

**344 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-419-SB-2005

Reserved on 1st September, 2022

Date of Pronouncement: __ September, 2022

Suresh Chand

... Appellant

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ashwani Bhardwaj, Advocate for the appellant.
Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN, J.

1. This appeal is directed against the conviction of Suresh Chand (appellant) in FIR No.24, dated 8th October, 2001, under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short 'the Act'), registered at Police Station SVB, Gurgaon.

2. The facts as set up by the prosecution are that a complaint was received on 8th October, 2001 from Mahipal. He stated that his uncle Ami Lal was having a tubewell which was used by the complainant and ten more persons for irrigating their fields. The transformer supplying electricity to the tubewell was overloaded. An application was made for change of transformer, which was marked to the appellant. He demanded bribe of Rs.5000/- for changing the transformer.

3. On the complaint, trap was laid. Ten currency notes of Rs.500/- denomination were laced with Phenolphthalein and initialled.

Constable Dyanand was appointed as a shadow witness. Complainant was

directed to hand over the laced currency notes to the appellant, on his demand. The shadow witness was directed to give signal to the raiding party as soon as bribe is accepted. On the signal from the shadow witness, the raiding party reached the office and apprehended the appellant. From the front pocket of his shirt, tainted currency was recovered. On washing the hands and the shirt of appellant with Sodium Carbonate, the colour of solution turned pink. From the personal search of the appellant, Rs. 1004/- were recovered.

4. The challan was presented. After receiving sanction to prosecute, the charges were framed. The appellant stated that he is innocent and claimed trial.

5. The prosecution to prove its case examined ten witnesses. PW-1 Abhay Singh deposed that he had prepared the final report under Section 173 Cr.P.C.. PW-2 Constable Mahesh Kumar drafted the scaled site plan. PW-3 R.C. Shera, S.D.E., Narnaul proved the letter dated 30th January, 2002 (Ex. PC) with regard to the duties to be performed by the appellant. PW-4 Dharampal, Deputy Superintendent in the office of Chief Engineer, DHBVN proved the sanction to prosecute. PW5 V.B. Kumar, Assistant Engineer-cum-SDO in his deposition admitted that he received an application dated 21st September, 2001 (Ex. PF) given by eleven villagers to increase the capacity of the transformer. Further that the application was marked to appellant for inspecting the site and submitting the report. PW-6 Constable Sube Singh and PW-7 were formal witnesses. The deposition of Investigating officer, Inspector Yad Ram PW-8 was in line of the allegations in the complaint and stated the procedure followed for laying the trap and recovery of the tainted amount. Complainant

Verma, SDM deposed with regard to the complaint received and the procedure adopted thereafter.

6. In his statement under Section 313 Cr.P.C. appellant claimed that neither he demanded illegal gratification nor accepted it, rather tainted currency was implanted.

7. In defence, the appellant examined three witnesses. DW1 Ramji Lal Clerk, CMO Office Narnaul brought the register to prove the death certificate (Ex. D-A) of Om Parkash S/o Bhola Ram. DW2 Constable Dhan Raj brought the record of FIR No. 285, dated 28th November, 1999, registered against the complainant, under Section 379 IPC and Section 39 of Electricity Act. DW-3 Mr. N.L. Dubey, SDO, Sub Division, Palwal, proved that raid was conducted on premises of complainant, he was caught stealing the energy from the main line of DHBVNL. FIR was registered against complainant and the penalty of Rs. 25,000/- was imposed. The appellant was the member of the raiding party.

8. The trial Court came to conclusion that the complainant was not having electricity connection but his uncle Ami Lal had a electricity connection for the tubewell. There was application by the villagers to increase the capacity of the transformer. The appellant had an opportunity to demand illegal gratification as the application was marked to him for inspection and submission of report.

9. The presumption under Section 20 of the Act was drawn against the appellant. It was considered that in hand wash test, the solution turned pink, the tainted currency was recovered from the possession of the appellant.

10. The defence that complainant was having grudge against

appellant, as he was member of raiding party which got registered FIR against him was not accepted. The trial Court relied on statement of complainant that he availed remedies against the consequences of raid. The deposition of the PW-10 SDM was relied upon as there was no reason for him to depose falsely against the appellant. Not examining of the shadow witness was not found to be fatal for the story of the prosecution, as recovery of the tainted currency from the appellant stood proved. The variation amongst the depositions of the prosecution witnesses in the context of the complaint were ignored being minor discrepancies. The appellant was convicted under Section 7 of the Act by judgment dated 11th February, 2005 and vide order dated 16th February, 2005, he was ordered to undergo sentence of rigorous imprisonment for two years, fine of Rs.5000/- and in default of payment of fine, six months rigorous imprisonment.

