

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1367 of 2019

Judgment Reserved on : 22.9.2021

Judgment Delivered on : 18.10.2021

Bhimendra Kumar Verma, son of Late Udayram Verma, aged about 47 years, (Sub Engineer Office of Zone Commissioner Zone No.5 Municipal Corporation Raipur) presently residing at Village Jaamgaon, Police Station Patan (wrongly mentioned Pathan in order dated 30.8.2019), District Durg, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Anti Corruption Bureau Raipur, District Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Kashif Shakeel, Advocate
For Respondent	:	Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred against judgment dated 30.8.2019 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the PC Act') and 8th Additional Sessions Judge, Raipur in Special Sessions Trial No.313 of 2016, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 7 of the PC Act	Rigorous Imprisonment for 3 years and fine of Rs.5,000/- with default stipulation
Under Section 13(1)(d) read with Section 13(2) of the PC Act	Rigorous Imprisonment for 3 years and fine of Rs.5,000/- with default stipulation
	Both the jail sentences are directed to run concurrently

2. Case of the prosecution, in short, is that at the relevant time, the Appellant was posted as a Sub Engineer in Zone No.5 of Raipur Municipal Corporation. Complainant Devendra Kumar Choudhary (PW1) was having a plot measuring 1650 Sq.Ft. by the side of the road in Changorabhatha, Raipur. For widening of the road, some portion of his plot was acquired. In the remaining part of the plot measuring 1211 Sq.Ft., for commercial construction of 455 Sq.Ft. at the ground floor and for construction of commercial office and residence total in 500 Sq.Ft. at the first floor, he had obtained due permission from the Municipal Corporation, but, he had not started the construction. Thereafter, changing the previous plan of constructions, he submitted a new application for construction of a parking in the ground floor and for construction of commercial building in remaining floors. For the said purposes, when he met with the Appellant, he demanded bribe of Rs.5,000. Since the Complainant did not want to give the bribe, on 13.7.2009, he submitted a written complaint (Ex.P1) to the Superintendent of Police, Anti Corruption Bureau, Raipur. For confirmation, he was given a micro cassette tape recorder along with a cassette for recording of the conversation. On 15.7.2009, he again met with the Appellant and recorded their conversation in the said tape recorder. On 17.7.2009, he went to the office of Superintendent of Police, Anti Corruption Bureau and submitted the tape recorder along with the recorded cassette and also submitted his second written complaint (Ex.P2). Thereafter, panch witnesses were called. They were introduced with the Complainant. They verified the complaint made by the Complainant. The recorded cassette was heard and a

transcription (Ex.P4) of the conversation was prepared. The Complainant submitted 10 currency notes in the denomination of Rs.500, total Rs.5,000 for giving to the Appellant as bribe. Their numbers were noted and a panchnama thereof was prepared. A trap proceeding was demonstrated to the Complainant and the panch witnesses. The Complainant was again given a micro cassette tape recorder along with a cassette for recording conversation to be taken between the Complainant and the Appellant at the time of giving bribe. Thereafter, the trap party went to the office of the Appellant. The Complainant alone went inside the office of the Appellant. After some time, he came out of the office and gave a signal to the trap party. The trap party went inside the office of the Appellant where his hands were caught and on being asked he told that the tainted money was kept in the drawer of the table. Numbers of the tainted currency notes were compared with the numbers already recorded in the preliminary panchnama. The numbers matched. Hands of the Appellant and the recovered tainted currency notes were dipped into different solutions of sodium carbonate on which their colour turned into pink. On completion of the investigation and after obtaining sanction for prosecution, a charge-sheet was filed against the Appellant. Charges were framed against him by the Trial Court.

3. To bring home the offence, the prosecution examined as many as 12 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt, pleaded innocence and false implication. No witness has been examined by the Appellant in his defence.

4. On completion of the trial, the Trial Court convicted and sentenced the Appellant as mentioned in 1st paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submitted that the Trial Court has wrongly convicted the Appellant. It was argued that both the demand and the acceptance of bribe money by the Appellant are not proved in this case. Complainant Devendra Kumar Choudhary (PW1) has not supported the case of the prosecution and turned hostile. He categorically admitted that he never met with the Appellant nor did the Appellant ever make any demand for bribe from him. According to this witness, his brother Vijay used to go to the office of the Municipal Corporation and the demand of money was made from him. This witness further admitted that on submission of the amended plan and map for the constructions, Vijay was asked to deposit fresh fees for obtaining due permission. Since according to the Complainant necessary fees was already deposited but demand for deposit of fees was again made, he went to the office of Anti Corruption Bureau and made the complaint. It was further argued that as stated by the Complainant, at the time of trap also, the Appellant had not made any demand nor did he accept any money from him as bribe and he himself without the knowledge of the Appellant kept the money in the drawer of the table and that money, on being asked by the trap party, was taken out by the Appellant from the drawer. Therefore, even acceptance of bribe is not established. In the transcriptions (Ex.P4 and P9) also, there is no demand of bribe by the Appellant. Therefore, if any amount has been recovered from the Appellant on

