IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 31 of 2000

Kumar Dutta
-Vs-
The State of West Bengal

Amicus Curiae : Mr. Dipanjan Dutt
Mr. Surojit Saha

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 18.01.2023, 19.01.2023, 16.02.2023, 20.02.2023, 04.08.2023.

Judgment on : 29.09.2023

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 22.12.99 passed in Special Case No. 15 of 1995 by Learned Judge, 1st Special Court, South 24 Parganas, Alipore convicting the appellant for commission of offences punishable under Section 420 of the Indian Penal Code and under Section 7 and under Section 13 sub-section 1 sub-section d of the Prevention of Corruption Act, 1988 and sentencing the appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for 1 month more for commission of offence punishable under Section 420 of the Indian Penal

Code and to suffer rigorous imprisonment for six months and to pay a fine of Rs. 2000/-, in default to suffer rigorous imprisonment two months more for commission of offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and to suffer rigorous imprisonment for one year and to pay a fine of Rs. 3000/-, in default to suffer rigorous imprisonment for 3 months more for offence punishable under Section 13 sub-section 1 sub-section d of the Prevention of Corruption Act, 1988 with direction that all the sentences to run concurrently.

2. The prosecution case as alleged against the appellant is as follows –

(a) P.W. 1 Niharendu Basu, the defacto complainant of the instant case submitted a written complaint on 05-09-94 against the appellant at the office of the Deputy Commissioner of Police, Detective Department.

(b) It was alleged in the written complaint that the appellant who is a Sub-Inspector of Police, Traffic Department, Calcutta was introduced to the defacto complainant through one Dipak Dey on 16-08-94.

(c) Premangshu Sarkar, a relation of the de-facto complainant was seeking a job in the post of Sub-Inspector in Calcutta Police.

(d) The appellant assured the de-facto complainant that he would get a job for his relation through Calcutta Police Association as he was holding a high position there.

(e) The appellant demanded Rs. 50,000/- for the said job as he had to pay one Tapan Mitra Inspector of Police working as Officer-in-Charge, Teleprinter and one Garai Mondal, Officer Bearer of the Association.

(f) Being induced by such statement, the de-facto complainant agreed to the proposal and paid Rs. 10,000/- on 20.08.94 in cash at 9 p.m. at the appellant's residence and a sum of Rs. 50,000/- on 03.09.94 at 1.30 p.m. at the office of the appellant.

(g) On 21-08-94, the appellant asked the relation of P.W. 1 to fill up a blank in a printed paper saying that it was a V.R. Form.

(h) On 03-09-94 and 04-09-94, the de-facto complainant met the appellant at his residence and enquired about the job.

(i) The appellant insisted that he must pay the balance amount of Rs. 25,000/- immediately otherwise his name shall be struck of.

(j) On 05-09-94 the appellant went to the office of the de-facto complainant at 2 p.m. and demanded the amount.

(k) The de-facto complainant told him that he would pay the money he could arrange for at the residence of the Inspector of Police, Tapan Mitra on 06-09-94.

(l) Being suspicious of the conduct of the appellant, the de-facto complainant made enquiries and also enquired from Tapan Mitra and on their advice lodged the instant complaint which had resulted in the registration of Narkeldanga Police Station Case No. 188 dated 06-09-94.

(m) The then DC/DD, Goutam Chakraborty endorsed the case to Shri A.K. Mitra, Assistant Commissioner of Police for causing investigation.

(n) Arrangements were made to lay a trap against the appellant and a Pre-trap Memorandum was prepared.

(o) Thereafter the de-facto complainant along with two witnesses and officers of the raiding party went to police quarters at Shyampukur P.S. at 8 a.m.

(p) The appellant came there at 9 p.m., met the de-facto complainant and asked him whether he has brought the balance amount.

(q) The appellant stated that he would bring at least Rs. 5000/- and asked the de-facto complainant to meet near the Bata Shop at College Street at 11.30 a.m.

(r) The de-facto complainant and the Trap witnesses and Police Personnel went to the spot i.e. College Street Bata Shoe Shop at 11.15 a.m. and waited for the appellant to come.

(s) The appellant came to the spot around 11.25 a.m.

(t) The appellant demanded the money and the de-facto complainant handed over a sum of Rs. 1000/- to him and told him that his relation would get Call Letter on 22/23-09-94.

(u) The appellant took the bribe amount of Rs. 1000/- in his right hand.

(v) The Police Officers including A.K. Mitra, Investigating Officer rushed and caught hold of the right hand of the appellant by which he was holding the bribe amount.

(w) The appellant was taken inside the Central Bank of India, College Street Branch and inside the Branch Manager's Chamber his right hand was washed in a solution of Sodium Carbonate and plain water was taken in a clean pot in presence of the witnesses and the de-facto complainant and the Bank Manager. The said solution turned pink which was preserved in a clean bottle, corked, sealed, labeled and marked with letter 'B' with signature of witnesses and the de-facto complainant.

(x) The bribe amount and other moneys from his person were seized and a Post Trap Memorandum was prepared by the raiding party.

3. Appellant stated that investigation in the instant case was conducted by one of the members of the raiding party namely Shri A.K. Mitra and thereafter, by Kanai Dutta who submitted a Charge-Sheet against the appellant before the Learned Trial Court.

4. The Learned Trial Court took cognizance of the aforesaid offence and framed Charge against the appellant for commission of offences punishable under Section 7 of the Prevention of Corruption Act, 1988 and under Section 13 sub-section 2 read with Section 13 sub-section 1 sub-section d of the Prevention of Corruption Act, 1988 and under Section 420 of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried.

5. In the course of trial, the prosecution examined as many as 10 (ten) witnesses and exhibited a number of documents. The defence of the appellant was one of innocence and false implication. It was a categorical defence of the appellant that he never took bribe from the de-facto complainant for making arrangement for getting a job for the relation of the de-facto complainant in Calcutta Police.

6. The appellant stated in his statement recorded under Section 313 Cr.P.C. stated he had been to College Street in order for certain purchases and the de-facto complainant rushed to him and thrust the 100 numbers of GC

Notes amounting to Rs. 1000/- in his hand and started shouting and thereby he was falsely implicated.

7. The appellant further submitted that the defence thereby was corroborated by a letter written by the de-facto complainant himself to the Deputy Commissioner of Police, DC/DD stating that the false allegations against the appellant be withdrawn which was exhibited as Ext. 'A' in the instant case and admitted by the appellant.
8. Heard rival submissions of the Learned Amicus Curiae as well as Learned Advocate for the State.
9. The assessment of the evidence of the prosecution witnesses is delineated as follows:

   i. PW 1 stated that Premangshu Sarkar is the brother of Moni Sarkar, who is the husband of the deponent's sister. Premangshu applied for the position of sub-inspector of police in 1994. PW 1 further stated that he was advised by a friend, PW 4, to contact the appellant, a police officer with influence in the police association on 18/8/94. Subsequently, on the same day, he contacted the appellant. The appellant informed PW 1 that if a sum of money was provided, he would use his influence to facilitate Premangshu's application. PW 1 agreed to this arrangement.

      PW 1 mentioned that on the following day, the appellant relayed that Tapan Mitra required Rs 10,000/- to move the matter forward and directed him to provide this amount. He also informed the deponent to prepare to pay an additional Rs 25,000/- on 20/8/94. Therefore, on 20/8/94, the deponent handed over Rs 10,000/- to the appellant at his residence, as instructed. The appellant also informed PW 1 that the remaining balance would be due after Premangshu's medical examination.

