amount demanded by them was brought by him and if the amount is paid, they would make arrangement to shift the phone on the next day itself. Then PW2 took one set of the currency notes smeared with phenolphthalein powder and handed over the same to the first accused. Since the first accused was holding Ext.P2 diary in his right hand, he extended his left hand and received the money and put into in his left shirt pocket. He wrote something in Ext.P2 diary. He gave the 2nd set of money to the 2nd accused and the 2nd accused extended his right hand and received the same and put in his left shirt pocket. Then PW2 said as instructed "chaya edukkam, kudichittu pokam". Accused persons went outside stating

that they had no time to drink tea and they would go out for finding a suitable place for installing the telephone post. Then PW2 went near the bath room where PW5 and others were hiding and told them that the accused persons accepted bribe. PWs 1 and 2 accompanied the accused persons to outside the house. At that time PW5 and others came outside and reached the place where accused persons were standing.

19. Thereafter PW5 revealed his identity to the accused persons and asked them as to why they came there and they told that they came there for installation of the phone and he asked whether they received any bribe from PW2 and they answered in the affirmative. PW5 took them into the room on the southern side of the house and he introduced all of them to the accused person. PW2 took Ext.P2 diary from the right hand of the first accused and gave it to PW11, Sri.Sreekumar. In the presence of the witnesses he prepared the sodium carbonate solution and

asked first accused to dip his right hand fingers into it. When he did so, the solution remained colourless and that was taken in MO2 bottle, sealed and marked as 'B'. He asked his left hand fingers to dip in another glass of solution and it turned pink and that solution was collected in MO3 bottle and put 'C' mark on the same. Similarly when the right and left hand fingers of the 2nd accused were dipped in separate sodium carbonate solution, when he dipped the right hand finger, the solution turned pink, but when the left hand fingers were dipped in another sodium carbonate solution it remained colourless. Both these solutions were collected in MO4 and 5 bottles separately putting marks 'D' and 'E' respectively. Then he asked the accused persons to produce the currency notes received from PW2 and they took out the phenolphthalein smeared currency notes from there shirt pockets and handed over to PW5 and he showed the same to PWs 1, 2 and 11. They verified and cross checked the numbers in the currency notes which tallied

with the numbers entered by them in Ext.P1 entrustment mahazar and MO10 series were the currency notes so handed over by PWs 1 and 2. The pocket portion of the shirts of both the accused were subjected to sodium carbonate-phenolphthalein test, which gave positive result and those pink coloured solutions were also collected in MO6 and MO8 bottles and they were also sealed accordingly and marked as 'F' and 'G' respectively. MO7 and MO9 were the shirts of first and 2nd accused respectively. After completing the formalities, accused Nos.1 and 2 were arrested and Ext.P3 mahazar was prepared and all the MOs were seized and thereafter they were released on bail. The house of the accused persons were searched and Ext.P4 and P5 were the respective search lists in respect of searches conducted in the houses of accused Nos. 1 and 2 respectively and no articles were seized from the house of first accused while five departmental telephones were recovered from the house of the 2nd accused.

20. Thereafter the investigation was conducted by PW12, Inspector of Police, CBI, Cochin. He questioned the witnesses and recorded their statements. He obtained Ext.P9 series specimen writings of first accused, Ext.P10, his admitted handwriting and sent them along with Ext.P2 diary to Government examiner for questioned documents in the office of GEQD, Hyderabad, and PW3 Sri.Balaswami, the Assistant Government Examiner, examined the writings with the admitted writings and specimen hand writing of first accused and give Ext.P11 opinion regarding the same, in which it was mentioned that, both the questioned writings and admitted writings were written by the same person.

21. Thereafter PW12 seized Ext.P6 application given by PW2 for shifting the telephone. He had seized Ext.P15 telephone advise note containing Ext.P15(a) entry dated 15.06.1998 regarding the shifting of the telephone of PW2 and also seized Ext.P16 carbon copy advise note and

Ext.P16(a) covering letter along with Ext.P16(b) original of P16, as per Ext.P3 seizure memo. He had seized Ext.P7 letter received by JTO, Alappuzha along with Ext.P18 delivery book which contained Ext.P18(a) entry regarding the receipt of this letter, as per Ext.P14 seizure memo. He had seized Ext.P19 to P22 transfer orders of accused Nos. 1 and 2. Ext.P23 advise note register which contained Ext.P23 (a) entry dated 15.06.1998 regarding the sanctioning of shifting of telephone and Ext.P24 attendance register during the period which will go to show that accused persons were on duty at the relevant time as per Exts.P25, 26, 29, 30, 31 and 32 receipt memos respectively from the respective officers as produced by PWs 6 and 7. As requested by PW12, the investigating officer, the Assistant Engineer(CPWD), Alappuzha, prepared Ext.P34 plan of the place of occurrence and sent the same along with Ext.P33 letter. The articles were sent for chemical examination and Ext.P35 report was obtained. He completed the

investigation and submitted the final report against the accused persons.