11. Learned counsel for the appellant submits that trial Court failed in appreciating evidence that it was a case of a false implication. Complainant had a grudge against the appellant. He submits that as per the deposition of SDM only shirt of the appellant was washed. Further it is argued that SDM stated that Surrender was appointed as shadow witness whereas, as per the investigation officer Dayanand was the shadow witness. No shadow witness was examined. The submission is that prosecution failed to prove the demand of bribe. The contention is that complainant improved his version in deposition. He stated that on 7th October, 2001, he along with Ajit, Ram Partap and Ved went to the house of the accused where he demanded Rs.8000/- and deal was struck for Rs.5000/-. The issue raised is that none of the persons allegedly

12. Learned State counsel defends the impugned judgment. He submits that the demand was made on 7th October, 2001 in its continuation the trap was laid on 8th October, 2001. Appellant was caught red handed. He argued that application was marked to the appellant for submission of the report, he had a motive for demanding illegal gratification. The tainted amount was recovered from the appellant and presumption under Section 20 of the Act is against him.

13. Heard learned counsel for the parties at length and perused the record

14. On appreciation of the facts and the evidence, there is no dispute that complainant Mahipal had no electricity connection in his name. He had not filed an application for change of transformer. Name of eleven persons were written on the application, one of them was Om Parkash who died prior to submission of the application. Name of Ami Lal uncle of the complainant was at Sr. No.8. It would be worth noting that at Sr. No.8- Jagdish son of Ami Lal was written and later Jagdish was scored off. The application was marked to the appellant for spot inspection and submission of the report, as he was posted as Assistant Foreman. The appellant was not having official capacity to change the transformer.

15. The deposition of complainant PW-9 and his cross-examination, revealed that he along with five persons in October, 2001 met the appellant and he demanded bribe of Rs.8000/-. On 7th October,2001, complainant alongwith Ajit, Ram Partap and Ved visited the house of the appellant and the deal was struck for Rs.5000/-. On complaint, a trap was laid on 8th October, 2001. The raiding team was headed by SDM, Mahendergarh. Dayanand Constable was appointed as a

handed over to the complainant to be given to the appellant on his demand.

The tainted currency was recovered from the front pocket of the shirt of the appellant. On washing of the shirt with Sodium Carbonate, the solution turned pink.

16. The issues which need determination are:-

(i) for conviction under Section 7 of the Act the demand and acceptance of the illegal gratification is to be proved beyond reasonable doubt.

(ii) presumption under Section 20 can be drawn against accused if acceptance of illegal gratification is proved.

It would be relevant to reproduce Section 20 of the Act:

20. Presumption where public servant accepts any undue advantage.- *Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.”*

Legal position to prove demand and acceptance for conviction under Section 7 and with regard to presumption under Section 20 of the Act

In **K. Shanthamma v. State of Telangana, 2022(2) RCR (Criminal) 195**, the Supreme Court held as under:

*7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of **P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SC 152**, and another, this Court has*

summarised the well-settled law on the subject in paragraph 23 which reads thus:

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, de hors 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.”

In N. Sunkanna v. State of Andhra Pradesh, 2015(4) RCR (Criminal) 797, the Supreme Court observed as under:

“The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) 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. 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. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in **B. Jayaraj v. State of Andhra Pradesh (2014(2) RCR (Criminal) 410; 2014(2) Recent Apex Judgments (R. A. J.) 570; (2014) 13 SCC 55]** and **P. Satyanarayana Murthy v. The District Inspector of Police and another [2015(4) RCR (Criminal) 350; 2015(4) Recent Apex Judgments (R.A. J.) 625; (2015(0) SCALE 724]**.*

In **P. Satyanarayana Murthy v. The Dist. Inspector of Police and another, 2015(4) RCR (Criminal) 350**, the Supreme Court held as under:

*“20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in **B. Jayaraj (supra)** in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(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 Section 13(1)(d) (i)&(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 emphasized, 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.*

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(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.

22. 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 Sections 7 or 13 of the Act would not entail his conviction thereunder.”

In **B. Jayaraj v. State of A.P., 2014(2) R.C.R. (Criminal) 410**, the Supreme Court held as under:

“9. In so far 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 Section 13(1)(d)(i)(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.”