On 21/8/94, Premangshu's medical examination was conducted using documents supplied by the appellant. These documents were filled out at the Coffee House, following the appellant's guidance. The appellant then instructed the deponent to provide him with an additional Rs 10,000 at his residence on 22/8/94 by 9 pm. PW 1 delivered another Rs 10,000 to the appellant at his residence on 22/8/94.

On 2/9/94, the appellant visited PW 1's office and demanded the remaining sum of Rs 5,000, warning that failure to comply would result in adverse consequences. PW 1 reluctantly paid this amount on 3/9/94.

On 4/9/94, when PW 1 went to the appellant's house and inquired about the situation, the appellant's brother, Ashish Dutta, revealed that the appellant had no authority to secure the job. He advised PW 1 to exert pressure to recover the money. That same evening, the appellant visited the deponent's house after 10 pm and demanded an additional Rs 40,000, threatening legal repercussions if the sum was not paid.

On 5/9/94, the deponent met with Tapan Mitra and subsequently lodged a written complaint with the Commissioner of Police and DC, requesting the return of the money. Ultimately, Premangshu did not get the service.

PW 1 stated that the DC had informed that the appellant needed to be caught in a trap. Instructions were given to visit the appellant's house and then take him to Tapan Mitra's house to deliver the money. A memorandum detailing these plans was prepared by PW 9 in the presence of the deponent, spanning six sheets.

On 6/9/94, PW 1, PW 4 and PW 5, approached the appellant's residence. Upon calling the appellant and attempting to involve Tapan Mitra, a commotion ensued, resulting in the appellant being expelled from Tapan Mitra's residence. The appellant subsequently directed PW 1 to deliver the money at the College Street branch.

At the College Street branch, the appellant received Rs 1,000 in ten-rupee notes, bearing serial numbers 1 to 100 at 11:15 am. Those were 100 pieces of ten rupees G.C notes and were mixed with powder at Lal Bazar. Then as per instructions PW 1 held the hands of the appellant as a sign of request and told him to accept the money. Then PW 4, PW 5, PW 6 and PW 9 along with the other police officers intervened. The appellant was apprehended and taken to PW 3, Branch Manager's office. (This statement was corroborated by PW 2, PW 3 and PW 5)

In the presence of witnesses, the appellant's hands were washed, and the resulting pink-colored water was collected in a bottle, labeled as 'B', marked as Ext. 1 and signed by PW 1, marked as Ext. I/1. PW 1 confirmed that the bottle labeled as 'A', marked as Ext. II, signature was marked as Ext. II/1, contained hand-washed water from a witness, though the specific witness was not identified in the statement.

Additionally, upon search by PW 6, Rs 1,000 was recovered from the appellant's right pocket marked as Ext. III, and Rs 6,800 was retrieved from his left pocket marked as Ext. IV. PW 1 stated that Rs 1000 notes were his as those were new notes and started from serial no. 1 to 100. The rest of the notes recovered were marked as Ext. V. (This was corroborated by PW 2, PW 4 and PW 5)

A post-trap memorandum marked as Ext. 3 was prepared by PW 9, along with a seizure list that documented the money and the sealed bottle containing the hand-washed water. PW 1 signed both documents marked as Ext. 3/1 collectively. PW 1 had kept the notes and the numbers of the G.C. notes in his house. The number of the notes starts from 02B 950401 to 950500.

PW 1 stated that PW 3, PW 4, PW 5 and PW 6 were present at the time of preparation of the seizure list marked as Ext. 4. They signed in the seizure list marked as Ext 4/1. The signature of the appellant on the seizure list was marked as Ext. 4/2.

ii. During cross-examination PW1 asserted that he had a substantial social network. He had entered into a marriage with Bela Ghosh, sister of one Joykrishna Ghosh, who was a C.A. to the then Chief Minister. During investigation, PW 1 wrote a letter marked as Ext. A to the D.C, D.D of Calcutta, intimating that he was not willing to proceed with the case. His signature on the letter was marked as Ext. A/1.

iii. PW 2 was designated as the Senior Scientific Officer cum Assistant Chemical Examiner of State Forensic Science Laboratory on 28/06/1995. He stated that he had received two sealed bottles from Narkeldanga P.S. as part of case no. 188 on 6/9/94. Subsequently, he examined the contents of the bottles and submitted a report marked as

Ext. 5 along with his signature marked as Ext. 5/1. He explained that "If sodium carbonate is mixed with phenolphthalein powder and taken in water the colour of the water will turn pink." Thereafter, he sealed the bottles along with his signature marked as Ext. I/2 and Ext II/2.

iv. PW 3 was posted as Manager of Central Bank of India, Calcutta Branch on September, 1994. PW 3 recognised PW 1 as a staff of his branch at the bank.

PW 3 stated that on 6/9/94, some police officers had arrested the appellant in connection with demand and acceptance of bribes from PW 1, who at that time was working on deputation basis at the Calcutta branch of the said bank. PW 3 had vacated his cabin, allowing the police officers to handle the matter. PW 3 was a witness to the seized items of bottles and money and his signature was marked as Ext. I/3 and Ext. III/3 respectively.

PW 3 was declared hostile.

v. During cross-examination PW 3 mentioned that it took approximately 10 minutes for the police officers to search the appellant and handle the matter related to the arrest and investigation.

vi. PW 4 was acquainted with PW 1. He stated being aware of a monetary transaction between PW 1 and the appellant but was uncertain about the total amount of money involved. PW1 had informed him that the money was intended for a service provided by the appellant.

PW 4 was a witness to the entrapment of the appellant which occurred in September/October, 1994. His signature on the pre trap memorandum, post trap memorandum, labels of the two seized bottles, the seized 10 denomination notes and the seized articles was marked as Ext. 2/2, Ext. 3/3, Ext. I/4, Ext. II/3, Ext. III/4 and Ext. 4/3 respectively. He could not recollect the colour of the solution in the bottle nor the amount of notes recovered from the appellant. However, upon reviewing the seizure list, he confirmed that a sum of Rs 6816 had been retrieved from the appellant.

PW 4 was declared hostile.

vii. During cross-examination PW 4 mentioned that the second bottle, containing the pink liquid, was obtained from PW5 and marked as Ext. II. PW 4 asserted that he could not recollect as to whether the recovered money was found in the pockets of the appellant. The recovered money was marked as Ext. V.

viii. PW 5 mentioned that during his employment on $4^{th}/5^{th}$ September, 1994, he received directions from his superior officer to act as a witness in a trap case at the request of PW9. PW5 was instructed to report to PW9 at Lalbazar on 6/9/94 at 6 hours, which he complied. PW9 explained the reason for entrapping the appellant on 6/9/94. PW5 was directed by PW9 to stay with PW1 and observe the monetary transaction between PW 1 and the appellant. He was then asked to wash his hands in a solution of water contained in a "Gamla" (tumbler), which turned pink. This solution was poured into a bottle and sealed. This was marked as Ext. II. The signature of the label on the bottle, the pre-trap memorandum and the post-trap memorandum was marked as Ext. II/4, Ext. 2/3 and Ext. 3/4 respectively.