22. Before going to the facts of the case, I may discuss the precedents relevant for the case. In the decision reported in **M.R.Purushotham v. State of Karnataka (2015 Crl.L.J. 72)**, the Hon'ble Supreme Court has held that in such type of cases prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. The Honb'le Supreme Court has relied on the decision reported in **B.Jayaraj v. State of Andhra Pradesh (2014 KHC 4199)**, wherein it has been observed that mere possession and recovery of tainted currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d) (i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position of public servants to obtain any

valuable thing or pecuniary advantage cannot be held to be established. Same view has been reiterated in the decision reported in **Banarsi Dass V. State of Haryana (AIR 2010 (SC) 1589)** and the **State of Kerala and Another v. C.P.Rao (2011 (2) SCC (Cri.) 1010)** and also in **Satvir Singh v. State of Delhi (AIR 2014 (SC) 3798)**.

23. In the decision reported in **Panalal Damodar Rathi v. State of Maharashtra (1979(4) SCC 526)**, it has been held that, there could be no doubt that evidence of the complainant should be corroborated in material particulars. After introduction of Section 165(A) of Indian Penal Code, making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration on material particulars connecting the accused with the crime has to be insisted upon. It has been further observed that, even if there is grave suspicion of appellant's complicity, unless it was established beyond

reasonable doubt, that is not sufficient to convict the appellant for the offence under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947.

24. Further in the decision reported in **C.M.Girish Babu v. CBI, Cochin, High Court of Kerala [2009(2) SCC (Cri) 1]**, it has been held that mere recovery of tainted money by itself is not enough in the absence of evidence to prove payment of bribe or to show that accused voluntarily accepted the money knowing it to be bribe to convict the accused for the offence. Further in the same decision it has been held that, if it is proved by the prosecution that there is demand and acceptance of illegal gratification, then there is a presumption under Section 20 of the Act and that can be rebutted by the accused either through cross examination of the prosecution witness or by adducing reliable evidence. It is further held that, the burden of proof on the accused under Section 20 is not the same as the burden placed on the prosecution to prove the

case beyond reasonable doubt.

25. In the decision reported in **M.K.Harshan v. State of Kerala (AIR 1995 (SC) 2178)**, it has been held that, in a trap case where the recovery of tainted money found from the drawer of the accused and trap witnesses deposing that the accused did not touch the currency notes, but told him to keep them in his drawer and if his evidence is not corroborated and suffers from infirmities, then the plea of the accused that the tainted money where planted in his drawer without his knowledge appears to be probable and he is entitled to get the benefit of doubt.

26. In the decision reported in **A.K. Sudhamma v. State of Kerala (2013 Crl.L.J. 4963)** it has been held that the demand and acceptance of illegal gratification has to be proved by the prosecution and if the accused was able to establish by some evidence, that she was not present in the office on the day on which alleged demand was made, then it cannot be said that the prosecution has proved

beyond reasonable doubt that she had committed the offence punishable under Section 7, and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, merely on the basis of recovery of currency notes alone.

27. In the decision reported in **State of Punjab v. Madan Mohan Lal Verma (2013 Crl.L.J. 4050)**, it has been held that the demand of illegal gratification is *sin-qua-non* for constituting offence under the Prevention of Corruption Act. Mere recovery of tainted money is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Unless there is evidence to prove payment of bribe or to show that the money was received voluntarily as a bribe, mere receipt of amount by the accused is not sufficient to fasten guilt in the absence of any evidence in regard to demand and acceptance of amount as illegal gratification. Once this is proved, the burden rest on the accused to displace the statutory presumption raised under Section 20 of the Act by bringing

on record evidence, either direct or circumstantial to establish with reasonable probability, that the money accepted by him was other than as a motive or reward as referred to in Section 7 of the Act. While invoking the provision of Section 20 of the Act, the court is required to consider the explanation offered by the accused if any, only on the touch stone of preponderance of probability and not on the touch stone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found to be in his possession, the fundamental fact must be established by the prosecution. The complainant is an interested and partisan witness concerned with success of the trap and the evidence must be tested in the same way as that of any other interested witness and in proper case, court may look for independent corroboration before convicting the accused persons.