17. From the reading of Section 20 of the Act and the law cited above, it is clear that presumption under Section 20 of the Act is to be drawn after it is proved that public servant had accepted, obtained or attempted to obtain undue advantage from any person. Further that for proving acceptance there has to be proof of demand. The recovery of tainted money in itself cannot be the basis for conviction under Section 7 of the Act, the demand and acceptance of the bribe is to be proved.

18. In the case in hand the complainant was not the applicant for change of transformer. The prosecution had not examined Ami Lal the uncle of the complainant to prove that he was consumer of electricity department and complainant had interest in his tubewell for irrigating his land.

19. As per the complainant, the appellant had demanded bribe in the month of October from him, in presence of five persons. On 7th October, 2001, the demand was made in presence of Ajit, Ram Pratap and Ved but none of these persons were examined.

20. There is another aspect of the matter, complainant had deposited that on 8th October, 2001 he went to the office of the appellant and

handed over the laced currency to him. In another words, there is no averment that the amount was demanded by the appellant on 8th October, 2001. The relevant part of deposition of PW-9 complainant is quoted below:-

“Thereafter I went to the office of the accused. One Headconstable who was in civil clothes was also deputed with me with the direction to give a signal to the police as soon as the accused accept the amount. I contacted the accused who was sitting on a chair in his office. I gave him Rs.5000/- to him. The accused put the same into his pocket.”

21. There is another angle which needs consideration. The defence taken by the appellant was that complainant was carrying grudge against him was supported with evidence. The appellant was a member of the raiding party, complainant was caught stealing electricity for which an FIR No. 285, dated 28th November, 1999 was registered. To substantiate the defence, FIR was exhibited as Ex. DB and Constable Dhanraj was examined as DW-2. The complainant had not denied the factum of raid being conducted at his premises, FIR being registered and penalty of Rs.25000/- imposed on him. The examination of DW-3- N.L. Dubey was to the effect that appellant was the member of the raiding party which conducted raid at the premises of the complainant.

22. In view of the defence taken, the statement of the complainant became doubtful. The non-examination of the shadow witness in such circumstances shall be fatal to the onus casted upon prosecution to prove demand and acceptance of illegal gratification by the appellant.

23. The deposition of the SDM PW-10 creates a doubt on the story putforth by the prosecution. As per his statement, Surinder was appointed as a shadow witness and on his signal the raiding team

apprehended the appellant. He further stated that the pocket of the shirt of the appellant was washed. As per his cross-examination the request made by the appellant to Yad Ram, Inspector to wash his hands with sodium solution was denied. According to the SDM, number of employees were sitting in the office of the appellant. The relevant portion is quoted below:-

“Thereafter myself alongwith Yad Ram, Mahipal and other police official went to the office of SDO Electricity Board, City, Mahendergarh. Mahipal was asked to give the currency notes mentioned above to the accused in case he demanded illegal gratification. One Surrender was appointed as shadow witness and was directed to give a signal to the police party when Suresh accused accepts the amount. xx xx

xx xx xx

The pocket of the shirt was washed with water. The water turned pink.”

Cross examination

It is correct that many employees were sitting in the office of accused. Surrender shadow witness was a police official.

xx xx xx xx xx xx

It is correct that when the accused was apprehended he requested Yad Ram Inspector to get his hands washed but his request was turned down.”

24. It would not be out of place to mention that as per the case set up Constable Dayanand was the shadow witness. There is variation as to who was the shadow witness. The shadow witness was not examined even when complainant had a motive for implication of the appellant. No independent witness was joined *inspite* of the fact that as per the SDM, number of the employees were sitting in the office of the appellant. All these factors makes story of the prosecution doubtful.

25. The Supreme Court in **B. Jayaraj v. State of A.P.** (*supra*) held that presumption under Section 20 can be taken against the accused

requisite.

26. Having failed to prove demand and acceptance, the prosecution can not succeed only on the basis that the tainted currency was recovered from the pocket of the appellant. In view of the law laid down by the Supreme Court in **K. Shathamma Vs. Telengana** (*supra*), the recovery cannot be sole basis for conviction under Section 7 of the Act.

27. The prosecution was not able to prove its case for conviction of the appellant under Section 7 of the Act. The judgment of conviction and order of sentence are set aside. The appellant is acquitted of the charges framed against him.

28. The appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

—— September, 2022
Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes