IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2925 OF 2019

1. **Kishore Khanchand Wadhwani**
R/at Plot No.15/A, Sanwer Road,
Indore, Madhya Pradesh.

2. **Anil Sharma**
R/at 12/2, Race Course Road,
B/H. Central Bank, Indore, M.P. … Petitioners

Versus

1. **State of Maharashtra**
Though Assistant Commissioner
of Police, Anti-Corruption Bureau,
Mumbai. … Respondents

Mr. Vikram Choudhary, Sr. Advocate with Dr. Sujay Kantawalla, Mr. Aditya Minthe, Sajal Yadav, Anil Naidu I/b Neha Ahuja for the petitioners.

Mr. A.D. Kamkhedkar, A.P.P. for the State.

CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.

RESERVED ON : 8th July, 2019

PRONOUNCED ON : 26th July, 2019.

JUDGMENT : (Per Smt. Bharati H. Dangre, J.)

1. The petitioners have approached this Court praying for quashing and setting aside of proceedings of Special Case No.26 of 2014 as well as the Order dated 08/02/2019 passed by the Special Court for ACB Cases, Greater Mumbai in ACB Special Case No.26 of 2014. The said case was initiated against the petitioners under Section 7 read with Section 12 of the Prevention of Corruption Act, 1988 (for short, "**the PC Act**") on a complaint being filed by one Mr. Mahendra Janrao, who at the relevant time, was a Police Sub-Inspector attached to the Azad Maidan Police Station, Mumbai.

2. The complaint filed by Mr. Mahendra Janrao contained the following imputations:

Dhariwal Industires Limited had filed a Criminal Complaint being CC No.36/I&R/2006 before the Chief Metropolitan Magistrate, Esplanade, Mumbai against one Mr. Nitesh Wadhwani and one Mr. Ashok Sharma. It was alleged therein that certain Assignment Deeds are manufactured and fabricated by conspiracy to claim proprietorship of the

Trademark "Malikchand". It was prayed that the offences be registered under Section 109, 120-B, 193, 196, 200, 465, 467 and 471 of the Indian Penal Code (for short, "**the IPC**"). The learned Magistrate passed an order directing the police to conduct investigation under Section 156(3) of the Code of Criminal Procedure (for short, "**the Cr.P.C.**") and pursuant to which MECR No.16 of 2006 came to be registered. The complainant – Mr. Mahendra Janrao was the person who was entrusted with the investigation of the said MECR and he visited Mandaleshwar Court with a request to handover the original Assignment Deeds for the purpose of investigation. It is also alleged that he had submitted an Undertaking to the Mandaleshwar Court that he will return the original Assignment Deeds to the Court by 25/01/2007 and pursuant to this Undertaking, the original Assignment Deeds came to be handed over to him.

It is then alleged in the complaint that in the morning of 19/01/2007, he received a message that Assistant Commissioner of Police was waiting for him at the Police

Station and when he approached the Police Station, the complainant met Accused No.3, who asked him to handover the original Assignment Deeds to the petitioners for which he would be given a bribe of Rs.10,00,000/-. It is the case of the complainant that he protested but Accused No.3 assured him that it would entail no trouble for him and thereafter Accused No.3 called the petitioners, who were waiting downstairs and the petitioners told Mr. Mahendra Janrao not to send the original Assignment Deeds to the Mandaleshwar Court but instead he was asked to part the said documents with them or, in the alternative, to destroy them. It was further alleged that the petitioners assured the complainant that they will pay him a bribe of Rs.5,00,000/- and they will manage the Mandaleshwar Court. It was also assured that the amount offered would be brought in the evening.

3. Pursuant to these events taking place, the complainant lodged a complaint against the accused persons for offering him bribe and an FIR was registered and the ACB set up a trap along with the trapping team. The trap was scheduled at the

Police Station in the evening and when the trapping team along with pancha proceeded at the spot, the petitioners were seated in the cabin in the Police Station. The complainant switched on the recording device and recorded the conversation regarding bribe and the petitioners gave an amount of Rs.5,00,000/- to the complainant. As pre-decided, the complainant stepped out of the cabin and gave a signal to the Respondent's team, who entered inside the cabin and apprehended the petitioners.

4. As an outcome of the investigation, on 21/10/2010, the Respondent-ACB filed Misc. Application No.64 of 2010 before the Trial Court praying for closure of the case since there was no sufficient evidence against the accused persons to file a charge-sheet. The Misc. Application was in the form of a “C”-Summary. It was asserted that DFSL Report, giving analysis of recorded conversation between the complainant and the petitioners was inconclusive and, there was no sufficient evidence to file a charge-sheet. By order dated 4/03/2011, the Trial Court rejected the “C”-Summary Report on the ground

that DFSL Report was only a corroborative piece of evidence and the case cannot be categorized as a “C”-Summary in view of the the other material available against the Accused persons.

5. Thereafter, the Respondent once again filed a “C”-Summary Report on 03/08/2012, however, when pointed out by the court that it is not permissible to file a “C”-Summary Report for the second time without any change in the circumstances, the Respondent sought permission to withdraw the same. After this two important events, on 27/08/2012, the Respondents filed a charge-sheet and it came to be numbered as ACB Special Case No.59 of 2012 against the petitioners and Accused No.3 by invoking and applying Sections 7 and 12 of the PC Act, 1988.

6. The petitioners along with Accused No.3 unsuccessfully filed separate Discharge Applications, which came to be rejected on 05/02/2018. Being aggrieved, the petitioners as well as Accused No.3 filed three separate Criminal Revision Applications praying for quashing and setting side of Order

dated 05/02/2018. In the said Criminal Revision Applications preferred before this Court, by an order dated 18/07/2018, the learned Single Judge of this Court was pleased to set aside Order dated 05/02/2018 and directed the Special Court (ACB), Greater Mumbai to hear the Applications for Discharge and decide the same in accordance with law without being influenced by the earlier orders. It is relevant to note that before the learned Single Judge, the primary contention of the Applicants therein, was that Section 7 of the PC Act was not attracted as demand was not established and, in the absence of a demand, no prosecution for the said offence can be instituted and the thrust of the argument was that if the demand does not exist, then the prosecution under Section 7 should fail and it was pointed out to the learned Single Judge that this issue was not properly dealt with by the trial court in proper perspective. It was in the light of this contention that the matter came to be remanded for being decided afresh by Order dated 18/07/2018.

Pursuant to this order, the Discharge Applications preferred by the petitioners were decided by the Special Judge by order dated 08/02/2019 and it is this order which is impugned in the present writ petition.

7. Learned senior counsel Mr. Choudhary representing the petitioners would submit that the impugned order passed by the Special Judge on 08/02/2019 does not take into consideration the basic premise for a punishment to be imposed under Section 7 of the PC Act and he would submit that when no bribe amount was demanded by the complainant, who is a public servant, from the accused persons, the ingredients of Section 7 of the PC Act are not attracted and satisfied. Learned senior counsel would further submit that considering the wording of Section 12 of the PC Act, the basic ingredients constituting offence under Section 7 of the PC Act needs to be first satisfied and, in the present case, since there is no demand of illegal gratification by the complainant, resultantly, offence under Section 12 of the PC Act would also fail. He would further submit that since no offence under Section 7 of the PC Act is committed by the

public servant, therefore, the petitioners cannot be punished for abetting the offence which was not committed and mere offer of bribe, according to Mr. Choudhary, would not attract the offence of abetment under Section 12 of the PC Act. He would also invite our attention to the amendment brought in the PC Act with effect from 19/07/2018 by which the offering of a bribe is also made an offence and the distinct feature being offering of bribe was not an offence prior to this. He would also invite our attention to the amendment of Section 19 of the PC Act where previous sanction is necessary for prosecution. Further, after the amendment though a public servant ceased to be so, in that circumstances also, an opportunity is to be afforded to the public servant prior to granting of sanction. He would invite our attention to amendment to Section 8 of the enactment which is a substantive amendment and, according to him, it has to be applied prospectively and it is only the procedural aspect of sanction which can be made applicable retrospectively. He would submit that since no *prima facie* offence is made out against the accused/petitioners, they were entitled for discharge. Mr. Choudhary would submit that the learned Special Judge accepted the said contention and agreed to the extent that on earlier occasion, the Investigating Officer had filed Summary Report by making reference to the DFSL Report which could not prove the demand and the learned Special Judge has partly allowed the application for discharge to the extent of offence punishable under Section 7 of the PC Act and though he discharged the petitioner and accused No.3 – Cyrus Dinshaw Dabierwala for the offence punishable under Section 7 of the PC Act, according to Mr. Choudhary, he has erroneously rejected the discharge application for offence punishable under Section 12 of the PC Act. Learned senior counsel reiterates that the perusal of the charge-sheet does not disclose any material brought on record by the prosecution which could conclusively prove the demand of illegal gratification from the accused person and, therefore, the trial court has incorrectly applied the interpretation of Section 12 and, on this ground itself, the impugned order is liable to be quashed and set aside since in absence of Section 7 of the PC Act, the prosecution of accused persons under Section 12 of the PC Act cannot continue.

8. We have also heard Mr. Kamkhedkar, learned A.P.P. for the State. He would justify the impugned order by submitting that the special court has rightly observed that according to the definition of abetment under Section 107 of the IPC, there has to be some nexus between the acts of the alleged abettor and the act of offence abetted. He would submit that on consideration of the factual aspect of not raising a demand by the complainant and the instigation by the accused-persons for committing the offence, offering the bribe for showing favour to them in investigation and seizure of cash during trap demonstrate that the accused persons not only made offer but also acted upon it. He would also submit that if the offence punishable under Section 7 or 11 of the PC Act is abetted by a person who is not a public servant and the offence is not, in fact, committed by the public servant, still the non-public servant can be tried for the said offence by taking recourse to Section 12 of the PC Act. He would also submit that the Special Judge has taken into consideration the amendment of

Section 12 of the PC Act which has brought into effect from 2018 and according to this Section whoever abets any offence punishable under the Act, whether or not that offence is committed in consequence of that abetment, shall be punished.

9. With the assistance of the learned counsel for the parties, we have perused the writ petition as well as the impugned order and considered the extensive arguments advanced by the contenders. As far as the facts involved are concerned, we do not think that there is any serious dispute amongst the parties. The very case of the prosecution is that initially on meeting the complainant, accused Nos.1 and 2 claiming to be innocent and in order that they are not further harassed offered an amount of Rs.1 lakh and, thereafter, a reference was made to the papers which the complainant was in possession from Mandaleshwar Court and a proposal was put for submitting the papers to the accused persons or to destroy them during journey for which an amount of Rs.5 lakh was offered. The case of the prosecution is that not only the accused had offered the bribe amount but they further acted upon the said offer

and an amount of Rs.5 lakh offered by them were found to be lying on the table in the cabin of the complainant. In the backdrop of these factual circumstances, we will have to examine the provisions of the PC Act prior to and subsequent to the PC (Amendment) Act, 2018 which came into effect from 26.07.2018.

10. It would be imperative to make a reference to Section 7 of the PC Act which was existing prior to the amendment and which read thus:

> *"**7. Public servant taking gratification other than legal remuneration in respect of an official act**.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*
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> *Explanations.—(a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by*

deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

11. In terms of the existing provisions, a public servant taking gratification other than legal remuneration in respect of his official act was liable for punishment under Section 7 of the PC Act. Section 8 of the PC Act provided penalty for an act of accepting or obtaining or agreeing to accept or attempting to accept a gratification by corrupt or illegal means to influence public servant.

The scheme also provided for punishment for abetment of offences under Section 12 of the PC Act, which read thus:

> ***"12. Punishment for abetment of offences defined in Section 7 or 11.****—Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."*

12. The Act of 1988 came to be extensively amended by (Amendment) Act of 2018, which was enacted in pursuance of ratification by India of the United Nations Convention against Corruption and the judicial pronouncements necessitating a review of the existing provisions of the Act and so as to fill in the gaps in description and coverage of offence of bribery and to bring it in line with the current international practices and enable India to discharge its obligations under the Convention. The Bill introduced intended to make the existing anti corruption laws more effective by widening their coverage and strengthening the provisions. Section 7 of the PC Act which covers the offence of public servant taking gratification other

than legal remuneration in respect of an official act, came to be substituted by new comprehensive definition which covers all aspects of passive bribery, including the solicitation and acceptance or bribe through intermediaries and also acts of public servants acting outside their competence. Further, since the Act of 1988 did not contain any provision directly dealing with active domestic bribery i.e. the offence of giving bribe, the said offence also came to be inserted by the new amendment. The amendment which introduced the new definitions of bribery, both as regards the solicitation and acceptance of undue advantage and as regards the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, are found to be comprehensive enough to cover all offences presently provided in Section 8 of the PC Act, which covers taking gratification, in order, by corrupt or illegal means, to influence public servants and Section 9. Section 12 also underwent a change in the Act (16 of 2018) and the existing section which provided for punishment for abetment of offences defined in Section 7 or section 11 came to be substituted so as to provide punishment for abetment of all offences under the PC Act. In the wake of the amendment, Sections 7, 8 and 12 of the PC Act read as follows:

> *"**7. Offence relating to public servant being bribed**.—Any public servant who,—*
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> *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or.*
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> *(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or;*
>
> *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in ancitipation of or in consequence of accepting an undue advantage from any person,*
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> *shall be punishable, with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
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> *Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitutes an offence even if the performance of a public duty by public servant, is not or has not been improper.*
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> *Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.*
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> *Explanation 2.—For the purpose of this section,—*
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> *(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another*

public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the advantage directly or through a third party."

"8. Offence relating to bribing of a public servant.—*(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—*

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper (ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisations shall be punishable with fine.

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the *person directly or through a third party.*

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later."

***"12. Punishment for abetment of offences**.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine."*

13. In the light of the amendment to the PC Act, we are required to test the validity of the impugned order passed by the Special Judge who has discharged the petitioners of the offence punishable under Section 7 of the PC Act on the ground that there is no sufficient proof tendered on behalf of the prosecution to establish the demand. The question that falls for our consideration and what is sought to be argued is whether in the absence of charge under Section 7 of the PC Act being established, whether offence of abetment under Section 12 of the PC Act can be prosecuted. Prior to the amendment, an offence of abetment under Section 7 or 11 was made punishable under Section 12 of the Act. However, after the amendment, the position has changed and whoever abets any

offence punishable under any of the provisions of the Act is made punishable under Section 12 of the PC Act. The Special Judge has reproduced Section 12 of the amended PC Act in para 8 of his order. The FIR in which the petitioners have been arraigned as accused is ACB Crime No.8 of 2007 and, as such, the amended provisions cannot be applied to the case in hand. If we go by the existing provisions as contained in the PC Act prior to its amendment, Section 12 contemplated abetment of an offence punishable under Section 7 or 11 of the PC Act, whether or not the offence is committed in consequence of that abetment.

The Hon'ble Apex Court in the case of ***Sukumaran v. State of Kerala, reported in 2015 (1) ACR 1094 (SC)*** has held in para 14 to the following effect:

> *"In the present case, as has been rightly held by the High Court, there is no demand for the illegal gratification on the part of the appellant under Section 7 of the Act. Therefore, in our view, the question of acceptance of illegal gratification from the complainant under the provision of Section 13(1)(d) of the Act also does not arise. The learned Special Judge has come to the erroneous conclusion that the appellant had received the money and therefore he had recorded the finding that there was*

> *demand and acceptance of the bribe money on the part of the appellant and convicted and sentenced the appellant. However, the High Court on re-appreciation of evidence on record has held that the demand alleged to have been made by the appellant from the complainant PW2, was not proved and that part of the conviction and sentence was rightly set aside in the impugned judgment. However, the High Court has erroneously affirmed the conviction for the alleged offence under Section 13(1)(d) read with Section 13(2) of the Act, although as per law, demand by the appellant under Section 7 of the Act, should have been proved to sustain the charge under Section 13(1)(d) of the Act."*

14. By this time, it is settled provision of law that proof of demand is a *sine qua non* to constitute an offence under the provisions of the PC Act. The demand of gratification must be proved by the prosecution by reliable and cogent evidence and unless the demand is proved, the mere fact that currency notes allegedly paid as bribe, though recovered from custody of accused, can take the prosecution case no further. Mere recovery of currency cannot constitute an offence under Section 7 of the PC Act unless it is proved beyond the reasonable doubt that the accused has voluntarily accepted the money knowing it to be bribe. This position has been succinctly laid down in catena of judgments and we would refer to the latest judgment of the Supreme Court in ***Mukhtiar Singh (since deceased) thgough his L.R. v. State of Punjab***

reported in 2017 (7) SCALE 702. and we would gainfully refer to para 14 of the same which reads thus:

> *"14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A. Subair v. State of Kerala (2009) 6 SCC 587, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposited in State of Kerala v. C.P. Rao, (2011) 6 SCC 450, that mere recovery by itself of the amount said to have been paid by way of illegal gratification 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."*

15. As far as the demand is concerned, the Special Judge has recorded a conclusion that the demand was not proved and the DFSL Report does not support the case of the prosecution and the Court has also recorded that previously the Investigating Officer has filed Summary Report disclosing the Report of DFSL which was rejected on the ground that the said Report is only a corroborative piece of evidence and not a substantive evidence. However, the Special Judge agreed with the Applicants and noted that the demand was not proved and he

agreed with the submission of the petitioners that since there is no demand from the complainant, who is a public servant, and, therefore, even actual payment of illegal gratification will not be punishable under Section 12 of the PC Act. Mere possession and recovery of currency notes from the accused without proof of demand will not bring the act under Section 7 of the PC Act. Mere receipt of the amount by the accused is not sufficient to pass on the guilt in the absence of evidence for demand as an illegal gratification.

16. Section 12 of the PC Act sets out the penalty for abetment of an offence punishable under Section 7 or 11, whether or not that offence is committed in consequence of that abetment. The PC Act, 1988 does not define as to what the term "abetment" means and conveys for the purpose of Section 12 of the PC Act. Therefore, we will have to fall back to Section 107 of the IPC. Perusal of Section 107 of the IPC would reveal that to constitute abatement of an offence there must be some instigation to do an act, which would amount to

an offence, or the alleged abettor must have intentionally aided or facilitated the commission of a crime, or the alleged abettor must have engaged in some conspiracy with one or more other person or persons for the commission of an offence. It thus contemplates existence of some nexus between the acts of the alleged abettor and the act of offence abetted. Prior to the amendment of 2018, the mere offer of bribe was not constituting an offence and the offence relating to public servants being bribed and offence relating to offering of bribe to public servant came to be introduced on 26/07/2018. Prior to substitution of Sections 7, 8, 9 and 10, what was punishable was an act of public servant accepting gratification other than legal remuneration in respect of an official act. The payment of bribe would be covered under Section 12 of the PC Act if such payment of illegal gratification was made as motive or reward as referred to in Section 7 of the PC Act. The act of offering a bribe to a public servant became an offence only with effect from 26/07/2018 and commensurating with the introduction of the said provision, Section 12 of the Act is also amended and by the amended provision whoever abets any offence punishable under the Act, whether or not that offence is committed in consequence of that abetment, shall be liable for punishment for abetment of offence. The public servant, who accepts the bribe was liable for penalty under Section 7 of the PC Act but now any person who gives or promises to give an undue advantage to another person or persons, with intention to induce a public servant to perform improperly a public duty; or to reward such public servant for the improper performance of public duty is liable for penalty under Section 8 of the PC Act. The act of mere offer voluntarily made by the petitioners without any demand from the complainant cannot be made punishable under Section 12 of the PC Act since the said act was not attracting any offence prior to 26/07/2018 even though the amount has been found on the table of the complainant in the trap laid.

17. We find sufficient substance in the submission of Mr. Choudhary that if provisions of Section 7 of the PC Act is not attracted then the provisions of Section 12 of the PC Act also

cannot be invoked and applied against the petitioners. The special court has failed to take into consideration the amended provisions. Under the Act of 1988 bribe giving or offering of a bribe was not a standalone substantive offence and private person who gave or offered bribe to a public servant was liable for being punished as an abettor, either to the commission of an offence under Section 7 or under Section 11 of the PC Act by virtue of Section 12 of the PC Act.

We have noted the Statement of Objects and Reasons accompanying the Prevention of Corruption (Amendment) Bill 2018 which has brought a paradigm shift in the entire approach and, for the first time, offering of a bribe is made a substantive standalone offence. The Special Judge has proceeded on the basis and has referred to Section 12 of the PC Act which has come into effect from 2018 and the act of giving bribe has been recognized as an offence by introduction of Section 8 in the PC Act from 26/07/2018. Thus, in the absence of any provision contained in the PC Act which made giving of a bribe as an offence by itself, the petitioners could not have been charged for an offence of offering of illegal gratification or bribe and specially when the prosecution has failed to establish its case that the public servant had demanded bribe and accepted the illegal gratification. Prior to the said amendment, any person, who abates (instigates to do, engages in or aids) in any manner in offence of bribe taking by public servant in receiving any illegal or valuable thing was covered within the ambit of offence of abetting under Section 12 of the PC Act. A person, who offers or provides for bribery was prosecuted an abettor/accomplice. It is to be noted that Section 24 of the PC Act which existed prior to the amendment of 2018, protected a person who makes statement in any proceeding against a public servant for an offence under Section 7 or 11 or under Section 13 or 15 that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant could not be subjected to prosecution under Section 12 of the PC Act. It is worth noting that Section 24 of the PC Act came to be omitted by the (Amendment) Act of 2018.

The Special Judge has thus erroneously made reference to Section 12 of the PC Act which is an amended provision which cannot be made applicable to the present case. The Special Judge has based its conclusion on Section 12 of the PC Act which could not be made applicable to the petitioners in the ACB Crime registered in the year 2007. A distinct category of offence being created by the amendment which was brought into force on 26/07/2018 thereby punishment for giving bribe has been enumerated as an distinct offence. In any contingencies, when the Special Judge has discharged the petitioners of the offence punishable under Section 7 of the PC Act, the invocation and application of Section 12 of the PC Act against the petitioners, in our considered view, cannot be sustained.

Resultantly, we quash and set aside the the proceedings pending before the Special Judge in ACB Special Case No.59 of 2012 charging the petitioner under Section 12 of the PC Act. We also quash and set aside order dated 08/02/2019 passed by the Special Judge as also the charge-sheet filed in ACB Special Case No.59 of 2012 prosecuting the petitioners for offence punishable under Section 12 of the PC Act.

18. Writ Petition is allowed in the aforestated terms. No order as to costs.

(SMT.BHARATI H. DANGRE, J.) **(RANJIT MORE, J.)**