28. In the decision reported in **Narinder Singh**

v. State of Himachal Pradesh [2014(3) Crimes 276 (SC)], the Supreme Court has held that once the demand and acceptance are proved, then the presumption under Section 20 of the Act will be attracted and it shall presume that the prosecution has proved that the accused had accepted illegal gratification, unless it is rebutted by the accused. In the decision reported in **Phula Singh v. State of Himachal Pradesh, (2014(2) Crimes 38 (SC))**, it has been held that, if the appellant is not denying his visit to complainant's house and not explain how his shirt was found hanging in the complainant's house and also not explain the incriminating circumstances of his acts and the pant pockets turning pink, the finding of the High Court, reversing the judgment of the trial court and finding the accused guilty of the offence under the Act is perfectly justifiable. Same view has been reiterated in the decision reported in the decision reported in **State represented by CBI Hyderabad, v. G.Prem Raj (AIR 2010 SC 793)** and

Subbu Singh v. State By Public Prosecutor (2009(6) SCC 462). In the later decision it has been observed that once there is a presumption as contemplated under Section 20, it is for the accused to establish that the amount was not received as a bribe and in the absence of any evidence regarding false implication, then court can rely on the evidence of prosecution and convict the accused.

29. In the decision reported in **State of U.P. v. Zakaullah (1998 CrL.J 863)**, the Hon'ble Supreme Court has held that, when the delinquent official was caught red handed in the trap laid by the trap officer and the complainant's evidence was corroborated by the evidence of the trap officer, then the complainants evidence cannot be rejected merely because he was aggrieved against the bribe taker. Further the fact that the trap officer successfully trapped delinquent is not a ground to conclude his animosity against the delinquent. In the same decision it has been held that, in bribery cases, the evidence of trap

officer can be relied on even without corroboration. Further in the same decision, it has been held that in a bribery trap case, when the accused was caught red handed with tainted currency notes not sending a sample of solution used for conducting phenolphthalein test to chemical examiner would not vitiate the trap.

30. In the decision reported in **T.Shankar Prasad v. State of Andhra Pradesh (2004 SCC (Cri.) 870)**, it has been held that Section 20(1) of the Act in essence and substance is the same as in Section 4(1) of the Prevention of Corruption Act, 1947, the expression shall be presumed employed in this Section read with the definition of 'shall presume' under Section 4 of the Evidence Act, 1872 shows that this must have the same import of compulsion, that is to say that it has to be presumed that the accused accepted the gratification as a motive or reward for doing any official act etc, if the condition envisaged in the former part of the section is satisfied. The only condition for

drawing legal presumption under Section 20 of the Act is that, during trial it should be proved that, the accused has accepted or agreed to accept any gratification. But the section does not say that the said condition should be satisfied only by direct evidence. It can be proved by other modes envisaged in the Evidence Act. Further in the same decision, it has been held that the proof of facts depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. As observed in Hawkins case, proof does not mean proof to rigid mathematical demonstration because that is impossible. It must mean such evidence as would induce a reasonable man to come to a particular conclusion. In reaching the conclusion that the court can use the process of inferences to be drawn from the facts produced or proved. Such inferences are akin to presumptions in law. The same view has been reiterated in the decision reported

in M.Narsinga Rao v. State of Andhra Pradesh (2001 (1) SCC 691) and Raghubir Singh v. State of Haryana (1974(4) SCC 560).

31. So it is clear from the above decisions that in order to attract the conviction under Section 7 and Section 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, mere recovery of the amount alone is not sufficient, but it must be proved by the prosecution that there was demand and acceptance of the amount which he is not legally entitled to receive for doing an official Act and if this is proved by the prosecution, then the presumption under Section 20 of the Act will be attracted and the burden is on the accused to rebut the same by adducing evidence, direct or circumstantial or bring circumstances to probabalise the case by cross examination of the witnesses by preponderance of probabilities and he is not expected to discharge his burden beyond reasonable doubt, as in the case of prosecution proving its case. With the above

principles, the case in hand has to be considered.

32. The case of the prosecution was that, for the purpose of shifting the telephone from the old house to the new house of PW2, when he approached PW8 on coming to know that his application had been forward with sanction to his office and he asked him to contact first accused who was the then Telecom Technical Assistant in that office. Accordingly he contacted him and he with the connivance of the 2nd accused demanded an amount of ₹250/- each as illegal gratification for coming to the house of PW2 for preparing estimate and asked him to come on 29.06.1998 with conveyance for the purpose. Accordingly on 29.06.1998, as requested by the accused persons, PW2 had gone there and brought them to his house and as demanded by them, he handed over the amount which the trap officer had seized after complying with the formalities.