PW 5 was instructed by PW 9 to signal by scratching the right side of his head with his right hand if the monetary transaction occurred between PW1 and the appellant. PW 5 stated the appellant arrived at the place of entrapment at around 8/10 am. PW 5 narrated that PW 1 informed the appellant that he had already paid most of the demanded sum and had brought Rs 1,000 to expedite the process. Thereafter, the appellant left briefly, mentioning that he needed to consult someone. Upon return, he mentioned to PW 1 that he was not prepared to take the money at that time and would return at 11 am in front of the Central Bank of India near College Street, Bata shoe shop.

Subsequently, the police officers in plain clothes were stationed at the scene. At about 11:25 am, the appellant returned and demanded the remaining money from PW1, stating that his relative would soon secure the promised job. Hence, PW 1 complied and handed over the notes mixed with powder, concluding the monetary transaction. PW 5, signaled as instructed, prompting the police officers to arrive at the scene and apprehend the appellant with the marked notes. The appellant was searched by the police, who recovered Rs 6816 from him. The bottle containing the solution was marked as Ext. I. PW 5’s signature on the label of the bottle and the seized notes were marked as Ext. I/5 and Ext. III/5. The brown cover in which the seized notes were kept was marked as Ext. VI and his signature was marked as Ext. VI/1. The signature on the sealing paper was marked as Ext. IV/1.

ix. PW 6 was posted as an Inspector of the Calcutta Police on 6/9/94. He identified the appellant as the sub-inspector of police attached to the Traffic Department. At about 6am, on 6/9/94, PW 6 was summoned to the chamber of PW 9, where several witnesses, including PW 7, N.K. Bhattacharjee, PW 5, PW 4 and PW 1, were also present. The complaint alleged that the appellant had demanded Rs 50,000 from PW1. PW1 had already paid Rs 25,000 in three installments, and the final installment of Rs 25,000 was to be given to the appellant. On the day of the incident, the appellant arrived at 11:15 hrs. He met and had a conversation with PW 1, who paid only Rs 1,000 out of the remaining Rs 25,000. The payment was arranged to take place on 6/9/94, near Shyampukur Police Station. The signature of PW 6 on the pre trap memorandum was marked as Ext. 2/5.

PW 6 stated there was a demonstration conducted before the actual entrapment, during which PW4 dipped his hand into the solution without touching the notes mixed with the powder. No change in the color of the solution occurred. However, when PW5 dipped his hand into the solution after touching the marked notes, the color of the solution turned pink. The signature of PW 6 on the sealed bottle was marked as Ext. II/5.

PW 6 mentioned that PW 1 was instructed to make the payment to the appellant only upon the appellant's demand. PW6 was tasked with monitoring the monetary transaction and providing a predetermined signal if such a transaction occurred. Furthermore, all the witnesses were instructed to remain in close vicinity to PW 1 to ensure that conversations could be heard.

PW 6 also mentioned that upon apprehending the appellant, he was searched and Rs 6,516 was recovered from him.

x. PW 6 stated that, on the day of the entrapment, the pre-trap memorandum was being made between 6 am to 8 am. The place of occurrence was mentioned in the post-trap memorandum.

xi. PW 7 stated that the appellant initially refused to accept Rs 1,000 from PW1, insisting that at least Rs 5,000 should be paid on that day itself. Later that day at 11:30 am, the appellant demanded the money again but PW 1 stated that he could only manage to provide Rs 1,000. The appellant accepted the money and placed it in his pocket. Following his apprehension, the appellant was unable to provide a satisfactory explanation for the possession of the marked money.

xii. PW 8 mentioned a sanction order that was issued against the appellant and was marked as Ext. 6.

xiii. PW 9, who held the position of Assistant Commissioner of Police at the time of the incident, stated that the case had been endorsed to him for investigation by D.C.D.D. Goutam Chakraborty. The signature of the said person was marked as Ext. 1/2. PW 9's signature on the label of the seized bottles was marked as Ext. I/7 and Ext. II/6.

PW 9 further stated that on the day of the incident, he had instructed all the officers, including himself, not to carry any money to the location of the incident. Additionally, he instructed that only PW 7 should carry Rs 200 for incidental charges.

PW 9 mentioned that the offer of the demanded money by PW 1 to the appellant had been recorded in the pre-trap memorandum. The signature of PW 9 on the post-trap memorandum, the seizure list and the seized money were marked as Ext. 3/6, Ext. 4/6 and Ext. III/6 respectively.

10. PW-1 in his deposition stated that *"On on 6.9.94 Dipak De, Dipak Mukherjee and myself went to the house of Kumar Babu at 6-30/6-45 and called him. We took him a taxi and went to the quarter of Tapan Babu. We were standing outside and Kumar Babu went to call Tapan Babu. But Tapan Babu raising hue and cries drove Kumar Babu out Kumar Babu came down from the quarter of Tapan Babu and told us that he would take the money at College Street Branch of our Bank and asked us to go there. Thus he went away. We came to our College Street Branch. There he came at 11-15 a.m. and he called me on the road. He demanded the money. I gave him Rs.1000/-. There were 100 pieces of ten rupees G.C.notes. Those notes were mixed with powder at Lal Bazar. Then as per instructions I held the hands of Kumar Babu as a show of request and told him to accept the same as I had no capacity to pay more.*

Immediately Asish Mitra, Swapan Das Gupt and other police officers and Dipak De and Dipak Mukherjee also came up there. Kumar Babu was caught by the Police Officer and taken to the chamber of the Branch Manager. There the hands *of Kumar Babu were washed and the colour of the water immediately turned into pink. The said coloured water was taken in bottle.*

The bottle was sealed.

Swapan Das Gupta searched Kumar Babu and the sum of Rs. 1000/- was recovered from the right side pocket of his pant and Rs.6,800/- was recovered from the left side pocket of his pant. The said Rs. 1000/- was of mine as those were new notes and started from the serial no. 1 to 100."

11. In his cross-examination PW-1 stated that *"Socially I am well-connected. I know Sri Joykrishna Ghosh, C.A. to the Chief Minister. I have married Smt. Bela Ghosh, sister of Sri Joykrishna Ghosh, During investigation of this case I wrote a letter to the D.C., D.D., Calcutta intimating that I am not willing to proceed with this case. This is the copy of that letter made under the same carbon process as with the original. The letter is marked as Exhibit- A. This is my signature in the said letter marked as Exhibit A/1. I made a complaint with the Police. I was examined by the police in connection with this case."*

12. PW-5 in his deposition stated that *"My Superior Officer asked me to report to Sri Mitra, Assistant Commissioner of Police, at Lalbazar on 6.9.94 at 6-00 hours. on 6.9.94 accordingly I reported before Sri Mitra at Lalbazar. Shri Mitra told me that one Sri Kumar Dutta, a sub- Inspector of Calcutta Police Force, took Rs. 25,000/- from Niharendu Basu (who was also present at Lalbazar at the material time) on the pretext of giving a job to one of the relatives of Sri Niharendu Basu, The said Assistant Commissioner of Police further told me that Kumar Dutta, the Sub-Inspector, has appointed 6th of September as the date for taking further sum of Rs.1000/- from Sri Niharendu Basu. Sri Mitra, the Assistant Commissioner,*

requested me to stay with Sri Niharendu Basu and to watch the monetary transaction, if any, that might take place between Sri Kumar Dutta and Sri Niharendu Basu. Sri Mitra gave some phenolphthalein powder in my hand and asked me to wash my hand in a solution of water with sodium carbonate kept in a "Gamla" (Tumbler). On putting my hand into that liquid solution the colour of solution turned pink. That pink coloured solution was then poured in a bottle which was duly sealed Sri Mitra prepared some papers in that regard duly signed by me. This is the bottle wherein the solution was poured, The solution still holds its pink colour. The bottle was sealed by Sri Mitra in my presence. The bottle with the contents has already been marked as Exhibit- II. This is my signature on the label pasted on the bottle. Marked as Exhibit- II/4. This is the pre-trap memorandum prepared by Sri Mitra and the same bears my signatures with others. My signatures in the pre-trap memorandum are collectively marked as Exhibit- 2/3. There was a bundle of hum Hundred Notes of ten-rupee denominations amounting to Rs.1000/-. That bundle of Notes was treated with phenolphthalein powder. After mixing the said phenolphthalein powder with the concerned bundle of Notes the same was handed over to Sri Niharendu Basu for giving it to Kumar Dutta, if demanded by the latter. Sri Mitra also requested me to give some signal if the monetary transaction takes place between Sri Niharendu Basu and Kumar Dutta. Sri Mitra asked me to scratch the right side of my head with my right hand in the event the monetary transaction takes place. Sri Mitra told me and others that Sri Dutta has appointed and would come to a place near Shyampukur Police station. We waited at that place (Near Shyampukur Police station) since 8'0 Clock in the morning of 6.9.94. There were *police personnels in plain cloth around that place to watch out the transaction and to take steps in the wake of the transaction, if any. At about 8/10 a.m. Sri Kumar Dutta came to that place. Sri Kumar Dutta had conversation with Sri Niharendu Basu. Sri Kumar Sri Basu told Sri Dutta that he is being harassed for a long time. He wanted to know from Sri Dutta how long further would it require to yet the job. I also heard Sri Basu say to Sri Dutta that he was already paid the major portion of the sum of money demanded by Sri Dutta, Shri Basu further told Sri Dutta that he has brought one Thousand Rupees on that date for Sri Dutta and requested him (Sri Dutta) to arrange for the job at an early date. Thereafter Sri Dutta went to a Police Quarters in the Shyampukur Thana Building telling Sri Basu to wait for some time. After 3/4 minutes Sri Dutta came down, Sri Dutta told Sri Basu that he is not prepared to take the money at that time. He would consult the appropriate person and thereafter at 11 a.m. on that date he would take the money at a place in front of the Central Bank of India (near College street Bata shoe Shop). Thereafter we dispersed. I came back to Lalbazar. Around 11 a.m. on that day I alongwith Sri Niharendu Basu waited for Sri Kumar Dutta in front of the Central Bank of India (near College Street Bata Shoe Shop). The Police Personnels in plain cloth were on the foot-path of the other side of the Road. At about 11-25 a.m. Sri Kumar Dutta came to that place and told Sri Niharendu Basu that his relative would be getting the job soon and arrangement has been made accordingly. He wanted the money from Sri Niharendu Basu, Sri Niharendu Basu further requested Sri Kumar Dutta to provide for the job quickly and handed him (Sri Dutta) over the said bundle of Notes (Rupees one Thousand) mixed with phenolphthalein powder. The monetary transaction* *between Sri Basu and Sri Dutta being over I made signals as arranged by scratching my head with my right hand. Instantly the Police Officers who were around in plain cloths came to the spot and held Kumar Dutta with the said bundle of Notes in his (Dutta's) right hand, Sri Dutta thereafter was taken to the chamber of the Manager of the Central Bank of India where Sri Dutta was asked to put his hand in the solution of water with sodium carbonate. The Manager of the Bank was then present in his chamber. Sri Kumar Dutta put his hand in the solution of water with sodium carbonate. The colour of the solution turned pink. The said bundle of Rs.1000/- (of Ten-rupee Denominations) was seized from the possession of the accused Kumar Dutta (identified the accused who is present in Court today)."*

13. PW-5 in his cross-examination stated that *"The sum of Rs.1000/- was seized from the hand of the accused Kumar Dutta. I am still employed with M/s. Coal India Limited and am presently holding the Post of Deputy Manager, Vigilance. As far as I remember with effect from 16th September, 1995 I was promoted to the Post of Deputy Manager, Vigilance. I cannot remember now if I had been to Lalbazar for the first time in connection with this case whether before or after the Mahalaya, I know some of the Assistant Commissioners and Deputy Commissioners of Police of the Calcutta Police Force. …. Not a fact that I was not directed by my Superior Officer to become a witness in the trap case and that I am suppressing the truth. The I.O. of this case took down my statement as I said. I find that it has been recorded in my statement that on 5.9.94 in the afternoon Sri Asish Kumar Mitra, Assistant Commissioner of Police, Detective Department, requested me over telephone to come to his office on 6.9.94 to*

become a witness in the trap case. The witness volunteers that the statement aforesaid has not been recorded) correctly by the I.O. It is a fact that I deposed once in a case on behalf of the C.B.I. The accused Kumar Dutta also went away from the place where we (illegible) near the Shyampukur Police Station. It is not possible on my part to recollect now if the statement above was recorded by the 1.0. in my statement under section 161 Cr.P.C. or not. Not a fact that Si Mitra did not tell me that Kumar Dutta would be coming to a place near Shyampukur Police station as appointed. I do not remember now if the foregoing statement was made to the I.O. and stood recorded in my statement under section 161 Cr.P.C. I do not distinctly remember what I stated to the I.O. in respect of offer of money to the accused Sri Dutta at the place near Shyampukur Police station in my statement recorded under Section 161 Cr.P.C..... It is a fact that the accused was taken to the chamber of the Bank Manager by the Police with the money being held in the hand of the accused."

14. PW-6 in his deposition stated that *"I am an Inspector of the Calcutta Polic Force, now posted as 0.C., Special Cell (GS), Detective Department Lalbazar. on 6.9.94 I held the same post. I know the accused Kumar Dutta (identified). At the material time Sri Kumar Dutta was a Sub-Inspector of Police then attached to Traffic Department, Calcutta Police. At about 6 Am. on 6.9.94 I was called in the Chamber of Sri Asish Mitra, then Assistant Commissioner of Police, Narcotics, under instruction of D.C. D.D., Calcutta. At the chamber of Sri Mitra there were also two Inspectors of the Calcutta Police, namely, Sri Suhi Chowdhury and Sri N.K. Bhattacharjee. Besides, there were two other persons, namely, Deepak Mukherjee and Sri Deepak Dey then present in the chamber of Sri Mitra. Sri*

Niharendu Basu, the complainant of this case, was also present in the Chamber of Sri Mitra. Sri Basu identified the complaint, which was lying with Sri Mitra, as the one written by him. The said Complaint was read out in our presence. The complainant Sri Basu brought with him a sum of Rs.1000/- in Ten Rupee Notes (i.e. Rs.10 x 100 Notes). A Demonstration was made in the chamber of Sri Mitra in regard to the Trap. The allegation as set down in the complaint revealed that Sri Kumar Dutta, the accused, demanded Rs.50,000/- from Sri Basu for giving a Job to Sri Premangsu Sarkar, a relative of Sri Basu. Sri Basu made payments of Rs.25,000/- in three instalments towards that end. Sri Kumar Dutta demanded the Balance sum of Rs.25,000/-. Sri Basu agreed to pay certain sum of money to Sri Kumar Dutta on 6.9.94 as he may arrange. Sri Basu could arrange Rs.1000/- for payment to Sri Kumar Dutta, The payment was arranged to be made on 6.9.94 at the road near Shyampukur Police station. Sri Basu, however, was reluctant to pay any further sum of money to Sri Dutta and accordingly he lodged the present complaint with the D.C.D., Calcutta."

15. PW-6 in his deposition further stated that *"The complainant was further instructed to make payment of the said money to Sri Kumar Dutta only on demand. The witness Deepak Mukherjee who was a Member of the Trap Party was instructed to keep watch on the transaction Mimink when made. He was instructed to give signal by putting his right hand on his head if and when the payment would be made to Sri Kumar Dutta by Sri Niharendu Basu. All the witnesses were further instructed to remain in disguise in the close vicinity of the Complainant E so that they may hear the conversations between the accused and the Complainant and see the transaction and take necessary steps in the*

matter. All the witnesses of the Trap-Party washed their hands before going to witness the Trap".

16. PW-6 in his cross-examination stated that *"The witnesses were directed by the I.O. Sri A.K. Mitra to remain close with the complainant and to hear the conversation and to see the transaction of money if any at about 09:00 hrs. Sri Kumar Dutta (accused) was seen coming towards the complainant & who was standing on the Shyampukur St. outside the Shyampukur P.S. and there was a conversation between the accused and the complainant for 2/3 minutes and the witnesses who stand close nearby heard the conversation and thereafter accused left the spot within 5/6 minutes. It was reported by the witnesses and the complainant that accused Kumar Dutta had demanded bribe amount of Rs.5000/- at least on that day instead of Rs.1000/- which the complainant was carrying. It was also reported by the witnesses and the complainant who heard the conversation that the accused asked the complainant to come near the College St. Bata Show Room at the crossing of Keshab Sen St. and College St. At about 11-30 hrs. with Rs. 5000/- at least as bribe towards payment against balance Rs. 25,000/-. Accordingly the trap-party along with the witnesses including the complainant t reached the above noted spot at the crossing of Keshab Sen Street and College Street at about 11.00 hrs. and at that juncture the complainant took position in front of College Street Bata on Keshab Sen Street and College Street and the above-named two independent witnesses namely, Sri Dipak Kumar Mukherjee and Sri Depak Dey stood closely with the complainant in order to hear the conversation and see the transaction. Then at about 11-15 hrs, the accused was seen coming towards the complainant and*

met him and there was conversation between the accused and the complainant and thereafter the complainant handed over the bribe money to the accused as per his demand and the accused took bribe money by his right hand and at that time as per the pre-trap memorandum one of the witnesses signaled by raising his hands his head and the police team (trap party) who were watching the transaction came and caught the accused red-handed by holding his right hand and the accused was then taken to an adjacent Bank namely Central Bank of India in the Branch Manager's Room of its 1st floor and with the permission of Branch Manager".

17. PW-7 in his deposition stated that *"I am Assistant Commissioner of Police now posted, Anti-Corruption Bureau, Vigilance Commission, West Bengal. In September, 1994 I was officer-in-charge, Fraud Section, Detective Department, Lalbazar, Sri Asish Kumar Mitra, Assistant Commissioner, Detective Department was entrusted with the investigation of the case on the complaint of one Sri Niharendu Basu of Kailash Bose Street Calcutta- 6.*

I was one of the members of the team under the said Asish Mitra for the purpose of investigation n of this case. It was a case of alleged demand of illegal gratification by one Kumar Dutta (Accused), a Sub-Inspector of Calcutta Police attached to the Traffic Department. It was alleged that the accused had demanded Rs.50,000/- from the said complainant towards appointment of his nephew in the Calcutta Police as Sub-Inspector of Police Till 5.9.94 he had allegedly paid Rs.25,000/- to the said accused. Further sum of Rupees was demanded and was about to be paid on 6.9.94. At this time the complainant lodged this complaint. An arrangement was made to laid a trap against the *accused while in the process of transaction of the half of transaction money. In the morning of 6.9.94 at Lalbazar a demonstration was held in presence of the complainant, two independent witnesses, the I.0., myself and Inspector Swapan Kumar Dasgupta (P.W. 6). The complainant could procure only Rs.1,000/- all in ten rupee G.C. Notes which were produced before the I.0. The G. C. Notes were treated with phenolphthalein powder. One of the witnesses was asked to touch the notes. Thereafter his hands were washed in a bowl containing water treated with washing soda and the colour of the solution turned pink. It was preserved in a bottle which was marked 'A' duly corcked, sealed and labelled and signed by all the witnesses including the I.0. and Inspector Swapan Dasgupta".*

18. PW-7 in his deposition further stated that *"The accused came to the spot i.e. just beside Shampukur Police Station Building. There the accused had conversation with the complainant when he came to know that the complainant had brought only Rs.1,000/- and the accused refused to accept it saying at least Rs.5,000/- should have to be paid that day itself at about 11-00 hrs. at the crossing of College Street and Keshab Sen Street near Bata Shoe Stores. Thereafter the complainant, all the witnesses and the members of the team assembled at the crossing of College Street and Keshab Sen Street near Bata. About 11-30 hrs. or so the accused arrived at the spot, had discussion with the complainant (P.W. 1) and demanded the money and the complainant had paid the money i.e. Rs. 1,000/- saying he could procure only this money. The accused did not count it but put it in his pocket. The money was given in an envelope. Thereafter the accused was intercepted and taken to a nearby bank that is Central Bank of India on Keshab Sen Street which is known as College Street*

Branch as there was a crowd around us. The hand of the accused was washed in a bowl containing water mixed with soda at the chamber of the Manager of the said Bank and the colour of the water turned pink and the solution of hand-wash was preserved in a bottle marked 'B'. It was duly corcked, sealed and labelled and signed by the witnesses. A seizure list was prepared in respect of the items seized on the spot and also the pet/ person of the accused. A sum of further Rs.6,800/- and odd was recovered from his possession. The amount was also seized as the accused could not explain satisfactory about such possession. A post-trap memorandum was also prepared on the spot i.e. at the chamber of the Manager of the Bank. The accused was arrested and taken to Lalbazar where the charge was explained to him. The ground of arrest was intimated and he had no injury and no complaint. The amount of Rs.8,000/- and odd seized from the possession of the accused includes the amount o bribe received by him".

19. PW-9 in his examination-in-chief stated that *"I also instructed witnesses Dipak Kumar Mukherjee and Dipak Dey to remain present at the place of trap very close to the complainant and to hear the conversation between the accused and the complainant and to watch the watch the transaction, if any. I also instructed all the officers present there not to keep any money in their pocket but I only instructed Sunit Chowdhury to keep Rs. 200/- with him for the purpose of incidental charges and accordingly all the officers including myself kept our money inside my office. Only Sunit Chowdhury carried Rs. 200/- with him. After all these things we proceeded towards Shyampukur Police station. Prior to proceeding to Shyampukur Police station I instructed the witnesses including the complainant to give signal by putting hand on head as soon as the money was*

paid to the accused and accepted of the same by the accused on demand. All these things have been recorded in the pre-trap memorandum prepared under my instruction by Swapan Dasgupta.

After reaching Shyampukur Police Station at about 8-40 a.m. myself and three other Inspectors who were previously acquainted with the accused hid ourselves inside Shyampukur Police Station for the purpose of avoiding alertness of accused and at that time the complainant and two other independent witnesses were waiting outside in front of Shyampukur Police Station. Before going to the place of trap I went to Narkeldanga police station and recorded a criminal case being Narkeldanga p.s. case no.188 dt. 6.9.94 under sections 420 I.P.C and 7 of P.C. Act read with Section 13(2) and 13(1)(d) of P.C. Act, 1988 against accused Kumar Dutta, S.I. of Police, Calcutta. The formal F.I.R. was drawn up at 7-30 hrs. on 6.9.94. The F.I.R. was drawn on the basis of a letter of complainant filed by the complainant. The formal F.I.R. was drawn by me and it bears my signature. The formal F.I.R. with signature of witness is marked Exhibit- 7.

At about 9'0 clock in the morning of 6.9.94 the accused Kumar Dutta came in front of Shyampukur Police station and talked with the complainant while we were watching them hiding ourselves in a corner by the side of the gate of Shyampukur Police station. The conversation took place between the accused and the complainant for about 2/3 minutes and thereafter the accused left the place. Subsequently after departure of the accused from that place I came to learn from the complainant and two witnesses that the accused demanded Rs. 5000/- on that day at least from the complainant and he asked the complainant to come in front of Bata Shoe Shop showroom at the crossing of Bidhan Sarani *and Keshab Sen Street at about 11-30 hrs. on the same day. The complainant also told me that he requested the accused to accept Rs.1000/- from him instead of Rs.5,000/- as he was not in a position to a pay the said amount at a time and ultimately the accused agreed to accept the amount of Rs.1000/- and asked him to come in front of Bata Shoe Shop Show room at the crossing of Bidhan Sarani and Keshab Sen Street. Thereafter myself along with other witnesses, complainant and the other police officers came back to my office at Lalbazar at about 9-30/9-35 a.m."*

20. PW-9 in his examination-in-chief further stated that *"At about 11-15 hrs. on 6.9.94 I along with other police officers and the complainant along with the witnesses went in front of Bata Shoe shop at the crossing of Bidhan sarani and Keshab Sen Street and waited there for the accused to come. The complainant and two witnesses were standing on the road at the crossing of Keshab sen Street and Bidhan Sarani in front of Bata Shoe Shop and myself and other police officers were standing behind them on the payment hiding ourselves behind a tree standing on the footpath. At about 11-25 or so the accused came in front of Bata Shoe Shop and met with the complainant at the said crossing and then the accused started talking with the complainant and myself and other Police Officers were watching that. Then after a few minutes the complainant offered the bundle of ten rupee notes to the accused after taking out from his breast pocket and as soon as the accused received the money from the complainant, one of the witnesses raised his hands on his head signaling and myself with other Police Officers rushed to that place of occurrence and caught hold of the right hand of the accused with the money. The offer of money to the accused on*

demand by the accused has been recorded in the pre-trap Memorandum. The accused demanded the money from the complainant and the complainant paid the money to the accused.

The accused was then taken to the Office chamber of Manager, Central Bank of India, College Street Branch which is situated by the side of Bata shoe shop the premises Number being 1, Bidhan Sarani, Calcutta- 6".

21. PW-9 in his cross-examination stated that "*It is fact that p.w.1 Niharendu Bose did not make any statement under Section 161 Cr.P.C. to the effect that Premanshu applied for a Post of Sub- Inspector of police in the year, 1994. Then my friend Dipak De told me to contact Kumar Dutta, a Police Officer, who had influence in Police Association.*

It is fact that P.W. 1 did not make any statement to me to the effect that "Kumar Dutta told me that if I gave money he would talk with Association people and would do the needful."

It is fact that P.W. 1 did not make any statement to me to the effect that "on 9.4.94 I went to the house of Kumar Babu at 9-9/30 p.m. when he was absent and then his brother, Ashis Dutta, told me that Kumar Babu had no power to give any job."

"It is fact that P.W. 1 did not make any statement to me to the effect that "on 4.4.94 Kumar Babu came to my house after 10 p.m, and told me to give a further sum of Rs. 40,000/- to be paid to the Commission of Police and D.C./D.D. and if the sum is not paid I would be put behind the bar".

It is fact that P.W. 1 did not make any statement to me to the effect that "D/C., D. D. told me that Kumar Baby was to be entrapped. He told me to go to the house *of Kumar Butta and to take him to the source of Tapan Mitra and to deliver the sum to Kumar Babu in the house of Tapan Mitra".*

It is fact that P.W. 1 did not make any statement to me to the effect that and went to the quarter of Tapan Babu. "We took him a taxi We were standing out side and Kumar Babu went to call Tapan Babu. But Tapan Babu raising him & cry drove Kumar Babu out...".

It is fact that P.W. 1 did not make any statement to me to the effect that "Kumar Babu came down from the quarter of Tapan Babu, and told us that he would take the money at College Street Branch of our Bank and asked us to go there".

It is fact that P.W. 1 did not make any statement to me to the effect that accused came there at 11.15 a.m. and called P.W. 1 on the road.

It is fact that P.W. 1 made categorical statement to me to the effect that "I told the accused in front of the Bank to accept Rs.1000/- from me as I had no capacity to pay more".

It is fact that P.W. 1 did not make any statement to me to the effect that "(illegible) regarding Medical Exam, were filled in sitting in a Coffee House at the instance of the accused."

I examined P.W. 5 Dipak Kumar Mukherjee and recorded his statements under section 161 Cr.P.C.

It is fact that P.W. 5 did not make any statement under section 161 Cr.P.C. to the effect that "Shri Mitra, the then Assistant Commissioner of Police told me to give signals by scratching the right side of my head with my right hand on the event money transaction between the complainant and the accused take place".

It is fact that P.W. 5 did not make any statement under section 161 Cr.P.C. to the effect that Mr. Mitra told me that Kumar Dutta would be coming to a place near Shyampukur P.S. as appointed".

It is fact that P.W. 5 did not make any statement under section 161 Cr.P.C. to me to the effect that "there was conversation at the place near Shyampukur P.S. between the accused and the complainant to the effect that the complt. is being harassed for a long time and that the complt. wanted to know from the accused as to when his relative is going to get the job and that the major portion of the sum of money demanded by Shri Mitra has already been paid to the Accused."

It is fact that P.W. 5 did not make any statement under section 161 Cr.P.C. to me to the effect that - "keeping us waiting Kumar Dutta had entered into a police quarter in the Miyake Shyampukur p.s. Building, and that after 3/4 minutes he came back fromt he said quarter."

It is fact that P.W. 5 did not make any statement under section 161 Cr.P.C. to the effect that "after his return from Shyampukur Police Quarters building he said to the Complt. that he is not prepared to take the money at that time."

It is fact that P.W. 5 did not make any statement under section 161 Cr.P.C. to the effect that Kumar Dutta stated to the Complt. that he would consult the appropriate person and thereafter at 11 A.M. he would take the money at a place in front of the Central Bank of India".

It is fact that P.W. 5 did not make any statement to the effect to me that "Accused stated to Complt. that his relative would be getting the job soon and arrangement has been made accordingly".

22. In the case of ***Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi***[1]) the Hon'ble Supreme Court observed as follows :

> ***10.*** *The demand for gratification and the acceptance thereof are sine qua non for the offence punishable under Section 7 of the PC Act.*
>
> ***11.*** *The Constitution Bench[4] was called upon to decide the question which we have quoted earlier. In paragraph 74, the conclusions of the Constitution have been summarised, which read thus:*
>
>> *"**74.** What emerges from the aforesaid discussion is summarised as under:*
>>
>> *(a)* ***Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.***
>>
>> *(b)* ***In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.***
>>
>> *(c)* ***Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.***
>>
>> *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the*

[1]2023 SCC Online SC 280

public servant, the following aspects have to be borne in mind:

(i) if there is an ***offer to pay by the bribe giver*** *without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a* ***case of acceptance*** *as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*

(ii) On the other hand, ***if the public servant makes a demand*** *and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is* ***a case of obtainment****. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.*

(iii) ***In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act.*** *Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence.* ***Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant,***

would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

(e) ***The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof.*** *On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) ***In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.*** *The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal.*

Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point

(e) as the former is a mandatory presumption while the latter is discretionary in nature."

12.*The referred question was answered in paragraph 76 of the aforesaid judgment, which reads thus:*

> ***"76.*** *Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*
>
> ***In the absence of evidence of the complainant (direct/primary, oral/documentary evidence), it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution****."*

13*. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj*[1] *and P. Satyanarayana Murthy*[2]*. There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu*[5]*, which follows the view taken in the cases of B. Jayaraj*[1] *and P. Satyanarayana Murthy*[2]*. In paragraph 9 of the decision in the case of B.*

Jayaraj[1], this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:-

> ***"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."*

14. *The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.*

15. *In the case of N. Vijayakumar[5], another bench of three Hon'ble Judges dealt with the issue of presumption under*

Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

> *"**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 [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] **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."*

16. *Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.*

17. *Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any* *gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.*

18. *The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does* *not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."*

23. In the case of ***P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh And Ors.***[2] the Hon'ble Supreme Court observed as follows :

*"**21.** In State of Kerala v. C.P. Rao [(2011) 6 SCC 450 : (2011) 2 SCC (Cri) 1010 : (2011) 2 SCC (L&S) 714] , 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*

[2](2015) 10 SCC 152

been underlined in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] 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.*

24. *The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW 1 S. Udaya Bhaskar. The substance of his testimony, as has been alluded to hereinabove, would disclose qua the aspect of demand, that when the complainant did hand over to the appellant the renewal application, the latter enquired from the complainant as to whether he had brought the amount which he directed him to bring on the previous day, whereupon the complainant took out Rs 500 from the pocket of his shirt and handed over the same to the appellant. Though, a very spirited endeavour has been made by the learned counsel for the State to co-relate this statement of PW 1 S. Udaya Bhaskar to the attendant facts and circumstances including the recovery of this amount from the possession of the appellant by the trap team, identification of the currency notes used in the trap operation and also the chemical reaction of the sodium carbonate solution qua the appellant, we are left unpersuaded to return a finding that the prosecution in the instant case has been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of PW 1 S. Udaya Bhaskar is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal gratification as enjoined by law to hold that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act has been proved. True it is, that on the demise of the complainant, primary evidence, if any, of the demand is not forthcoming. According to the prosecution, the demand had in fact been made on 3-10-1996 by the appellant to the complainant and on his complaint, the trap was laid on the next date i.e. 4-10-1996. However, the testimony of PW 1 S. Udaya Bhaskar* *does not reproduce the demand allegedly made by the appellant to the complainant which can be construed to be one as contemplated in law to enter a finding that the offence under Section 7 or Sections 13(1)(d)(i) and (ii) of the Act against the appellant has been proved beyond reasonable doubt.*

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 [(2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] 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 order [P. Satyanarayana v. State of A.P., Criminal Appeal No. 262 of 2002, order dated 25-4-2008 (AP)] of the High Court is hereby set aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately."*

24. In the case of ***B. Jayaraj Vs. State of Andhra Pradesh***[3] the Hon'ble Supreme Court observed as follows :

*"**7**. In so far 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 Vs. State of A.P. and and C.M. Girish Babu Vs. C.B.I.*

***8.**In the present case, the complainant did not support the prosecution case in so far 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 (Exbt.P-11) before LW-9, and*

[3](2014) 13 SCC 55

there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit 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 in so far as the offence under Section 13(1)(d)(i)(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. *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.*

10. *For the aforesaid reasons, we cannot sustain the conviction of the appellant either under Section 7 or under*

13(1)(d)(i)(ii) read with Section 13(2) of the Act. Accordingly, the conviction and the sentences imposed on the accused-appellant by the trial court as well as the High Court by order dated 25.4.2011 are set aside and the appeal is allowed."

25. In the case of ***Neeraj Dutta Vs. State (Government of NCT of Delhi)***[4] the Hon'ble Supreme Court observed as follows :

> *"**3.** Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short "the Act") would not arise. Thus, the proof of demand is a sine qua non for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and dehors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning "hostile" or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.*
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> *xxx*

[4] (2023) 4 SCC 731

5. *The following are the ingredients of Section 7 of the Act:*

(i) the accused must be a public servant or expecting to be a public servant;

(ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;

(iii) for himself or for any other person;

(iv) any gratification other than legal remuneration; and

(v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

6. *Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely:*

(i) The accused must be a public servant.

(ii) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

(iii) To make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.

(iv) An agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).

(v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.

(vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.

(vii) Since the legislature has used two different expressions, namely, "obtains" or "accepts", the difference between these two must be noted.

***7.** In Subash Parbat Sonvane v. State of Gujarat [Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 : 2002 SCC (Cri) 954] ("Subash Parbat Sonvane"), it was observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d). In Sections 7 and 13(1)(a) and (b) of the Act, the legislature has specifically used the words "accepts" or "obtains". As against this, there is departure in the language used in sub-section (1)(d) of Section 13 and it has omitted the word "accepts" and has emphasised on the word "obtains". In sub-clauses (i), (ii) and (iii) of Section 13(1)(d), the emphasis is on the word "obtains". Therefore, there must be evidence on record that the accused "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or that he obtained for any person any valuable thing or pecuniary advantage without any public interest.*

***8.** It was further observed [Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 : 2002 SCC (Cri) 954] with reference to Ram Krishan v. State of Delhi [Ram Krishan v. State of Delhi, AIR 1956 SC 476] ("Ram Krishan"), that for the purpose of Sections 13(1)(a) and (b) of the Act : (Subash Parbat Sonvane case [Subash Parbat Sonvane v. State of Gujarat, (2002) 5 SCC 86 : 2002 SCC (Cri) 954] , SCC p. 88, para 7)*

"7. … '9. … It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour.' [Id., AIR p. 478, para 9] "

9. *Moreover, the statutory presumption under Section 20 of the Act is available for the offence punishable under Sections 7 or 11 or clauses (a) and (b) of sub-section (1) of Section 13 and not for clause (d) of sub-section (1) of Section 13.*

10. *Reliance could also be placed on C.K. Damodaran Nair v. Union of India [C.K. Damodaran Nair v. Union of India, (1997) 9 SCC 477 : 1997 SCC (Cri) 654] ("C.K. Damodaran Nair"). That was a case under the Prevention of Corruption Act, 1947 (" the 1947 Act" for the sake of convenience). Speaking of a charge under Section 7 of the Act, it was held that the prosecution was required to prove that:*

(i) the appellant was a public servant at the material time;

(ii) the appellant accepted or obtained a gratification other than legal remuneration; and

(iii) the gratification was for illegal purpose.

11. *While discussing the expression "accept", it was observed in C.K. Damodaran Nair case [C.K. Damodaran Nair v. Union of India, (1997) 9 SCC 477 : 1997 SCC (Cri) 654] that "accept" means to take or receive with a "consenting mind". Consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to "acceptance". Therefore, it cannot be said, as an abstract proposition of law, that without a prior demand, there cannot be "acceptance". The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is* *concerned. Under the said Section, the prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Sections 5(1)(a) and (b) and not under Sections 5(1)(c), (d) or (e) of the 1947 Act. According to this Court, "obtain" means to secure or gain (something) as a result of request or effort. In the case of obtainment, the initiative vests in the person who receives and, in that context, a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Penal Code, 1860 (for short "IPC"), which can be established by proof of either "acceptance" or "obtainment".*

xxx

88.1. *(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*

88.2. *(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

88.3. *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

88.4. *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

> *(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*
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> *(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.*
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> *(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.*

88.5. *(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*

88.6. *(f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.*

88.7. *(g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.*

88.8. *(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.*

89. In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] and P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] with the three-Judge Bench decision in M. Narsinga Rao [M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 : 2001 SCC (Cri) 258] , with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases.

***90.** Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

26. The following was held in ***K. Shanthamma v. State of Telangana***[5] by the Hon'ble Supreme Court:-

[5], (2022) 4 SCC 574

> ***"10.*** *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 qua non for establishing the offence under Section 7 of the PC Act.*
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> ***11.*** *In P. Satyanarayana Murthy v. State of A.P. [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] , this Court has summarised the well-settled law on the subject in para 23 which reads thus : (SCC p. 159)*
>
> *"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."*
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> *(emphasis supplied)*

27. The evidence of P.W. 1 was contradicted and inconsistent with the evidence of other witnesses including the Investigating Agency, P.W. 9.

28. It was a specific evidence of P.W. 1 that the bribe amount was recovered from the left side pocket of the trouser of the appellant whereas it was the evidence of P.W. 9 and other witnesses that the alleged amount was seized from the hand of the appellant. This contradiction caused a severe doubt as

to the genuineness of the prosecution case with regard to the alleged demand and acceptance of the bribe amount.

29. The evidence of P.W. 1 with regard to payment of various sums of money on 20-08-94, 22-08-94 and 03-09-94 on the score of assurance given by the appellant with regard to obtain a job for his relation in Calcutta Police is wholly uncorroborated and unsupported by any material evidence.

30. The alleged payments on 20-08-94, 22-08-94 and 03-09-94 were made by the de-facto complainant prior to his contact of the police authorities and the role of the de-facto complainant at the time of such payments was in no way different from that of an accomplice.

31. The alleged candidate Premanshu Sarkar was not examined by the prosecution in order to support and/or corroborate the evidence of P.W. 1 that he had made an application for appointment to the Post of Sub-Inspector of Police in respect of which the alleged bribe amount was allegedly paid.

32. No oral or documentary evidence was placed before him to establish and prove that Premangshu Sarkar had in face made an application for appointment to the Post of Sub-Inspector of Police for which the alleged bribe was being given to the appellant.

33. The evidence of P.W. 1 with regard to payment of bribe amount for securing a job for his relation is neither corroborated and such evidence was made for the first time in Court. There was no examination of P.W. 1 with regard to such facts by the Investigating Officer under Section 161 of the Code of Criminal Procedure during investigation.

34. The deviance version of false implication is probabilised by the fact that P.W. 1 in the course of investigation wrote a letter to the Deputy Commissioner of Police, Detective Department, Calcutta stating that the false allegations against the appellant be withdrawn. In his evidence, P.W. 1 admitted in writing such a letter and this had clearly shown the ambivalent stand taken by P.W. 1 in assisting the prosecution of the appellant on one hand and praying for withdrawal of false allegations on the other.
35. The conduct of P.W. 1 and the evidence on record clearly shows that he is an unreliable witness and his evidence is most weak, inconsistent and ought not to be the basis of any conviction in the eye of law.
36. The evidence of the prosecution witnesses are inconsistent and contradicted to one another with regard to the various and/or steps of the prosecution case.
37. The evidence of prosecution witnesses are contradictory on the score that on the date of the Trap i.e. 06-09-94, the appellant came to Shyampukur P.S. on his own or was escorted by the trap witnesses from his residence. That as per the prosecution witness Tapan Mitra, Inspector of Police, O/C, Teleprinter played a role with regard to the which resulted in the lodging of the F.I.R. and the subsequent trap which was laid against the appellant. However, the prosecution for reasons best known to them, have withheld him as a witness and thereby given rise to an adverse presumption against the prosecution case.

38. The evidence of P.W. 3 revealed that he was not present at all points of time when the appellant was kept in his cabin in the presence of the police officer.

39. The evidence of P.W. 4 reflect that he did not recollect that in his presence, P.W. 1 offered money to the appellant or that any transaction took place in his presence. P.W. 4 further cannot recollect whether the money was recovered from the pocket of the appellant or from his hand. P.W. 4 further has stated that he cannot recollect the change in colour in the solution after the hands of the appellant was washed. The evidence of P.W. 4 discredited the prosecution case and plants a seed of doubt as to its genuineness.

40. In the cross-examination of P.W. 5 stated that he was a stock police witness and was a summoned to be a witness of the trap case by the Investigating Officer himself.

41. The evidence of P.W. 7 wholly destroys the prosecution case in as much as he stated that the alleged bribe was given in an envelope. This contradiction in the evidence of prosecution witnesses goes to the root of the prosecution case and clearly disproves the ingredients and/or elements of the trap which is the sole basis of implication of the appellant.

42. The appellant had no authority or power as a Sub-Inspector of Police to procure a job for the relation of the de-facto complainant to the post of Sub-Inspector of Police and therefore the allegation of acceptance of illegal gratification for abusing his official position does not arise.

43. The complainant being a socially influential person by virtue of his proximity to a person powerful on the administrative sector would presumably not seek the assistance of the appellant more or less functioning in a position which predominantly did not confer any right on him to provide a job to any person. Provision of a government job in the police sector has to follow a series of documentation, examination, interview, etc. which otherwise could not have been accomplished on the verbal assurance of the appellant. The complainant could not be oblivious of such a methodology. Moreover, exploiting his connections in the government, he mobilized the Assistant Commissioner of Police to endorse the case for investigation.

44. There are contradictions, inconsistencies and omissions in the deposition of PW-1, PW-5, PW-6 and PW-9 which could not be considered to be sacrosanct. Moreover, the prosecution witnesses failed to prove there are offer or demand and acceptance on the part of the appellant. The evidence of the prosecution witnesses who were declared hostile could not be discarded as the same in their cross-examination stated to have been directed by the investigating agency and/or by PW-1 to adduce evidence in the instant case.

45. The motive or the mens rea on the part of the appellant could not be proved. There are variations in the evidence of the prosecution witnesses with regard to the presence of the appellant at his house, taken to the place of occurrence through a taxi, being at the spot on his own accord. The lapses on the part of the evidence of the prosecution witnesses are writ

large through its uncorroborative material. Moreover, the complainant had filed a letter intending to withdraw the allegation against the appellant which signified a dispute between the parties to have been blown out of proportion. The act of the complainant cannot be accepted in the absence of the victim who was supposed to be given a job to have not been examined. Mere allegations utilizing the criminal machinery of the State to his advantage owing to his influential status being in the vicinity of powerful people cannot in any circumstance prejudice the appellant.

46. Under the facts and circumstances of the case any absence of proof of commission of the offence by the appellant beyond reasonable doubt, the prosecution has failed to prove its case and accordingly the appeal is allowed.

47. Accordingly, CRA 31 of 2000 is disposed of.

48. I record my appreciation for the able assistance rendered by Mr. Dipanjan Dutt and Mr. Surojit Saha, Learned Advocates, as *amicus curiae* in disposing of the appeal.

49. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

50. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)