being taken out by him from the drawer of the table, the offence alleged against him is not proved. It was further argued that the sanction for prosecution has been accorded mechanically without examining the documents and evidence and, therefore, the conviction of the Appellant is not sustainable. Reliance was placed upon (2014) 13 SCC 55 (**B. Jayaraj v. State of Andhra Pradesh**), (2015) 10 SCC 152 (**P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh**), (2016) 3 SCC 108 (**Krishan Chander v. State of Delhi**) and (2021) 3 SCC 687 (**N. Vijayakumar v. State of Tamil Nadu**).

6. Opposing the above arguments, Learned Counsel appearing for the Respondent supported the impugned judgment.
7. I have heard the rival contentions advanced on behalf of the parties and perused the entire material available including the statements of witnesses with due care.
8. It is not in dispute that at the relevant time the Appellant was posted as a Sub Engineer in Zone No.5 of Raipur Municipal Corporation.
9. In a case of illegal gratification, there are three essential ingredients to constitute the offence. They are (i) demand, (ii) acceptance and (iii) recovery.
10. In **B. Jayaraj case (supra)**, it was held by the Supreme 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.*, (2010) 15 SCC 1 and *C.M. Girish Babu v. CBI*, (2009) 3 SCC 779.

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.”

11. Further, in **P. Satyanarayana Murthy case (supra)**, the Supreme Court held as follows:

“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 v. State of A.P.*, (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 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.”

12. Again, in **Krishan Chander case (supra)**, it was held by the Supreme Court thus:

“35. It is well-settled position of law that the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The same legal principle has been held by this Court in *B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55, *A. Subair v. State of Kerala*, (2009) 6 SCC 587 and *P. Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152 upon which reliance is rightly placed by the learned Senior Counsel on behalf of the appellant.”

In paragraph 39, it was further held by the Supreme Court thus:

“39. In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant Jai Bhagwan (PW2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant Jai Bhagwan (PW2), which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. Thus, the impugned judgment and order [*Krishan Chander v. State of Delhi*, 2014 SCC OnLine Del 2312] of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside.”

13. In **N. Vijayakumar case (supra)**, it was held by the Supreme Court as follows:

“26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in *C.M. Girish Babu v. CBI*, (2009) 3 SCC 779 and in *B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d) (i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes

is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

27. The relevant paras 7, 8 and 9 of the judgment in *B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55 read as under: (SCC pp. 58-59)

“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.*, (2010) 15 SCC 1 and *C.M. Girish Babu v. CBI*, (2009) 3 SCC 779.

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 LW9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW1 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.”

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a “possible view” as such the judgment [*State of T.N. v. N. Vijayakumar*, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is

recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.”

14. In the light of above view taken by the Supreme Court, I shall examine the statements of witnesses of the present case. In the instant case, Complainant Devendra Kumar Choudhary (PW1) has not supported the case of the prosecution and turned hostile. As regards the incident, in his Court statement, it is deposed by Complainant Devendra Kumar Choudhary (PW1) that for obtaining building construction permission, he had submitted an application in the prescribed proforma and for seeking information in that regard he had been sending his brother Vijay to the office of the Municipal Corporation. According to this witness, Vijay had been telling him that the Appellant was making demand of Rs.5,000. On this, he himself met with the Appellant. The Appellant demanded Rs.5,000 from him. On this, he went to the office of the Anti Corruption Bureau and submitted the written complaint (Ex.P1). He further deposed that the Anti Corruption Bureau officials gave him a tape recorder along with a cassette for recording conversation. With the tape recorder and the cassette, he went to the office of the Appellant and recorded their conversation. Thereafter, he again went to the office of Anti Corruption Bureau. There he submitted 10 currency notes of Rs.500 each, total Rs.5,000. This witness has stated that at that time he had submitted the written complaint (Ex.P2) in the office of the Anti Corruption Bureau or not is not

recollected to him. With regard to the trap proceeding, this witness deposed that at the time of trap, he alone had gone inside the office of the Appellant. There a talk took place between him and the Appellant and he took out the tainted money from his pocket and kept the same in the drawer of the table placed there. Thereafter, the trap party entered the office of the Appellant and caught the Appellant. In paragraphs 17 and 18 of his examination, this witness categorically deposed that the written complaints (Ex.P1 and P2) were not drafted by his own mind but the same were copied in his handwriting by him from the draft complaints prepared by the Anti Corruption Bureau officials. In paragraphs 29 and 30 of his cross-examination, this witness further admitted that his brother Vijay had been telling him that fresh fees was being asked to deposit and on this point a dispute had also taken place between Vijay and the Appellant. Then this witness telling that illegal demand was being made went to the office of the Anti Corruption Bureau and intimated about the demand to the Anti Corruption Bureau officials. In paragraph 31, he further admitted that the Anti Corruption Bureau officials had directed him to keep the tainted money in the drawer of the table. According to this witness, at the time of trap, when he met with the Appellant, the Appellant told him that after depositing the due fees, he should obtain a receipt thereof then the permission will be granted. Thereafter, when the Appellant went near the almirah and was working there then this witness kept the tainted money in the drawer of the table and came out of the office. In paragraph 32 of his cross-examination, this witness further deposed that the trap party entered the office of the Appellant and

searched him, but no money was found from him. Thereafter, when the drawer of the table was searched, the tainted money was found there. On being pressurised by the Anti Corruption Bureau officials, the Appellant took out the tainted money from the said drawer and handed over the same to them. This witness further admitted that the Appellant never demanded money for grant of permission for construction of the building nor did this witness ever give him any bribe. In paragraph 33, he further admitted that later on also, when he paid the due fees for the permission then he was given the necessary permission for the construction.

15. In this case, it is admitted that at the time of trap, no shadow witness was sent along with the Complainant and the Complainant alone had gone inside the office of the Appellant. Therefore, in the second transcription (Ex.P9) of the conversation, there is no demand of bribe from the Complainant. In this regard, panch witness Abhinav Shrivastava (PW3) and Investigating Officer S.S. Bhagat (PW12) admitted the fact that the transcription (Ex.P9) does not contain anything regarding demand of bribe. With regard to the transcription (Ex.P4) also, S.S. Bhagat (PW12) further admitted that the transcription (Ex.P4) does not contain anything to show that any demand of bribe was made by the Appellant for doing the work of the Complainant.
16. It is not in dispute that the tainted money was not recovered in the personal search of the Appellant, but it was recovered from a drawer of the table placed in his office. As deposed by Complainant Devendra Kumar Choudhary (PW1), on being pressurised by the Anti Corruption Bureau officials, the Appellant

took out the tainted money from the drawer of the table and handed over the same to them. Whereas, according to the case of prosecution, the tainted money was taken out from the said drawer of the table by panch witness Moinuddin (not examined). Pawan Kumar Pathak (PW8) deposed that at the time of trap proceeding, he carried out the work of dipping of hands and tainted money in different solutions of sodium carbonate vide Ex.P19. From perusal of Ex.P19, it reveals that panch witness Moinuddin, who had taken out the tainted money from the drawer of the table, had dipped his hands into a solution of sodium carbonate, but colour of that solution had not turned into pink. Therefore, the case of the prosecution that panch witness Moinuddin had taken out the tainted money from the drawer of the table is not established. Hence, there appears substance in the statement of Complainant Devendra Kumar Choudhary (PW1) that on being pressurised by the Anti Corruption Bureau officials, the Appellant had taken out the tainted money from the drawer of the table.

17. On a minute examination of the above evidence, it is clear that Complainant Devendra Kumar Choudhary (PW1) has not supported the case of the prosecution and turned hostile. With regard to the initial demand also, he has not supported the case of the prosecution. The transcription (Ex.P4) also does not contain any demand of bribe. Therefore, the initial demand is not established. With regard to demand of bribe at the time of trap also, no shadow witness is available in this case. Complainant Devendra Kumar Choudhary (PW1) himself has not supported the case of the prosecution on this point also. The transcription

(Ex.P9) does not show that at the time of trap also, the Appellant made any demand for bribe from the Complainant. From the evidence adduced by the prosecution, it is clear that in the personal search of the Appellant, no tainted money was recovered from him. The tainted money was recovered from the drawer of the table. As per the statement of Complainant Devendra Kumar Choudhary (PW1), he had kept the tainted money in the drawer of the table without the knowledge of the Appellant. On being told by this witness that the tainted money was kept in the drawer of the table, the Appellant, after being pressurised by the Anti Corruption Bureau officials, took out the tainted money from the said drawer of the table and handed over the same to them. Therefore, if on dipping of the hands of the Appellant in a solution of sodium carbonate colour of that solution turned into pink, that does not help the case of the prosecution. Thus, from the entire evidence adduced by the prosecution in this case, in my considered view, both demand and acceptance of bribe money are not proved. Therefore, conviction of the Appellant is not sustainable. He is entitled to get benefit of doubt.

18. In the result, the appeal is allowed. The conviction and sentence imposed upon the Appellant are set aside and he is acquitted of all the charges framed against him.

Sd/-
(Arvind Singh Chandel)
JUDGE