33. The fact that PW2 approached PW8 and as instructed by PW8, he contacted first accused and accused

Nos. 1 and 2 accompanied PW2 to his house on 29.06.1998 and the tainted money was recovered from their possession by the trap laying officer etc., are not in dispute. The case of the accused persons was that, PW2 had thrust the amount in their pocket and when they were about to return the amount, the CBI officials came and arrested them and recovered the amount. Their further case was that, since 2nd accused had found out that PW2 had unauthorisedly shifted the telephone post and made shifting of the telephone to his new house without permission, when he told that he would make complaint about the same and he made complaint to PW8 and PW8 called PW2 and warned him of the consequences and at that time, he declared that he would teach a lesson on the accused persons, on account of that enmity they have been falsely implicated in the case. The first accused also had a case that he had no responsibility to prepare estimate and it was the duty of PW8 to do the same and as such there was no question of any demand or

acceptance of illegal gratification as claimed by the prosecution arises.

34. As regards the case of the defence is concerned, except the suggestions given to PW2, there was no other acceptable evidence adduced on their side to prove this fact. They have no case that they had made any written complaint about the same. Further PW8 had deposed that no such complaint was made by the 2nd accused to him as claimed by him. Further there was no evidence adduced on the side of the accused to prove that there was any previous enmity for PW2 to falsely implicate the accused persons in a case like this. So under the circumstances, it can be safely concluded that the defence has failed to prove the question of false implication in the case as claimed by him. It may be mentioned here that merely because the defence case is not probable alone is not sufficient to convict the accused persons, unless the prosecution had discharged its primary duty of proving their case independently.

35. Prosecution relies on the evidence of PWs 1 to 5, 8, 11 and 12 and Exts.P1 to P3, P6, P7, P11, P12 and MOs 1 to 10 to prove their case. Though DWs 1 to 4 were examined and Exts.D9 to D14 was marked on the side of the defence, they are not related to the actual demand and acceptance of bribe alleged to have been taken by the accused persons. Those witnesses were examined on the side of the accused only to prove that PWs 9 and 10 are not the sanctioning authorities competent to grant sanction to prosecute the accused persons under Section 19 of the Prevention of Corruption Act. But while answering Point No.I, those evidence has been considered by this court. Then Exts.D1 to D8 are the relevant portions of the contradictions of the evidence of PWs 2, 5, 8, and 11 respectively, which can be considered while considering the evidence in this case.

36. PW2 is the complainant in this case who gave Ext.P8 complaint, when he was agitated by the demand

made by accused Nos.1 and 2, for taking steps to shift his telephone from the old house to the new house. PW2 had categorically stated that he filed Ext.P6 application for shifting, on 15.06.98 and when he enquired about the same with the Sub Divisional Office, Telecoms, it was informed by PW6 that it was forwarded to the concerned office and gave Ext.P7 slip noting the reference of forwarding the letter for necessary action to the concerned section. It is also come out in evidence of PW8 that after getting necessary sanction, it reached his office for shifting the telephone. According to PW2, he went to the office of PW8 after getting Ext.P7 slip and after ascertaining from the Sub Divisional Office that, they had already forwarded the same to Joint Telecom Officer, Alappuzha South and met PW8. He told PW2 to meet the first accused for the purpose of making arrangements for shifting and accordingly he met first accused and at that time 2nd accused was also there and first accused told that he had to deposit ₹600 to the

Government and there were lot of work to be done for which he required the help of 2nd accused and PW2 had to pay ₹250/- each to both of them for that purpose. The fact that PW2 came to the office and met PW8 and also met accused Nos. 1 and 2 on 26.06.1998 as claimed by him is not in dispute. Further the attendance register maintained in the office also will go to show that accused Nos. 1 and 2 were working in that office under PW8 on that day and they were present in the office on that day. It was also in away admitted by first accused in his 313 examination that when PW2 came and asked for the shifting of the telephone, he was instructed by PW8 to go to the house along with 2nd accused and prepare the estimate and accordingly he along with the 2nd accused went to the house of PW2 on 29.06.1998.

37. According to PW2, after he left the office on 26.06.1998 and since he was not willing to heed for the demand of payment of illegal gratification, he wanted to

make complaint and it was revealed that the complaint had to be filed before the CBI, who alone can take against them. Accordingly on 28.06.1998, he went to the office of the CBI, Cochin and gave Ext.P8 complaint to the Superintendent of Police, CBI, who wanted him to wait in the office. According to PW2, some officer had come and informed him to come to Alappuzha Guest House on the next day at 8.30 a.m. Accordingly he left the office and went to the Alappuzha Guest House on 29.06.1998. At that time he saw PW5 along with PW1 and PW11 and some other CBI officials there and as instructed by PW5, all of them came to the house of PW2 from where PW5 introduced the persons to each other and also read out Ext.P8 complaint to PWs 1 and 11. Thereafter he had explained the procedure for laying trap and also made demonstration about the Sodium Carbonate-Phenolphthalein test and prepared Ext.P1 entrustment mahazar.

38. It is also deposed by PW2 that, from his

house when PW5 asked as to whether he had brought the amount demanded, he had handed over MO10 series currency notes consists of four hundred rupee notes and two 50 rupee notes and as instructed by PW5, one of the officials of the CBI had smeared the same with phenolphthalein powder and thereafter divided the same into two sets and after demonstrating the sodium carbonate phenolphthalein test, put the two sets of currency notes of 250/- each in the pocket of PW2 and instructed him not to take the same till the accused persons made the demand. He had also instructed PW2 that immediately after handing over the money, he had to ask the accused "chaya edukkam, kudichittu pokam". He had also explained the place where they proposed to hide. Thereafter he told PW1 to accompany PW2 to the office of the accused persons and he had told them that if anybody asked about PW1, PW2 had to say that he is his brother-in-law.

39. According to PW2, both PW1 and PW2 had

gone to the Joint Telecom Office, Alappuzha South, and met first accused there and he told that 2nd accused had gone outside and wanted to wait till his arrival. So they were standing outside the office in the scooter shed. When the 2nd accused came, they came to the office again and accused persons wanted to arrange an autorickshaw to go and accordingly he arranged an autorickshaw and all the four persons traveled in the autorickshaw and reached his house. Thereafter they entered the hall and first accused asked as to whether he had brought the amount and immediately PW2 had took one set of notes and handed over the same to the first accused and he received the same with his left hand as he was holding Ext.P2 diary in his right hand and put it in his shirt pocket and 2nd accused showed his hand and he had paid the other set which he received and put in his shirt pocket. Thereafter they wanted to see the place and they were about to go outside. At that time PW2 asked them “chaya edukkam, kudichittu pokam” and

they went outside stating that they had no time for that. Immediately PW2 came to the place where the trap laying team was hiding and told them that the amount had been paid and thereafter PWs 1 and 2 accompanied the accused persons to outside. By the time other persons including PW5 and PW11 came out side and introduced themselves to the accused persons and after completing the formalities, recovered MO10 series from their possession, and conducted sodium carbonate-phenolphthalein test and collected the solution so used in MOs 2 to 7 and MO8 bottles and they also collected MO7 and MO9 shirts of the first and 2nd accused respectively and prepared Ext.P3 mahazar stating all these facts. Thereafter they arrested the accused Nos. 1 and 2 and released them on bail.

40. Thereafter they went to the house of first and 2nd accused and conducted search and prepared Ext.P4 and P5 search lists. No incriminating articles were seized from the house of the first accused while certain telephones were

found in the house of the 2nd accused.

41. PW1 had corroborated the evidence of PW2 on material aspects. It is true that at the time when PW1 was cross examined, he had stated that at the time when he was going along with PW2, he only said about 2nd accused, but in the re-examination, he had stated that the names of accused Nos. 1 and 2 were mentioned in Ext.P8 and that was read over to him and that was admitted by PW2. He denied the suggestion that PW2 had thrust the amount in the shirt pocket of accused Nos. 1 and 2 and while they were trying to resist and handing over the amount back, they were arrested by the CBI officials. He had further stated that after reaching the house, the first accused has asked something to PW2 and immediately PW2 handed over one set of the amount and thereafter the other set was given to the 2nd accused. Though there is Ext.D1 contradiction in his evidence, on analysis of the entire evidence will go to show that, it is not relevant or material

so as to disbelieve the evidence of PW1 on the question of demand made and handing over amount and accepting the amount by accused Nos. 1 and 2.

42. The fact that after receipt of the amount, the first accused had made some entries in Ext.P2 diary and the entries so made were found to be in the hand writing of the first accused as per the evidence of PW3, the expert who examined the question entries in Ext.P2 and specimen writings and admitted writings in Exts.P9 and P10 is to the effect that all these writings were written by the same author and he proved Ext.P11 opinion given by him in this regard were also proved by the evidence of PW2 and PW3 the expert. Further the first accused had no case that it was not written by him as well.

43. PW11, the other decoy witness also proved the transaction, but his evidence is not helpful to prove the actual receipt of the amount. But on all other aspects, he had corroborated the evidence of PWs 1 and 2. Further

PW5 the trap laying officer also corroborated the evidence of PWs 1 and 2. He denied the suggestion given by the accused persons that the amount was thrust in their pocket and at the time when they resisted and trying to hand over the amount to PW2, that they were arrested by the CBI officers. Except the suggestion given, no other evidence was adduced on the side of the accused to prove this fact. Even in the 313 examination, the accused persons had admitted their presence in the house of PW2 and recovery of the amount from their possession by the CBI officials. So under the circumstances and in the absence of any convincing evidence adduced on the side of the accused to prove their false implications, court below was perfectly justified in relying on the evidence of PWs 1, 2, 5 and 11 to prove the case against accused persons and the evidence of PW2 will go to show that he had proved the demand for the amount made on 26.06.1998 and subsequent demand made on 29.06.1998 and receipt of the amount by the accused

persons. Except the suggestion given to PW2, that he had some enmity as the 2nd accused had found out the unauthorized shifting of the phone and removing of the telephone post, there is no acceptable evidence adduced on the side of the defence to prove this fact, either by adducing direct evidence or by circumstantial evidence. None of the officials examined on the side of the accused supported their case as well. Further PW8 had denied having received any complaint as suggested by the 2nd accused. So under the circumstances, the court below was perfectly justified in believing the evidence of PW2 for the purpose of proving the demand and acceptance of the amount which they have demanded for the purpose of discharging their official duty, for which the amount need not have been paid and rightly relied on the presumption under Section 20 of the Act and came to the conclusion that the prosecution has proved the demand and acceptance of the illegal gratification by the accused persons while discharging their duty as public

servant, by misusing their official position to do their work.

44. Further there is no explanation forthcoming from the side of the accused that the amount demanded was anything connected with the preparation of the estimate by first accused, for which he obtained the assistance of the 2nd accused. Merely because PW1 has stated that at the time when he interacted with PW1, he had only mentioned the name of 2nd accused alone and first accused had shown some reluctance to come in the beginning when he was compelled to come by 2nd accused and PW2, he also accompanied them is not sufficient to come to the conclusion that it is not a legal trap, but it is a concocted trap made by the prosecution to trap innocent person as claimed by the counsel for the accused persons.

45. Contradictions in the evidence of PW11 is also not much relevant for this purpose. Merely because PW1 had not mentioned the exact words spoken by the first accused alone is not sufficient to come to the conclusion

that the demand has not been proved by the prosecution. His evidence will go to show that immediately on first accused and PW2 made some conversation, the amount was given and that was accepted by both the accused persons. There is no much contradiction in the evidence of PW1 regarding the manner in which the amount was received and it was recovered from their possession as well. The evidence of PWs 1 and 2 are corroborated to each other regarding the demand and acceptance of the amount by the accused persons on 29.06.1998 from the house of PW2.

46. Further the suggestion that the amount was thrust in the pocket of accused Nos. 1 and 2 and when they were trying to return the amount they were caught by the trapping party was denied by all the witness examined on the side of the prosecution. Except the suggestion given, there is no other evidence adduced on the said of the defence to prove this fact as well. Further even regarding the alleged enmity for PW2, except the suggestion, there is

no other evidence adduced on the side of the defence either direct or circumstantial to probabilise their defence. There is no other evidence adduced on the side of the defence for PWs 1, 2, 5 and 11 to give any false evidence against the accused persons in a case like this as well. Further there is no explanation forthcoming from the side of the defence to account the amount received from PW2, so as to come to the conclusion that it was not illegal gratification, but legal remuneration payable to them or the amount legally liable to be paid by PW2 for preparing the estimate and for effecting shifting of telephone as requested by him.

