

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No. 60 of 2007 ()

AGAINST THE JUDGMENT IN CC 35/2001 of ENQUIRY COMR.& SPL.JUDGE,
KOZHIKODE, DATED 27-12-2006

APPELLANT(S) /ACCUSED:

SHIJU.M.THANKACHAN,
S/O.THANKACHAN.K., MADATHARAYIL, PANATHADY VILLAGE,
(LINEMAN GRADE I, KSEB, ELECTRICAL SECTION
RAJAPURAM) .

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.C.DINESH
SMT.ASHA BABU
SRI.G.RENJITH
SMT.AMMU CHARLES
SMT.JINNU SARA GEORGE

RESPONDENT(S) /STATE & COMPLAINANT:

1. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
2. THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU, KASARAGOD.

PUBLIC PROSECUTORSRI. ROY THOMAS.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-01-2015,
THE COURT ON 13.10.2015 DELIVERED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

.....
Crl. Appeal No.60 of 2007
.....

[C.R.]

Dated this the 13th day of October, 2015

J U D G M E N T

Accused in C.C.35/2001 on the file of the Enquiry Commissioner and Special Judge, Kozhikode, is the appellant herein. The appellant was charge-sheeted by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Kasaragod in VC-8/2000 of VACB, Kasaragod under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (hereinafter called the P.C. Act).

2. The case of the prosecution in nut shell was that, while the accused was working as Lineman Grade-I, Kerala State Electricity Board, Electrical Section, Kasaragod District, being a public servant abused his official position, demanded and accepted illegal

gratification of ₹1000/- for himself from Sri.Shyamkumar, son of Raghavan, cousin of CW1, in September 2000, at the shop of the complainant for changing the faulty electrical meter of his shop and after some days the accused again demanded another sum of ₹1,000/- for himself from CW1 at the office of the accused and reiterated the said demand on 06.10.2000 and 12.10.2000 over telephone and on 13.10.2000 when he came for changing the meter in the shop of CW1, he demanded the amount and accepted the same after changing the meter and installing the new one and thereby he had committed the above said offence.

3. After investigation, final report was filed before the Enquiry Commissioner and Special Judge, Kozhikode and it was taken on file as C.C.No.35/2001. When the accused appeared before the court below, after hearing both sides, charge under Section 7 and 13(d) read with Section 13(2) of the Prevention of Corruption Act was framed and the same was read over and explained to him

and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 8 were examined and Exts.P1 to P25, P1(a) to P1(e), P4(a) to P4(e), P5(a), P6(a), P7(a), P9(a), P10 (a), P11(a) to (c), P12(a), P13(a), P14(a) and P18(a), MO1 series and MO2 to MO9 were marked on the side of the prosecution. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that as directed by his higher officials, he had disconnected electric connection to consumer No.1419, as they have not remitted the consumption charge. Thereafter on 13.10.2000 as instructed and entrusted by his higher official, he came to the shop for changing the meter and after changing the old meter, he removed his shirt and climbed the post for giving re-connection and thereafter he came and took the shirt and wore the same and took the old meter and came out side

the shop. When he reached near his motor bike, PW3 and some people came there and surrounded him and obtained the shirt, PW3 informed that he was Vigilance Deputy Superintendent of Police and pointed at PW1 and told that he was arrested by him for receiving bribe from him. There was no electric connection for consumer No.1419 due to non-remittance of electric bill and he had to remit more than ₹5,000/- towards arrears of electric charges, fine, deposit and re-connection charge etc., and he had misconception that he was responsible for the same and on account of that misconception, a false complaint was filed against him. Deputy Superintendent of Police never asked him whether he received the amount and he never told the Deputy Superintendent of Police that the amount was in his pocket. He was working in the KSEB since 1991 and he was doing his work with integrity and in full dedication. He never demanded any amount and received any amount. No defence evidence was adduced on his side. After

considering the evidence on record, the court below found the appellant guilty under Section 7 and 13(1)(d) read with Section 13(2) of the P.C. Act and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year each and also to pay a fine of ₹1,000/- each, in default to undergo rigorous imprisonment for two months each for the offence under Section 7 and 13(1)(d) read with Section 13(2) of the P.C. Act and directed the substantive sentences to run concurrently. Set off was allowed for the period of detention already undergone by him. Aggrieved by the same, the above appeal has been preferred by the appellant/ accused before the court below.

4. Heard senior counsel appearing for the appellant Sri.K.Ramkumar and Sri.Roy Thomas, learned Public Prosecutor appearing for the respondent.

5. The counsel for the appellant submitted that, in order to attract the offence under Section 7 of the P.C. Act, the prosecution has to prove that in abuse of his official

position and for getting unlawful gain for himself, he demanded and accepted illegal gratification for discharging his official duty. Unless the demand and acceptance are proved by the prosecution, mere recovery of tainted amount from the possession of the accused alone is not sufficient to convict the accused for the offences alleged. Further in this case, the case of the prosecution was that, Sri.Shyamkumar, the cousin of PW1 was doing business and for the purpose of giving re-connection on an earlier occasion, the accused demanded and obtained ₹1,000/- and this was again repeated to him and it was on that basis a complaint was filed through PW1, he being the person in charge of the Managing properties on behalf of his brother Sri.Kunjikannan, who was the owner of the shop. But the said Shyamkumar was not examined. Further PW1 did not support the case of the prosecution, though he admitted the signature in Ext.P1, P2 and P3, he had stated that he was accompanied by Shyamkumar and he had done all these

things on the basis of the allegations made by Shyamkumar against the accused and no amount was demanded from him by the accused and he did not pay any amount as well. According to him, the accused came to their shop for changing the meter and when he climbed the post for giving connection, Shyamkumar took the amount from him and placed in the shirt pocket of the accused which he had hanged in the shop while climbing the electric post. He had touched the hands of the accused while he was changing the meter as well. So his evidence is not helpful to prove either the demand or acceptance. Further PW2 who was examined for the purpose of proving the trap did not state that he had seen the accused demanding the amount or accepting the amount. He had further stated that he did not know how the amount happened to come in the pocket of the accused. Further the prosecution relies on the evidence of PW7, the head constable who had said to have witnessed the entire incident. Neither PW2 nor PW3 the

trap laying officer had a case that PW7 had witnessed the entire incident. He had even gone to the extent of saying that, he had seen PW1 attending phone call said to have been received from the accused and he told the said witness about the same and he had seen the accused demanding the amount and receiving the amount which is highly improbable as even PW3 the trap laying officer had no case that he was deployed in such a position along with PW2 and another witness. So under the circumstances, the court below was not justified in convicting the accused for the offence alleged. He had relied on the decisions reported in **Suraj Mal v. State Delhi Administration (AIR 1979 SC 1408)**, **A. Subair v. State of Kerala (2009(6) SCC 587)** in support of his case.

6. On the other hand learned Public Prosecutor submitted that though PW1 turned hostile, he had admitted giving of Ext.P1 complaint and signing of Ext.P2 entrustment mahazar and Ext.P3 recovery mahazar. He had

also admitted that PWs 2 and 3 and another lady officer were present at that time. He had also admitted that accused came there for changing the meter on that day. He had also admitted that he was told by Shyamkumar about the demand made by the accused and it was as requested by him he went to the office and gave the complaint. Further the evidence of PWs 2, 3 and 7 will go to show that the tainted currency notes were seized from the possession of the accused and the accused had no explanation as to how this amount had reached him. In the absence of such evidence adduced from the side of the accused, the presumption under Section 20 of the Act will be attracted and court shall presume that the accused had made demand and accepted the amount as reward or illegal gratification for doing his duty as a public servant which he is not entitled to receive. He had relied on the decisions reported in **State of West Bengal v. Kailash Chandra Pandey (AIR 2005 SC 119)**, **State of Andrapradesh v.**

Kommaraju Gopala Krishna Murthy [(2000) 9 SCC 752] in support of his case and submitted that court below was perfectly justified in convicting the appellant for the offences alleged.

7. 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 himself for discharging his official duty. If demand and acceptance are proved by the prosecution, then the presumption under Section 20 of the 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.

8. 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, unless 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 Act will be attracted. The burden on the accused is not so onerous as that 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 decisions reported in **Suraj Mal v. State of Delhi Administration (AIR 1979 (SC) 1408)** and **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).

9. In the decision reported in **B. Jayaraj v. State of Andhra Pradesh 2014(4) SCALE 81**), it has been observed that, demand of illegal gratification is sine qua non to constitute offence under Section 7 of P.C. Act. Mere recovery currency notes cannot be constitute offence under Section 7, unless it is proved that the accused voluntarily accepted the money knowing it be bribe. Presumption be drawn under Section 20 of the Act only in respect of offence under Section 7 and not under Section 13 (d)(i)(ii). The same view has been reiterated in the decision reported in **Narendra Champaklal Trivedi v. State of Gujarat [(2012) 7 SCC 80]**.

10. The Hon'ble Supreme Court has considered

the circumstances under which even if the complainant turned hostile, court can rely on the other evidence and convict the accused, in the decision reported in **Vinod Kumar v. State of Punjab [(2015(1) KHC SN 17 (SC)]** and **Narendra Champaklal Trivedi v. State of Gujarat [(2012) 7 SCC 80]**. With the principles mentioned above, case in hand has to be considered on facts.

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

PW1 Sri.P.K.Karunan, is the brother of Kunhikannan who was having properties at Belur in Kasaragod District. The property originally belonged to one Moosa from whom Kunhikannan and one Murali had purchased the property. Thereafter Murali released his right to Kunhikannan, the brother of PW1 and there are number of buildings in that room in which in one of the rooms one Shyamkumar, the cousin of PW1 was conducting business and it was having an electric connection with

consumer No.1419. Due to nonpayment of electricity charges, connection to that building was disconnected and an application was filed for reconnection and it was ordered and the faulty meter of the building has to be changed. According to the prosecution, the accused was working as lineman Grade-I of Kerala State Electricity Board, Electrical Section, Rajapuram within whose jurisdiction the shop is situated was approached by Shyamkumar, he demanded ₹1,000/- for changing the meter and according to the prosecution that amount was paid during September 2000. Thereafter again he demanded ₹1,000/- on 06.10.2000 and 12.10.2000 over telephone to PW1 and PW1 had agreed to pay the amount on the date of effecting connection. Since he was not interested in paying the amount, he contacted PW3 and gave Ext.P1 statement to him about the same. PW3 the Deputy Superintendent of Police, VACB, Kasaragod on the basis of Ext.P1 statement given by PW1, registered Ext.P1(e) crime as VC-8/2000 under Section 7 of

P.C Act. Thereafter he obtained the assistance of PW2, Sri.P.V. Narayanan, Accountant in PWD Road Division and CW3, Assistant Engineer, PWD Road Section for the purpose of laying the trap, who were working in PWD road division office from the Assistant Executive Engineer of PWD. Accordingly they also reached the office of PW3. He obtained two 500 rupee notes brought by PW1 for the purpose of giving the same to the accused as bribe, which were later identified as MO1 series. As directed by PW3 P.C.No.271 Kunhikannan prepared the sodium carbonate-phenolphthalein solution and with the help of MO2 one rupee note demonstration of phenolphthalein test was done by smearing MO2 note with phenolphthalein powder and dipped the same in the solution and that became pink and collected that solution in MO3 bottle and put mark 'I' on the same after sealing the same. He had prepared Ext.P2 entrustment mahazar in the presence of PWs 1, 2 and CW3. Thereafter PW3 along with PWs 1, 2 and CW3 and police

officers including PW7 came to the shop of PW1. Before leaving the office, after smearing MO1 series notes with phenolphthalein powder, PW3 asked PW1 to keep it in his shirt pocket and not touch the same till it was handed over to the accused on demand. Thereafter they came to the shop of PW1 and deployed themselves to lay the trap. PW1 received a phone call from the accused which he disclosed to PW7 and immediately after sometime, the accused reached there in his motor cycle and then he went inside the shop room along with PW1 and changed the meter and he demanded the amount and PW1 handed over the amount which he received with his right hand and kept in his shirt's pocket. Thereafter PW1 came outside and gave signal as directed earlier and when accused came outside of the shop room and reached near his motor cycle to go from there with the faulty meter, PW3 and witnesses came near him and PW3 asked whether he received the amount and the accused answered in the affirmative and told that it was in

his pocket. PW3 himself introduced as Deputy Superintendent of Police Vigilance and introduced the other witnesses and done their body search in his presence. Thereafter he sprinkled the sodium carbonate solution on his right hand and it became pink and that was collected in MO4 bottle and mark 'II' was put on the same and it was sealed. Thereafter he asked PW2 to take the amount from the pocket of the accused and PW2 took MO1 series currency notes along with other currency note of ₹90/- and when the sodium carbonate solution was sprinkled to MO1 series, it became pink and that solution was collected in another bottle. When sodium carbonate solution was sprinkled in the other 90 rupee notes taken from the pocket of the accused, it did not turn pink. So it was handed over to him. When the pocket of the shirt was subjected to the test, it became pink and the shirt was identified as MO5. When he examined the side box of the motor cycle, he found MO6 old meter, MO7 cutting plair MO8 tester, MO9

cardboard box. He prepared Ext.P3 mahazar in the presence of witnesses and seized the above articles. He arrested the accused and came to the office and produced him before court.

12. The investigation in this case was conducted by PW8. He questioned the witnesses and recorded their statements. He seized Ext.P5 office order register containing Ext.P5(a) entry relating to the accused showing his area of operation, which includes Odayamchal Sub Centre in which consumer No.1419 falls, Ext.P6 service connection register in which Ext.P6(a) details regarding consumer No. 1419 was written, Ext.P7 meter reading register, which contains Ext.P7(a) entry regarding the above consumer No, Ext.P8 disconnection register which contains the disconnection details of the above consumer No, Ext.P9 complaint register containing Ext.P9(a) entry regarding the above said consumer No. in which requisition was made for reconnection on 05.10.2000, Ext.P10 faulty

meter changing register containing Ext.P10(a) entry regarding issuance of new meter on 13.10.2000, as per Ext.P19 mahazar. He had seized Ext.P8 register as produced by CW10 as per Ext.P21 mahazar. He had seized Ext.P13 application register containing Ext.P13(a) details of the application in respect of consumer No.1419, Ext.P14 work register which contains Ext.P14(a) entry regarding deputing the accused for that purpose on 13.10.2000, Ext.P16 promotion order of the accused, Ext.P17 the report order of the accused, Ext.P18 attendance register containing Ext.P18(a) entry showing that the accused was present in the office on 13.10.2000, as per Ext.P20 mahazar as produced by PW6. He obtained Ext.P22 ownership certificate produced by CW32 as per Ext.P23 mahazar. He had seized Ext.P15 as produced by CW20 as per Ext.P24 mahazar. He obtained Ext.P25 sanction issued by the appointing authority of the accused for prosecuting the accused under Section 19 of the P.C. Act. He completed the

investigation and submitted final report.

13. Prosecution relies on the evidence of PWs 1, 2, 3 and 7 and Exts.P1 to P3 and MO1 series to prove the demand and acceptance of the amount by the accused. The fact that the accused was working as lineman and he went to the shop of PW1 on 13.10.2000 for changing the faulty meter and the meter was changed and MO1 series currency notes were seized from the possession of the accused from his shirt pocket on that day in the presence of PWs 1, 2 and CW3 by PW3 etc., are not in dispute. PW1 is the complainant in this case. He had admitted that he was managing the shop of his brother Kunhikannan, who was working abroad and also admitted that the electric connection to his shop with consumer No.1419 was disconnected for non-payment of electricity charges and that particular shop was conducted by his cousin Shyamkumar. It is also in away admitted by him that on the basis of the application given by him, that reconnection was

ordered and it was also decided by the Electricity Board for replacing the faulty meter and the accused was deputed for that purpose on 13.10.2000 and he came to the shop for that purpose.

14. The case of the prosecution was that, during September 2000, when Shyamkumar went to the office of the Electricity Board, Rajapuram, to enquire about the replacement of faulty meter, the accused who was a lineman demanded ₹1,000/- for that purpose and that was paid. Thereafter again on two occasions namely 06.10.2000 and 12.10.2000, he demanded further amount of ₹1,000/- for that purpose to PW1 and since he was not interested in payment of the amount, he gave Ext.P1 statement regarding the demand made by the accused, on the basis of which Ext.P1(e) first information report was registered by PW3. But when he was examined before the court, he had disowned the factum of accused demanding the amount and he paying the amount to him. According to him, he gave

Ext.P1 complaint as instructed by his cousin Shyamkumar who was conducting the business and when the accused came to the shop on 13.10.2000 for shifting the meter, Sri. Shyamkumar took the amount from him and put the same in the shirt pocket of the accused which was hanged there when the accused climbed the electric post for giving connection. He had denied having stated in Ext.P1(a), P1 (b), P1(c), P1(d) in Ext.P1 and Ext.P4(a) to P4(e) when he was questioned by the investigating officer regarding these aspects. But he had admitted in his evidence that he went to office of PW3 and gave Ext.P1 statement. But according to him Ext.P1 statement was given as instructed by Shyamkumar. He had also admitted that he handed over MO1 series notes to PW3 and signed Ext.P2 entrustment mahazar. He had also admitted that the MO1 series were seized from the shirt pocket of the accused on 13.10.2000 when he was about to go after changing the meter by PW3 in the presence of himself, PW2 and CW3 and the accused

was arrested from there. So it is clear from his evidence that, he is now trying to help the accused and that was the reason why he was not fully supporting the case of the prosecution regarding the demand and acceptance of bribe made by the accused.

15. PW2 is the decoy witness examined to prove the trap. He had stated that, he had gone to the office of PW3 as instructed by the Assistant Executive Engineer along with CW3 and when he went there PW1 was also present in the office. Ext.P1 was read over and the contents of Ext.P1 were admitted by PW1. He had also deposed that PW3 had demonstrated the manner in which the trap will be conducted by showing the sodium carbonate phenolphthalein test and admitted that Ext.P2 entrustment mahazar was prepared after the demonstration and he signed the same as a witness along with CW3. He had also admitted that he along with CW3, police party headed by PW3 and PW1 came to the shop of PW1 and after they

reaching there, the accused came there in his motor cycle and then he went inside the shop along with PW1 and thereafter PW1 came out side and gave signal as instructed by them while preparing Ext.P2 entrustment mahazar and so PW3 and the witnesses went near the accused and PW3 asked as to whether he had received the amount and he told that he received the amount and kept in the pocket. Thereafter PW3 had sprinkled the solution in the hands of the accused and his right hand became pink. Thereafter as instructed by PW3 he took the amount from the shirt pocket of the accused and he found along with MO1 series another 90 rupee was also there in the pocket and PW3 conducted the phenolphthalein test on MO1 series which became pink and the number mentioned in MO1 series tallied with the No. mentioned in Ext.P2 entrustment mahazar. Thereafter the accused was arrested and taken to the office of PW3.

16. It is true that in the cross examination he had stated that he did not see the accused demanding the

amount and PW1 paying the amount and he did not know as to how the amount had come in the shirt pocket of the accused. But he denied the suggestion that the accused had not told that he had received the amount and kept in the shirt pocket. He had stated that he did not know whether Shyamkumar was present at the time when the trap was conducted. So his evidence will go to show that trap was conducted and the amount was recovered from the possession of the accused and he had admitted that he had received the amount and kept in his pocket. PW3 the trap laying officer also deposed all these things. He had denied the suggestion that Shyamkumar had accompanied PW1 to his office and it was on the basis of the instructions given by Shyamkumar that Ext.P1 statement was given by PW1. He had stated that he did not deploy any independent witnesses to overhear the conversation between PW1 and the accused.

17. Then the evidence available is that of PW7,

the police constable who accompanied the trap party along with PW3. He had stated that he accompanied the trap party along with PW3 and as instructed by him, he was standing in the varantha of the shop along with PW1. At that time a telephone call came and PW1 attended the same and he told that it was the accused and he was coming and he demanded the amount over phone. After sometime, accused came in his motor cycle and came to the shop and PW1 and accused went inside the shop and after changing the meter, the accused demanded the amount and PW1 paid the same and he received the same with his right hand and kept in the shirt pocket. Thereafter PW1 came outside and gave signal as instructed. When accused came outside, PW3 intercepted him and asked whether he had received the amount and he told that he received the amount and kept in his pocket. Though he was cross examined at length, nothing was brought out to discredit his evidence regarding this aspect. The presence of PW7 at the place of occurrence

was disputed by the defence. But it will be seen from Ext.P2 entrustment mahazar that, it was mentioned that he also accompanied the trap party along with PW3 to the place of occurrence. So it cannot be said that he was a planted witness later as claimed by the defence. Even according to PW1, Ext.P2 entrustment mahazar was prepared from the office of PW3 and only thereafter they came to his shop. So the presence of PW7 at the place of occurrence as claimed by the prosecution is strengthened by including his number in the police party to be deployed for that purpose by PW3.

18. The defence had no case that Ext.P2 entrustment mahazar and Ext.P3 recovery mahazar were prepared not from the places from where it was said to have been prepared, which is clear from the evidence of PW1 himself. Even according to PW1, he had signed Ext.P2 mahazar after it was duly prepared and he had also signed Ext.P3 mahazar from the shop after it was prepared. So there is no possibility of incorporating the number of PW7

in Ext.P2 mahazar so as to plant him later at the place of occurrence to witness the demand and acceptance of the amount by the accused. So under the circumstances, the court below was perfectly justified in relying on the evidence of PW7 to come to the conclusion that prosecution has proved the demand and acceptance of amount by the accused.

19. In the decision reported in **Vinod Kumar v. State of Punjab [(2015(1) KHC SN 17 (SC)) = (2000 KHC 4054)]**, the Supreme Court has held that it is settled principle of law that mere recovery of tainted money is not sufficient to record a conviction, unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence 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.

20. In this case PW1 had admitted that he had given the complaint, he had given MO1 series notes to PW3/ Deputy Superintendent of Police for the purpose of giving it to the accused and he had signed Ext.P2 mahazar from the office of the Deputy Superintendent of Police etc. It will go to show that, all these things were done by PW1 voluntarily so as to take action against the accused, since he demanded money for discharging his official duty which he was not

entitled to receive. Further the evidence of PW3 and PW2 will go to show that the amount was recovered from the pocket of the accused and phenolphthalein test was positive on the hands of the accused and the shirt from which the amount was recovered and that will go to show that the acceptance of the amount by the accused is proved. Further the evidence of PW7, the police constable who accompanied the trap party will go to show that the phone call was received by PW1 and PW1 told that it was the accused who called and within short time accused reached there and after changing the meter, the amount was demanded by the accused and it was paid by PW1 and it was received by the accused and it was put into his shirt's pocket by him and thereafter the recovery was effected.

21. The fact that PW1 had given signal after the amount was paid was also not challenged in the cross examination. Further the evidence of PW2 the independent witness will go to show that, when the accused came out

side and when PW3 asked as to whether he had received the amount, the accused admitted about the receiving of the amount and he told that it was in his pocket also will go to show the immediate conduct of the accused of admitting receiving of the amount and that will show that it was voluntarily received by him knowing that it is not an amount which he is entitled to receive.

22. Further the evidence of PW4 will go to show that there was no necessity for the accused to climb the post for giving connection at that time as claimed by him. Further except denying the fact by filing a statement by the accused, no acceptable evidence was adduced on his side as to how the amount had reached his hands. He had no explanation as to who had put the amount in his shirt's pocket. Merely because PW1 turned hostile and stated that it was Shyamkumar who had put the amount in the pocket of the accused, while his shirt was hanged in the shop when the accused climbed the post cannot be accepted to

exonerate the accused, as it is clear from his evidence that he is now trying to help the accused and that was the reason why he is not supporting the case of the prosecution and in view of the other evidence available on record.

23. It is clear from the above decision in Vinod Kumar's case cited (supra), it has been decided by the Supreme Court after considering all the decisions on this aspect including **B.Jayraj v. State of Andrapadesh (2014 (4) SCALE 81)** that merely because a witness turned hostile, court need not brush aside his evidence in toto and to the extent he is supporting the case of the prosecution can be relied on by the court and that can be taken along with other evidence adduced on the side of the prosecution and base conviction of the accused on that basis. Mere non-examination of Shyamkumar whose name was mentioned in Ext.P1 for proving the prior demand and payment alone is not sufficient to disbelieve the case of the prosecution. It will be seen from Ext.P1 that subsequent demands were

made to PW1 and even on the previous day of the incident the demand was made and it was on the basis of the assurance given by PW1 that he would pay that amount that the accused had come there on the next day. So it is clear from this that non-examination of Shyamkumar in this case is not fatal as claimed by the defence. 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 and received illegal gratification in abuse of his official position for getting personal gain for himself for discharging his official duty and thereby he had committed misconduct coming under Section 13(1)(d) of the Act coupled with Section 7 of the Act and rightly convicted him for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and the finding does not call for any interference.

24. As regards the sanction is concerned, there

is no dispute regarding the authority of the sanctioning authority and that was not challenged by the defence as well. So under the circumstances, the conviction entered by the court below against the appellant under Section 7 and 13(1)(d) read with Section 13(2) of the Act are perfectly justifiable and it does not call for any interference.

25. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for one year each and also to pay a fine of ₹1,000/- each, in default to undergo rigorous imprisonment for two months each for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and directed the substantive sentence to run concurrently. Set off was allowed for the period of detention already undergone by him under Section 428 of the Code of Criminal Procedure.

26. In the decision reported in **Narendra Champaklal Trivedi and another v. State of Gujarat**

(2012(7) SCC 80) = (2012 KHC 4330), the apex court has considered the sentencing policy in the case of corruption and observed that:

“Where minimum sentence is provided, we think it would not be at all appropriate exercise jurisdiction under Art.142 of the Constitution of India 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”.

27. In this case court below had provided the minimum sentence provided under Section 13(1)(d) read with Section 13(2), though one year imprisonment was awarded in the place of six months minimum punishment under Section 7 of the Act, since substantive sentences were directed to run concurrently, he need only to undergo imprisonment for one year in all apart from default

sentence for non-payment of fine. So under the circumstances, court below had shown maximum leniency in imposing the sentence as well considering the circumstances, this court does not find any reason to interfere with the sentence also when the substantive sentences were directed to run concurrently, he had only to undergo the minimum sentence provided for the offence under Section 13(1) read with Section 13(2) of the Act. So the sentence imposed is also proper and does not call for any interference.

In the result, the appeal fails and the same is hereby dismissed. The order of conviction and sentence passed by the court below against the appellant are hereby confirmed.

Office is directed to communicate this judgment to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, (Judge)

// True Copy//

P.A. to Judge