NAFR (69)

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2019 of 1997

1. Chhedilal Sharma, son of Shri Lakhanlal Pande, aged about 58 years, resident of village Kheda, Police Station Mungeli, (the then Head Master, Middle School), Rohra, District Bilaspur, MP (Now CG)

--- Appellant

Versus

1. The State of Madhya Pradesh (Now Chhattisgarh) through Special Police Establishment, Bhopal, MP

---Respondent

AND

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---Respondent

For Appellant	:	Shri Pravin Das, Advocate
For Respondent/State	:	Shri Neeraj Mehta, PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

10/01/2017

As the aforesaid two Criminal Appeals arise out of the same judgment dated 27.08.1997 passed by Special Judge/Additional Sessions Judge Bilaspur in Special Criminal Case Nos. 03/1993 & 04/1993 convicting the accused/appellant under Sections 7, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act (for short the "PC Act") and sentencing him to undergo simple imprisonment for six months with fine of Rs. 500/- u/s 7 and simple imprisonment for one year with fine of Rs. 500/- u/s 13 (1) (d) read with 13 (2) of the PC Act plus default stipulations, they are disposed of by this common judgment.

2. Facts of the case in brief are that at the relevant time accused/appellant was working as Head Master in Government School, Rohra, Tehsil Mungeli, District Bilaspur and it is alleged that he demanded Rs. 100/- from complainant Mohanlal (PW-3) in Special Criminal Case No. 03/1993 as illegal gratification for issuance of transfer certificate to his grand-son Premlal (PW-4) and accepted the same as well. Similarly it is alleged that he further demanded and accepted Rs. 100/- from the other complainant Umed Prasad (PW-1) in Special Criminal Case No. 04/1993 for issuance of transfer certificate to his son Bhanu Prasad (PW-2). Written report Ex. P-1 was filed by complainant Umed Prasad (PW-1) whereas the other written report Ex. P-4 was made by Mohanlal (PW-3) before the Dy. SP (Vigilence) requesting action against the accused as they were not interested in giving the bribe amount to him. On the basis of these two similarly worded written complaints un-numbered *Dehati Nalisi* Ex. P-2 was registered. After chemically treating the currency notes, Pre Trap Panchnama was drawn; trap party was constituted; it went to the house of the accused/appellant at village Kheda;

complainants were asked to go inside the house for making payment to him and thereafter on receiving the signal from the complainants, members of the trap party also rushed in to the house of accused and apprehended him. It is alleged that Rs. 200/- (two currency notes of 100 denomination) were seized from the accused/appellant vide Ex. P-8 and after conducting chemical test on the seized currency notes, memorandum Ex. P-9 was prepared, service book of the accused was seized under Ex. P-11, spot map Ex. P-19 was drawn and the articles so seized were sent to Forensic Science Laboratory for chemical examination vide Ex. P-22 from where positive report Ex. P-23 was received. Sanction to prosecute the accused was obtained vide Ex. P-18 and after the charge-sheet was filed, the Court below framed the charge against him under Sections 7, 13 (1) (d) read with 13 (2) of the PC Act.

3. So as to hold the accused/appellant guilty, prosecution has examined 11 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case. This apart, five witnesses including the accused/appellant were also examined by the defence in support of its case.

4. Specific defence taken by the accused/appellant is that he had received Rs. 200/- from the complainants in respect of contribution for Shala Vikas Samiti and it was not an illegal gratification as alleged. According to him, in Mungeli Tehsil

every school has a Shala Vikas Samiti with the local villagers as its members and the Head Master as the Secretary thereof. In the school of the petitioner also the Shala Vikas Samiti was constituted on 20.5.1988 and being the Head Master, the accused/appellant was the Secretary of the said Samiti and thus empowered to collect funds from the parents/guardians of the students studying in the school to meet out the expenses incurred in maintenance of the school building. Further defence of the accused/appellant is that in pursuance of the resolution dated 20.5.1988 (Ex. D-1), he immediately started collecting contributory amount by duly maintaining the record thereof, and it is not that for the first time on 6.6.1989 he made such collection from the complainants. According to the accused/appellant, apart from issuing receipts in favour of the complainants he had issued the receipt against one Nanku Singh (DW-2) also vide Ex. D-1. Accused/appellant has further taken a defence that he had asked the complainants to pay Rs. 50/- each as contribution towards the Shala Vikas Samiti on 6.6.1989 under receipt but as they both had given him the currency notes of 100 denomination each and before he could return the remaining amount of Rs. 50/- to each of them, trap party apprehended him.

5. After hearing the parties the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment. Hence this appeal.

6. Counsel for the appellant submits as under:

(i) that the Court below has erred in law in convicting the accused/appellant solely on the basis of presumption under Section 20 of the PC Act holding that he is guilty of collecting the amount of Rs. 100/- from each of the complainants as illegal gratification;

(ii) that in the schools of Tehsil Mungeli Shala Vikas Samitis were constituted and likewise in the case of accused/appellant's school also such Samiti was constituted on 20.5.1988 and he being the Secretary thereof was fully empowered to collect funds from the parents/guardians of the students to meet out the expenses incurred in the maintenance of school building;

(iii) that in the present case the accused/appellant issued receipt of Rs. 50/- to each of the complainants but before he could return the remaining amount of Rs. 50/- trap party entered his house and apprehended him;

(iv) that for the payment received from the complainants the accused issued receipts No. 65 and 66 whereas in respect of the amount of Rs. 10/- accepted from Nanku Singh (DW-2) receipt No. 64 was issued;

(v) that while referring to document of Ex. D-2 it is argued by the counsel for the accused/appellant that even prior and subsequent to the date of incident various receipts dated 23.5.1988, 19.7.1989, 9.8.1989, 13.8.1989, 22.9.1989, 20.10.1989 and 27.11.1989 – all forming part of Ex. D-2 were issued by the accused/appellant;

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(vi) that defence witness No.2 namely Nanku Singh who was also the signatory of resolution dated 20.5.1988 Ex. D-1 has categorically stated about constitution of Shala Vikas Samiti and authorisation of the Head Master as Secretary thereof as well as issuance of recejpts No. 64, 65, 66 etc;

(vii) that while arguing the case counsel for the appellant took this Court through the evidence of Nanku Singh (DW-2) – the father of one of the students of the same school has also supported the case of the defence and stated that he paid Rs. 10/- to the accused/appellant and obtained the receipt and that when he gave the said amout to the accused, two other boys with their fathers came there, asked for the transfer certificate, each of them gave Rs. 100/- to the accused, asked for refund of remainaing amount of Rs. 50/- on which accused had told them to refund the same after preparation of the transfer certificate. According to counsel for the accused, statement of Nanku Singh (DW-2) further goes to show that receipts were issued by the accused/appellant but before he could return the remaining amount, the trap was laid;

(viii) that the appellant has been falsely implicated in the case at the instance of one Santosh Pandey – the *Maalgujar* of the village with whom he was having old land related dispute and the litigation was also pending for that;

(ix) that the prosecution has utterly failed to prove the demand of illegal gratification which is a *sine qua non* to hold one guilty under Sections 7, 13 (1) (d) read with 13 (2) of the PC Act, and mere recovery of tainted amount is not sufficient

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for the said purpose;

(xi) that presumption under Section 20 of the PC Act is a rebuttable presumption and the appellant has successfully rebutted the same by giving explanation in his statement recorded under Section 313 of the Code of Criminal Procedure and establishing his defence by preponderance of probability but the Court below has committed an error of law in ignoring the same;

(xii) that even prior to the date of alleglled trap, pursuant to the notice dated 2.6.1989 given by the District School Inspector regarding the complaints made by complainants Mohanlal and Umed Prasad for the delay in issuance of transfer certificate and also for demand of money in lieu thereof, the accused/appellant gave a prompt reply on 3.6.1989 clearly mentioning therein that he never made any demand for any illegal gratification for issuance of transfer certificate. In the reply the accused/appellant further mentioned that the said certificate could not be issued as there was some discrepancy in the results of Premlal and Bhanu Prasad – the wards of the complainants and that after correction of the said error, he would issue the same after taking contribution towards the Shala Vikas Samiti by duly issuing the receipts;

(xiii) that from the explanation of the accused/appellant it is apparent that it was given prior to the alleged trap and when the complainant could not succeed in involving the accused in a false case from the department side, they have made an absolutely false complaint to the police and unfortunately the prosecution has also overlooked the correct factual position which ultimately led to his conviction under the special Act.

(xiv) that the Block Education Officer (PW-7) has admitted in his statement that there were certain discrepancies in the results of Premlal and Bhanu Prasad which is evident from Ex. P-17.

(xv) In support of his contention, counsel for the appellant placed reliance on the decisions of the Apex Court in the matter of ***Punjabrao v. State of Maharashtra (2002) 10 SCC 371***, in the matte of ***V. Venkata Subbarao v. State represented by Inspector of Police AP (2006) 13 SCC 305***, in the matter of ***CM Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779,*** in the matter of ***Banarsi Das v. State of Haryana (2010) 4 SCC 450***, in the matter of ***B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55*** and in the matter of ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152.***

7. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Sections 7, 13 (1) (d) and 13 (2) of the PC Act are strictly in accordance with law and there is no infirmity in the same. He submits that once the prosecution has proved the existence of preponderence of probability against the accused; the chemical test turned postive; the

trap party recovered the currency notes from the accused, there is no scope for interference with the well reasoned judgment passed by the Court below.

8. Heard counsel for the parties and perused the evidence on record.

9. Umed Prasad (PW-1) – the complainant in Special Criminal Case No. 4/1993 is the father of Bhanu Prasad (PW-2). He has stated that at the relevant time his son Bhanu Prasad was studying in class VIII in Middle School Rohra and that on 3.6.1989 when he approached the accused/appellant for transfer certificate so as to get his son admitted in class IX, he demanded Rs. 100/- from him. According to this witness, when he expressed his inability to pay the said amount on account of his poor financial condition the accused/appellant told him that such certificate would not be issued without money. Thereafter, on 5.6.1989 he along with Mohanlal (PW-3) went to Vigilence Office at Bilaspur and narrated the entire story to him. On 6.6.1989 he gave a written report Ex. P-1 and one currency note of 100/- denomination to the concerned officer which after being chemically treated was given back to him which he kept in his pocket. Subseuqently, he along with three persons (PW-2 to PW-4) went to the house of the accused/appellant and asked him to issue the certificate as he had arranged for money. According to this witness, after giving the mark-sheet and the transfer certificate the accused/appellant accepted Rs. 100/- from him and asked for

Rs. 40/- more. Thereafter, according to this witness, his son Bhanu Prasad went out and informed about the same to the concerned officer on which trap party came there and on being asked the accused took out Rs. 200/- (two currency notes of 100 denomination, one given by this witness and the other one by Mohanlal). This witness has further stated that after washing the hand and pocket of the trouser of the accused in the solution so prepared, its colour turned red. In paragraph No. 14 of his deposition, this witness has stated that he was not aware of the fact that in the school of village Rohra there was any Vikas Samiti. He however admits that at the time of admission and at the time of leaving the school some amount was being taken but he has denied any receipt being issued. Bhanu Prasad (PW-2) - the son of Umed Prasad (PW-1) has stated that when he along with Premlal went to the concerned school, accused/appellant asked them to get Rs. 100/- each and only then the mark-sheet and transfer certificate would be issued. Thereafter, on 5.6.1989 his father went to the concerned officer and informed him about the same. According to him, his father made an application to the Vigilence officer, gave Rs. 100/- to him and after being treated chemically the said currency note was kept in his pocket. This witness along with (PW-1, PW-3 and PW-4) went to the house of the accused and on being demanded, gave him Rs. 100/-. This witness has further stated that the accused/appellant demanded Rs. 40/- more and then he came out and told the trap party about giving money to the accused on which the trap party went to the house of the accused and took out the money from his pocket. In paragraph No. 13 this witness has stated that at the time of giving money to the accused, in addition to the complainant party 2-4 other persons were also present but he was not aware of their names. Mohanlal (PW-3) – the complainant in Special Criminal Case No. 3/1993 and grand-father of Premlal (PW-4) while supporting the case of the prosecution has stated that on 5.6.1989 Rs. 100/- were demanded by the accused/appellant and as he was not interested in giving the same, he made the complaint to the Vigilence officer. Thereafter, on being asked by the vigilence officer he gave Rs. 100/- to him who after chemically treating the same returned to this witness with the instruction to give it to the accused on demand. Accordingly, he went to the house of the accused and on being demanded he gave Rs. 100/- to the accused and when he was preparing the transfer certificate, trap party approached there and then on being asked, he took out the money from the pocket of his trouser. In paragraph No. 13 this witness has stated that Premlal and bhanu had told him that the accused/appellant had asked them to give transfer certificate only after receiving money for the Shala Vikas Samiti. Premlal (PW-4) – the grand-son of Mohanlal (PW-3) has also supported the case of the prosecution stating that the accused/appellant had asked for Rs. 100/- to issue the transfer certificate. Rest of the statement of this witness is quite similar to the ones' made by PW-1 to PW-3. K.R. Dixit (PW-5) - an independent witness though has supported the case of the prosecution but at the same time he has stated that when he reached the spot, mark-sheet and transfer certificate were in possession of the complainants. Shri H.N. Shukla (PW-6) – the Lokayukta inspector had prepared the chemical solution on the instructions of Dy. S.P. This witness however has stated that he had not seen the money transaction between the complainants and the accused. S.L. Giwari (PW-7) - yet another independent witness who at the relevant time was posted as Block Education Officer, Mungeli has supported the case of the prosecution. However, in paragraph No.4 he has admitted that there were discrepancies in the result of Premlal and Bhanu Prasad studying in class VIII in the year 1989. He has also admitted that in every school there existed a Shala Vikas Samiti headed by the Secretary who normally is the Head Master of the school and that some token amount was collected by the said Samiti from the guardian/parent of the student for maintenance of the school building. Dinanath (PW-8) is the witness who has proved the sanction Ex. P-18 to prosecute the accused. Uma Shankar Singh (PW-9) is the Patwari who prepared spot map Ex. P-19. S.S. Gaur (PW-10) is the investigating officer who has supported the case of the prosecution and described as to how the trap was laid. Ram Bahadur Singh (PW-11) being a formal witness has not stated anything specific against the accused/appellant. Ghanshyam Prasad Yadav (DW-1) has stated that at the relevant time there existed a Shala Vikas Samiti in village Rohra of which

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the Head Master of the school was the Secretary. He has further stated that the Secretary of the said Samiti was empowered to collect the contribution, issue the receipt and keep account thereof. According to this witness, on 6.6.1989 three receipts having the number 64, 65 and 66 were issued by the Shala Vikas Samiti in the names of Nanku Singh, Umedram and Mohandas respectively. Nanku Singh (DW-2) has stated that at the relevant time he had gone to the school at village Rohra for making an inquiry with respect to the supplementary examination of his son Rajendra and had given Rs. 10/- to the accused who was the Head Master of the said school of which the receipt was issued to him. According to this witness, at that time two boys along with their parents had also come there for obtaining the transfer certificates and after giving Rs. 100/- each they had asked the accused to refund Rs. 50/- to each of them on which the accused had told them to return the remaining amount after preparing the transfer certifricate but in the meanwhile 4-5 people came over there and apprehended the accused. Dhanush Singh Rajput (DW-3) has also stated that there was a Shala Vikas Samiti in the school of village Rohra and he was one of its members. According to this witness, on being asked about the issuance of certificate, the accused had informed him that as there were some discrepancies in the result, the certificate could not be issued and that he would issue the same immediately after the result is corrected. Ram Bharosh (PW-4) has stated that there was some land related dispute between

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the accused and the *Malgujar* of the village namely Santosh and for that some litigation was also pending. Chhedilal Sharma (DW-5) - the appellant herein has taken a defence that he has been falsely implicated at the behest of one Santosh Kumar Pandey - the Malgujar of the village on account of some land related dispute and the pending litigation therefor.

10. Before adverting to the merit or demerit of the case, this Court feels it appropriate to first look into the existing legal position in the matters involving the identical issue.

11. In the matter of Punjabrao v. State of Maharashtra (supra) where the accused took the plea that the amount accepted by him was not in pursuance of any demand for illegal gratification but it was for a loan amount which he was collecting in those days from different raiyats and therefore he has not committed any offence under the provisions of PC Act, while acquitting him, it has been held by the Apex Court as under:

> "3. We have examined the judgment of the learned Special Judge as well as that of the High Court. It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. It is undisputed that from 24^{th} to 26^{th} the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the investigating officer seized the amount from the accused Patwari, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the

explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused. It also transpires that the High Court, while setting aside an order of acquittal recorded by the Special Judge, has not focussed its attention on the reasoning advanced by the Special Judge, and by mere reappreciation has come to the conclusion, and in our view the conclusion is based upon a misreading of the relevant evidence including the evidence of PW-2. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court erred in interferring with the well-reasoned judgment of the Special Judge in an aorder of acquittal. We, therefore, set-aside the impugned conviction and sentence passed by the High Court. The appeal is allowed. The accused-appellant is acquitted of the charges levelled against him. The bail bond stands discharged."

12. While considering the presumption enshrined under Section 20 of the PC Act in the matter of ***V. Venkata Subbarao v. State represented by Inspector of Police*** (supra) it has been held by the Apex Court as under:

"24. Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alias, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved. It reads as under:

20. *Presumption where public servant accepts gratification other than legal remuneration.—*

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause
(a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned

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in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

25. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution.

26. In M.S. Narayana Menon v. State of Kerala (2006) 6 SCC 39, this Court held (SCC p. 55, para 45)

"Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding."

27. In Union of India v. Purnandu Biswas (2005) 12 SCC 576, it was opined: (SCC p. 585, para 36)

"36. In this case demand of illegal gratification by the respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the respondent had been charged for commission of an offence under Section 13(1)(1)(d) read with Section 13(2) of the Act."

13. In the matter of ***CM Girish Babu v. CBI, Cochin, High Court of Kerala*** *(supra)* also the presumption under Section 20 of the PC Act has been considered and while dealing with the recovery of tainted money from the accused it has been held by the Apex Court as under:

"18. In Suraj Mal v. State (Delhi Admn.) (1979) 4 SCC 725, this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

19. The learned counsel for CBI submitted that the onus of proof was upon the appellant to explain as to how he came into possession of the amount recovered from him during the trap. The argument of the learned counsel is obviously based on Section 20 of the Prevention of Corruption Act, 1988 which reads as under:

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

20. A three-judge Bench in M. Narsinga Rao v. State of AP (2001) 1 SCC 691, while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)

"24.....we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571, SCC p. 577, para 12) the following statementmade by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel; (Madhukar case SCC p. 577, para 12)

'12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the reference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

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21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratifiction.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

> "*4.* ... It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. *As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts* i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."
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> (emphasis supplied)

(See *V.D. Jhingan* v. *State of U.P.* at AIR p. 1764, para 4.)

23. It is against this background of principles we have examined the contention of the appellant that the charges under Section 7 of the Act have not been proved against him.

24. It was argued by Shri U.U. Lalit, Senior Counsel, that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs. 1500/- as gratification. Having examined the findings of both the courts, we are satisfied that the appellant has proved his case by the test of preponderance of probability and we accordingly reach the conclusion that the amount was not taken by the appellant as gratifiction. He was made to believe that the amount paid to him was towards the repayment of loan taken by PW 2 from Accused 1.

25. The prosecution failed in establishing the guilt of the accused beyond reasonable doubt that the appellant

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received any gratification.

26. For the aforesaid reasons, we find it difficult to sustain the conviction of the appellant under Section 7 of the said Act. Accordingly, the conviction of the appellant and the sentence imposed upon him is set aside.

14. in the matter of ***Banarsi Das v. State of Haryana*** *(supra)* it has been held as under:

20. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, PW 10 and PW 11 were neither the eyewitnesses to the demand nor to the acceptance of money by the accused from Smt Sat Pal Kaur (PW 2).

23. To constitute an offence under Section 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5(1)(*d*) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused.

25. Reliance on behalf of the appellant was placed upon the judgment of this Court in *C.M. Girish Babu*[1] where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in paras 18 and 20 of the judgment held as under: (SCC pp. 784 & 785-86)

"*18.* In *Suraj Mal* v. *State (Delhi Admn.)*[4] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

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20. A three-Judge Bench in *M. Narsinga Rao* v. *State of A.P.*[5] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24)

> '*24.* ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide *Madhukar Bhaskarrao Joshi* v. *State of Maharashtra*[6].) The following statement made by us in the said 458 decision would be the answer to the aforesaid contention raised by the learned counsel: (*Madhukar case*[6], SCC p. 577, para 12)
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> "*12.* The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted 'as motive or reward' for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like 'gratification or any valuable thing'. If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it." ' "

In fact, the above principle is no way a derivative but is a reiteration of the principle enunciated by this Court in *Suraj Mal case*[4] where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to the judgment of this Court in *Sita Ram* v. *State of Rajasthan*[7] where similar view was taken.

26. *C.M. Girish Babu case*[1] was registered under the Prevention of Corruption Act, 1988, Section 7 of which is in pari materia with Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the

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Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite presumption and, in fact, acquitted the accused in that case.

15. In the matter of ***B. Jayaraj v. State of Andhra Pradesh*** *(supra)* it has been held by the Apex Court as under:

> "**7.** Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma* v. *State of A.P. (2009) 3SCC 779* and *C.M. Girish Babu* v. *CBI*.
>
> **8.** In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(*d*)(*i*) and (*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 as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.
>
> **9.** Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(*d*)(*i*) and (*ii*) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20

of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.

16. In the matter of ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152*** it has been held by the Apex Court as under:

> **20.** This Court in *A. Subair* v. *State of Kerala*, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(*d*) of the Act ruled that (at SCC p. 593, para 28) the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.
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> **21.** In *State of Kerala* v. *C.P. Rao 4 (2011) 6 SCC 450,* this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.
>
> **22.** In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in *B. Jayaraj (2014) 13 SCC 55,* in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(*d*)(*i*) and (*ii*) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(*d*)(*i*) and (*ii*) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any

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official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

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

25. In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(*d*)(*i*) and (*ii*) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(*d*)(*i*) and (*ii*) of the Act, thus, had been to underscore the indispensability of the proof of demand of illegal gratification.

26. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in *Sujit Biswas* v. *State of Assam* 5 *(2013) 12 SCC 406*, had held that suspicion, however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

27. The materials on record when judged on the touchstone of the legal principles adumbrated hereinabove, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under Sections 13(1)(*d*)(*i*) and (*ii*) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and orderof the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately.

17. Thus the settled legal position in the cases of like nature is that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presmption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. It is sufficient if the accused succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused to prove his case beyond reasonable doubt or in default to incur the verdict of guilty. Onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burdent is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.

18. Undisputedly, right from the beginning the defence of the appellant has been that in all the schools of Mungeli tehsil Shala Vikas Samitis were constituted and those Samitis were authorised to collect contribution from the guardians/parents of the students for maintenance of the school building, vide resolution dated 20.5.1988 Ex. D-1 and 15.5.1989 part of Ex. D-1. It is further not disputed that in respect of the school of

the appellant where he was working as Head Master, being Secretary he was fully authorised to collect the amount from the students as also from their guardians/parents. Appellant has successfully proved Ex. D-2 – the receipts issued to various persons who had given contribution towards Shala Vikas Samiti including the two complainants herein. In respect of both the complaints, receipts of Rs. 50/- each were issued on 6.6.1989 vide Ex. D-2. On the same day yet another receipt was issued in favour of Nanku Singh (DW-2) which is also evident of Ex. D-2. Nanku Singh has categorically stated in his Court statement that he had paid Rs. 10/- to the Shala Vikas Samiti at the time when he had gone there to enquire of the supplementary examination of his son. Statement of Nanku Singh further goes to show that on the date when he gave his contribution to the said Samiti, other two students had also come there with their parents and asked for issuance of transfer certificate. This defence witness has further stated that those two persons gave Rs. 100/- each to the accused on which he issued the receipts of Rs. 50/- each and told them to refund the remaining amount after preparation of the transfer certificates, but before he could do so, the trap party apprehended him. Yet another defence witness Dhanush Singh Rajput (DW-3) has also stated that there was a Shala Vikas Samiti in the school of village Rohra and he was one of its members and further that the said Samiti was authorised to collect the contribution from the parents/guardians of the students. Accused/appellant has also taken a specific plea in his defence that he has been falsely implicated in the case at the behest of one Santosh Pandey – the Maalgujar of the village as there was some old land related dispute between the two. After entering into the witness box as DW-5 the appellant has also taken the same defence. Most importantly, while answering questions No. 92, 251 and 253 at the time of recording of his statement under Section 313 of the Code of Criminal Procedure he has categorically stated that he accepted the amount from the complainants as contribution to the Shala Vikas Samiti by issuing receipts of Rs. 50/- each but before he could refund the remaining amount, the trap party apprehended him. Further, on 2.6.1989 the department had issued show-cause notice to the appellant asking for explanation regarding the complaint for demanding money for issuing transfer certificate and while replying to the same on 3.6.1989 vide Ex. D-3 a specific defence was taken by him that he never demanded any illegal gratification from the complaints and that as there was certain discrepancy in the result, some delay has occasioned in issuance of the certificate.

19. Thus the prosecution has utterly failed to prove that the appellant ever demanded or accepted any illegal gratification from the complainants. Rather, there is ample evidence on record to show that the appellant being the Secretary of the Shala Vikas Samiti was empowered to collect contribution from the guardians/parents of the students by issuing requisite receipts and as such the money paid by the

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complainants was for the Shala Vikas Samiti which is used for maintenance of the school building, but unfortunately before he could return the remaining amount, the trap party apprehended him. This fact has been duly corroborated by Nanku Singh (DW-1). The accused/appellant, in other words, has succeeded in establishing his defence by preponderance of prbability in favour of his case. The Court below however has not considered the evidence on record in its proper perspective while recording the finding of conviction against the accused/appellant under the special Act. Since the prosecution has not proved its case beyond all reasonable doubt, benefit has to go to the accused.

20. Accordingly, the appeals are allowed, judgment impugned is set aside and accused/appellant is acquitted of the charges levelled against him. As the accused/appellant is already on bail, no further order to set him free etc, is necessary. Bail bonds so furnished stand discharged.

Sd/-
Pritinker Diwaker
Judge

Jyotishi