47. Once it is proved by the prosecution that there was demand and acceptance of money which is not legally due to them, then the presumption under Section 20 of the Act will be attracted and court shall presume that it was illegal gratification that has been obtained by them misusing their official position as public servants to their advantage. Then the burden is on the accused to disprove

this fact. In this case no evidence acceptable or probable adduced to rebut the presumption available under Section 20 of the Act. So under the circumstances, court below was perfectly justified in coming to the conclusion that the prosecution has proved beyond reasonable doubt that the accused had demanded money and accepted the same and also the evidence will go to show that they have conspired together for the purpose of demanding the amount and in pursuance of that conspiracy that the demand and consequential acceptance have been made by them. Further in Ext.P8, PW2 had categorically stated about the role of both the accused in demanding the money as illegal gratification for discharging their duty as a public servant in connection with shifting of the telephone of PW1 from his old house to the new house. The delay in making enquiry about the same by PW2 is not much relevant so as to doubt his genuineness of filing the complaint. So under the circumstances, the court below was perfectly justified in

coming to the conclusion that the accused have committed the offence punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and Section 120B of the Indian Penal Code.

48. The other contention raised by the counsel for the appellants in both the cases was that, there was delay in the First Information Report reaching the court. It is true that as per the evidence of PW4, it will be seen that Ext.P8 complaint was received on 28.06.1998 at about 3.30 p.m, by the Superintendent of police, CBI, Cochin Unit and it was entrusted to PW4 for the purpose of registering the crime and take up investigation and it was received by him on the same day and on that basis, he had registered Ext.P12 first information report at 4.00 p.m. PW4 had categorically stated that, he had entrusted the same to the despatch section for the purpose of forwarding the same to the court on the same date. It is seen from Ext.P12 that it was forwarded to the court on 29.06.1998 and it reached

the court at 4.15 p.m., on that day. But that alone is not sufficient to come to the conclusion that Ext.P8 was subsequently concocted after the alleged trap was completed as claimed by the defence. There is no acceptable evidence adduced on the side of the defence to probabalise the case as well. They could have summoned the first information report register to prove that Ext.P1 was anti timed and dated so as to suit the case of the prosecution after they have falsely implicated the accused persons.

49. The theory of the defence that they have made the trap for some other person, but the accused persons have been unfortunately caught in the trap cannot be believed as well. Not even a suggestion given to PW5, that it was PW8 who had demanded the amount and they were expecting PW8 at that time. Merely because Sri.Vijayakumar, Dy.S.P. was part of the investigation team, his non-examination is not fatal in this case. Further there

was nothing brought out in the evidence of the prosecution witnesses or any evidence adduced on the side of the prosecution to prove that the said Vijayakumar had any grudge to grind against the accused persons so as to implicate them in a case like this.

50. It is settled law that merely because there was some delay in sending the first information report to court alone is not a ground to doubt the genuineness of the prosecution case, unless there are circumstances brought out by the defence so as to infer for a reason for manipulation of anti dated and anti timed first information report being registered so as to falsely implicate the accused persons and give that benefit to the accused for acquittal. Except the suggestion given, there is no other acceptable evidence adduced on the side of the accused to substantiate this fact. Merely because there was some discrepancy in the evidence of PW5 regarding the availability or nonavailability of room in the Guest House is

also not relevant in a case like this. So the submission made by the counsel for the appellants that Ext.PW8 was subsequently created at the instance of Dy.S.P. Vijayakumar, so as to falsely implicate the accused persons is without any substance and the same is liable to be rejected.

51. The other contention raised by the counsel for the appellants was that, normally the demonstration of trap to be conducted will be done either from the office of the person to whom complaint was given or the trap laying officer or at the place from where they were expected to meet at the first time. In this case, since the demonstration and preparation of Ext.P1 entrustment mahazar etc., were done from the house of PW2, which is against the normal conduct, that creates doubt regarding the genuineness of the trap laid. There is no specific rule which says that the demonstration has to be done from the office of the trap laying team or from some particular place. In this case, the

prosecution case was that, the accused have made the demand from their office and they insisted that the amount has to be brought to the place from where they will have to prepare the estimate namely the new house premises of PW2. Further unless they reached the house and found out the location of the house, it may not be possible for the trap laying officer to demonstrate correctly where they will stand and how the signal after payment of the amount has to be made etc. So the place where the 2nd demand and acceptance has to be accomplished is the house of PW2. There is nothing wrong for the trap laying officer reaching the house of PW2 and from there making the demonstration regarding the sodium carbonate phenolphthalein test and also explaining the mode in which the trap will be laid for trapping the accused persons in this case. So under the circumstances, that alone is not a ground for acquittal of the accused persons as claimed by the counsel for the appellants, especially when there are other evidence

adduced on the side of the prosecution to prove the guilt of the accused beyond reasonable doubt and rightly rejected the contentions of the accused by the lower court and court below was perfectly justified in convicting the appellants for the offence under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and I do not find any reason to interfere with the finding of the court below on this aspect.

52. The other contention raised is that the superintendent of police had asked PW4 to register the crime and investigate, but the trap was laid by PW5, another officer which also creates doubt regarding genuineness of the prosecution case. It is true that PW4 was asked to register the crime and investigate by the Superintendent of Police as seen from the endorsement made on Ext.P8 and later PW5 was directed to conduct the trap. There is nothing wrong in the procedure of directing investigation by one officer and laying trap by another team

as the trap team will be cited as witnesses in the case to prove the case of the prosecution. Further no prejudice has been established by the defence on account of the same. In the absence of any evidence of prejudice being established that alone cannot be taken as a ground to suspect the genuineness of the prosecution case to acquit the accused especially when the independent witnesses, complainant and the trap laying officer have proved the case of the prosecution beyond reasonable doubt. The points are answered accordingly.

53. Point No.(v): The counsel for the appellants submitted that sentence imposed is harsh considering the amount received. Public Prosecutor submitted that the court below had considered all the aspects and punishment imposed is proper.

54. The court below had sentenced both the accused to undergo rigorous imprisonment for two years each and also to pay a fine of ₹2,000/- each, in default to

undergo rigorous imprisonment for two months each for the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and further sentenced to undergo rigorous imprisonment for one year each for the offence under Section 7 of the Prevention of Corruption Act and directed substantive sentence to run concurrently. No separate sentence was awarded for the offence under Section 120B of the Indian Penal Code.

55. In the decision reported in **Narendra Champaklal Trivedi and Another v. State of Gujarat (2012(7) SCC 80) = AIR 2012 SC 2263**, the Hon'ble Supreme Court has held that where the minimum sentence is provided, we think it would not be at all appropriate to exercise jurisdiction under Article 142 of the Constitution of India to reduce the sentence on the ground of 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 the 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 permium. 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.

56. It may also to be taken into consideration that public servants are the servants of the public and they have been appointed to serve the public to cater their needs for which they have been paid remuneration by the Government. They are not expected to demand anything more than the legal remuneration payable to them from the public for discharging their official duty which they expected to do as a service to the public. If any one violated

that principle, then he will be committing misconduct in discharging his duty to the detriment of the public and that could be curtailed only by imposing proper sentence against the accused in cases where the demand and acceptance of bribe is proved by the prosecution. Giving proper punishment in such cases would not only be a punishment to a person who have committed the crime but also it will be a warning to other public servants that if they commit such offence, they also will be put to similar situation and face such consequences.

57. In the decision referred to above, the court below had imposed minimum punishment provided and Supreme Court has declined to further reduce the sentence from the minimum provided under the Act. In this case the amount said to have been received is ₹250/- each. Minimum sentence provided at the time when the offence was committed is six months which may extend to 7 years for the offence under Section 7 of the Act and one year which

may extend to 10 years for the offence under Section 13(1) (d) read with Section 13(2) of the Act. So considering the circumstances, this court feels that imposing the minimum substantive sentence and increasing the fine little more will be sufficient and that will meet the ends of justice. So the sentence imposed by the court below is set aside and the same is modified as follows:

The appellants are sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of ₹5,000/- each, in default to undergo rigorous imprisonment for two months each under Section 7 of the Prevention of Corruption Act and further sentenced to undergo rigorous imprisonment for one year each and also to pay a fine of ₹5,000/- each, in default to undergo rigorous imprisonment for six months each under Section 13(1)(d) read with Section 13(2) of the Act. The substantive sentences are directed to run concurrently. Set off is allowed for the period of detention, if any undergone by them in this case,

under Section 428 of the Code of Criminal Procedure. The point is answered accordingly.

In the result, the appeals are allowed in part. The order of conviction passed by the court below against the appellants under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B of Indian Penal Code are hereby confirmed. But the sentence of two years imprisonment each and also to pay a fine of ₹2,000/- each, in default to undergo rigorous imprisonment for two months each for the offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and further sentence to undergo rigorous imprisonment for one year each under Section 7 of the Prevention of Corruption Act are hereby set aside and the same is modified as follows:

The appellants are sentenced to undergo rigorous imprisonment for six months each and also to pay a fine of ₹5,000/- each, in default to undergo simple imprisonment

for six months each under Section 7 of the Prevention of Corruption Act and further sentenced to undergo rigorous imprisonment for one year each and also to pay a fine of ₹ 5,000/- each, in default to undergo rigorous imprisonment for six months each under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The substantive sentences are directed to run concurrently and the period of detention if any undergone by them in this case is given set off under Section 428 of the Code of Criminal Procedure.

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

Sd/-

K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge