IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 64 of 2003
With
CRAN 2 of 2022

Sri Banshidhar Singh

-Vs-

The State of West Bengal

For the Appellant	: Mr. Sekhar Basu Mr. Milon Mukherjee Mr. B. Manna
For the CBI	: Ms. Chandreyi Alam
Heard on	: 20.02.2023, 27.02.2023, 04.04.2023, 12.03.2023, 26.06.2023, 01.12.2023.
Judgment on	: 04.12.2023.

Ananya Bandyopadhyay, J. :-

1. The instant criminal appeal is preferred by the appellant being aggrieved by and dissatisfied with the judgment and order dated 03.03.2003 passed by Learned Additional Sessions Judge, 1st Special Court, Burdwan in Special Case No. 8 of 1998 whereby the appellant was held guilty of offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for a period of five (5) years and to pay a fine of Rs.3,000/-. In default to suffer rigorous imprisonment for a further period of three (3) moths.

2. The prosecution case precisely stated one Manowar @ Monawar Hossain lodged a complaint before the Superintendent of Police,

Central Bureau of Investigation, A.C.B./S.P.E. Division, Calcutta on 25.09.1995 alleging, inter alia, that he had a small shop of scrap materials at Burdwan. On 08.08.1995 in the morning by a hired truck bearing No.WML-956 he sent certain scrap materials. As it approached near the railway over-bridge at Burdwan on the way to Kolkata on the Katwa Burdwan Road the R.P.F. Inspector, the appellant herein intercepted the said truck, assaulted its driver and took the said truck near the barrack by the side of Burdwan Raiway Station. Thereafter he sent the said truck being loaded with scrap materials along with its driver and khalasi to Court and on 12.09.1995, he obtained an order from the Burdwan Court for release of the seized scrap materials. Subsequently, with the said order, he met the appellant and requested him to release the seized scrap materials. The appellant demanded Rs.10,000/- being a condition to release the same. The complainant Manowar @ Monawar Hossain requested the appellant not to demand such an amount from him as he was a small businessman but the appellant refused and so Sk. Manowar @ Monawar Hossain decided to report it to the C.B.I. and prayed for some time in order to provide the amount to the appellant till 23.09.1995. On that date he again met the appellant and wanted to know the place where the appellant would accept the amount to which the appellant asked him to hand over the amount to him on 26.09.1995 at 12.00 noon at his office at platform no. 1 of the said station.

3. It was alleged on the basis of the said complaint the Superintendent of Police, C.B.I., A.C.B./S.P.E. Division, Calcutta ordered on the same day for registering a R.C. and also for laying a trap. In the said order he endorsed Sri R.N. Adak, Deputy Superintendent of Police, C.B.I., A.C.B/S.P.E. Division, Calcutta for investigation. A regular case No. R.C. 38/95 was registered on 25.09.1995 under Section 7 of the Prevention of Corruption Act, 1988 and investigation was initiated. About 15/20 R.P.F. constables started scuffling with the trap laying team and the accused person escaped from the lawful custody with the assistance of the R.P.F. constables under his control.
4. On the basis of the complaint of Manowar @ Monawar Hossain lodged in Burdwan G.R.P.S. and on the basis of the complaint of the C.B.I., Burdwan G.R.P.S. Case No. 62/95 dated 26.09.1995 was registered.
5. Sanction for prosecution was obtained against the appellant under Section 9(1)(c) of the said Act of 1988. The appellant was a public servant and working for gain as a R.P.F. Inspector.
6. The Charge-Sheet was filed against the appellant for the alleged commission of offences under Section 7 of the said Act of 1988 and punishable under Section 13(2) of the said Act of 1988.
7. Charges were framed against the appellant under Sections 7 and 13(2) of the said Act of 1998 by the Learned Additional Sessions Judge, 1st Special Court, Burdwan and the same was read over and explained to the appellant to which the appellant pleaded not guilty and claimed to be tried.

8. The prosecution agency in order to prove and establish its case, examined as many as 9 witnesses and exhibited certain documents.

9. Learned Advocate for the appellant submitted that:-

   i. The Learned Trial Judge failed to consider amongst 9 prosecution witnesses PW-1, PW-2, PW-4, PW-5, PW-6, PW-7 in course of their deposition did not express a single word about demand of money by the appellant nor that the bribe money was offered to the appellant nor that bribe money was found in possession of the accused person. Therefore, there was no sufficient evidence to come to the conclusion that the appellant was guilty of the offence.

   ii. The Learned Trial Court failed to consider that the prosecution witness no. 3 was the officer who granted sanction, the prosecution witness no. 6, Deb Narayan Banerjee, Inspector, G.R.P.S. and the PW-9 were the Scientific Officer who conducted the necessary tests. Therefore, the said prosecution witness nos. 3, 6 and 9 were not the witnesses to the alleged trapping and therefore the Learned Trial Court ought not to have relied upon the evidence of the said witnesses to come to the finding that the appellant was guilty of the offences.

   iii. The Learned Trial Court failed to consider that the PW-1, PW-2, PW-4, PW-5 and PW-6 did not support the case of the prosecution regarding the preparation of Post Trap

Memorandum by the R.P.F. Office and accordingly the alleged Post Trap Memorandum should not have been taken into consideration by the Learned Trial Court.

iv. The Learned Trial Court failed to consider the main witnesses of the Trap i.e. PW-1, PW-2 and PW-6 stated that all the papers were prepared at G.R.P.S. at platform no.2 which was situated on the other side of the platform no. 1 crossing the over-bridge. Therefore, the Learned Trial Judge ought to have disbelieved the prosecution case regarding preparation of Post Trap Memorandum.

v. The Learned Trial Court failed to consider that the prosecution witness no. 2, Manowar @ Monawar Hossain who allegedly gave the bribe money stated that the complaint was written at the dictation of another person at C.B.I. Office and he did not know the contents of the complaint written by the C.B.I. Office. Therefore, the Learned Trial Court ought to have disbelieved the prosecution.

vi. The Learned Trial Court failed to consider that PW-2, Manowar @ Monawar Hossain stated that he never saw the appellant nor he demanded money nor anything was offered to him nor he accepted anything. Therefore, the Learned Trial Judge ought to have disbelieved the prosecution case.

vii. The Learned Trial Court failed to consider that the prosecution witness nos. 1, 2, 4, 5 and 6 did not say anything about the hand washing of the appellant and accordingly the Learned Trial Court ought not to have believed the case of hand washing and should not have relied upon the report of the same.

viii. The Learned Trial Court failed to consider that from the Post Trap Memorandum itself it would be seen that in the concluding portion the Post Trap was concluded at 6.30 p.m. whereas the witnesses put their signature at 6.00 p.m. Furthermore, the PW-3, the writer of the Post Trap Memorandum, in course of evidence, stated that the PW-3 along with PW-1 and the C.B.I. Team left the R.P.F. Office and reached Burdwan G.R.P.S. at platform no.2 at 3.15 p.m. to lodge complaint against the appellant. Thus the evidence of the PW-3 to the effect that the Post Trap Memorandum was prepared at R.P.F. Office after 3.15 p.m. to 6.30 was palpably false.

10. The Learned Advocate for the CBI submitted that the pre-trap memorandum and post-trap memorandum evinced the act of the appellant to have been involved in the offence. The raiding team was impartial and independent and carried out the process of the trap being initiated and accomplished, according to law with preparation of seizure list and in the presence of witnesses. The prosecution has aptly proved its case and the appeal shall be dismissed.

11. A circumspection of the evidence of prosecution witnesses revealed that PW-1, appointed as Divisional Manager of United India

Insurance Co. Ltd., recounted an incident where a team of C.B.I. officers visited the office on 26.9.1995. They requested PW-1 and PW-5, to accompany them to Natraj Hotel, Burdwan, as witnesses. The complaint, shown to them, involved the appellant, an R.P.F. officer, allegedly demanding money for releasing a truck, with PW-2 as the complainant.

12. The C.B.I. officers proposed setting a trap where chemically treated hundred-rupee notes was to be used. PW-1 was directed to touch these notes, causing a color change upon washing his hands, recorded as Mat. Ext. I. Subsequently, PW-1, PW-5, PW-2, and C.B.I. officers headed to the R.P.F. office. While PW-1 and PW-5 stayed outside, PW-2 entered and engaged with the appellant. PW-1 heard a conversation but he could not understand the details. Then PW-2 came out and asked the C.B.I. officers to present PW-6 to the appellant. Thereafter, PW-2 and PW-6 went inside the office and the C.B.I. officers followed them. Following a commotion, PW-1 entered the office to witness the appellant's arrest, as C.B.I. officers found the treated money on the appellant's table. PW-1 and PW-5 assisted in counting and sealing the notes as directed by the officers. Later, they filed a complaint at a local G.R.P.S, with PW-1's signature on the memorandum as Ext. 1 series. This was corroborated by PW-2 and PW-3.

13. During PW-1's cross-examination, it was affirmed that no direct transaction between PW-2 and the appellant was observed by PW-1.

14. PW-2 is the de-facto complainant of this case. He mentioned that he has a scrap business in Burdwan. PW-2 expressed his truck, identified as WML-956, allegedly carrying railway materials, was not released despite a Court order. He initiated proceedings due to this issue. Subsequently, during an attempt to retrieve his truck, an R.P.F. staff member demanded Rs. 10,000/- from him, leading PW-2 to file a complaint marked as Ext. 2.
15. PW-2 further narrated that he along with C.B.I. officers went to the R.P.F office. Then an officer of R.P.F. who was the appellant asked him to call a lawyer's clerk from the Court. Then PW-2 handed over Rs. 10,000/- to that lawyer's clerk.
16. PW-2 asserted that the C.B.I. requested Rs 10,000 from him to orchestrate a trap involving the said money for the appellant's apprehension. He further mentioned that his signature on the sealed bottle containing the reddish solution was marked as Ext. I/I.
17. Furthermore, PW-2 related an incident where, accompanied by C.B.I. officers, he visited the R.P.F. office. There, an R.P.F. officer, identified as the appellant, instructed PW-2 to summon a lawyer's clerk from the Court. PW-2 then handed Rs 10,000 to the clerk. Thereafter, C.B.I. officers rushed into the office and PW-2 was taken to the G.R.P.S office, where documents were prepared and marked with his signature as Ext. 1/1.
18. During PW-2's testimony, it was noted that the appellant was absent from the Court proceedings.

19. During cross-examination, PW-2 affirmed that the individual present in the dock was not recognizable to him. Additionally, he clarified neither had he paid any money to this individual nor had there been any demand for money from him by this individual. PW-2 mentioned inscribing the appellant's name on the complaint document under the direction of an unidentified C.B.I. officer, whom he could not identify.
20. PW-3, serving as the Inspector of police at C.B.I, Kolkata on 26.9.1995, initiated the investigation upon endorsement from PW-8, marked as Ext. 2/1. The F.I.R was officially registered on 25.9.1995, signed by PW-3 as Ext. 3. Subsequently, a team comprising PW-3, PW-8, Rajib Debnath, Umesh Kumar, and S.I. Tripathi was formed.
21. On 26.9.1995, the team gathered at Hotel Nataraj in Burdwan, where two Insurance Company officers were summoned as witnesses. A demonstration involving sodium carbonate and phenolphthalein powder was conducted, producing a pink solution placed in a sealed bottle marked as 'A', signed by various officers including PW-3 as Ext. 1/2. The team then proceeded to Burdwan Railway Station's platform no. 1, seeking assistance from the officer-in-charge of G.R.P.S.
22. PW-2 entered the appellant's chamber upon which PW-3 positioned PW-1 to overhear conversations. Following directions from the demonstration, PW-2 initiated a signal, prompting the team to enter the appellant's chamber. Rajib Debnath apprehended the appellant. PW-3 mentioned that the appellant was caught after the

appellant took the money from PW-2 and kept it in his pocket. The appellant seeing the officers going to apprehend him, kept that money on the nearby table. The notes were then seized, tallied with the pre-trap memorandum, and sealed as evidence, marked as Mat. Ext. II to II/99 and the signature of PW-3 on the label was marked as Ext. 4.

23. The bearing nos. of the notes are "%DB617197, 5NB91592, OHM 828735, 8PL, then says 8TL712727, 4RP984160, 5CL 180001, 5AF658347, 3UH498976, 7AM888122, 8DK612256, 2AP724780, 5GF703728, 3AU379843, 4FS118448, 7PVO81544, 0CR357116, 3BV936293, 2CU522487, 5DD1O5534, 9RN536469, 2PL-728644, OLD591858, 2DR632947, 9AG900570, JCS473299, 5QH497071, 8PM924396, 8BC937074, 4AM467888, JFU862777, 9UT817781, JTA910605, OBT928458, 7SV353216, 8MG300311, 2GS519198, 6VM186213, 9UT785759, JBN176115, 8MV176867, 4BT367886, 6BBO11521, 9ACO44729, 7AU374967, OGD582537, 6KU652090, 4KT204390, 7KM995861, OSB207420, OPUO77610, JTU681676, 8BF970839, 3NF681341, 9HH489014, 8UF834572, 6CW791689, JAS191318, JTL849955, 3CE315390, 3EL235345, 8BW341865, JBS859050, 2FH750546, 7UV796293, 9AB484764, 6VH330165, 4GH3495517, 9UU285833, OUBO62605, JKE842437, 3CP863947, 9QP632568, 6CDO26443, 6KWO60600, 5DM827242, 8DM680617, 7TE77O826, 8UR191849, 3HE238492, 7BB124294, 3NU34772, 3EW334778, 7FE906656, 3QU189632, 7TW769979, 5BB650524, JTM331720, 8BK196965, 9BR656474, 8UT247202, JFD224538,

6SH303971, 2DR469798, 9HD288455, 6MH250691, 5LH555053, 4RG354932, 8UE180814, 3BK257921, 4VN522222".

24. Thereafter the appellant's hands were washed in the sodium carbonate solution. The solution became pink. The bottle was sealed and labeled as 'X'. A commotion ensued as the appellant summoned additional officers. Amidst this chaos, the appellant managed to flee. The team was eventually rescued by G.R.P.S officers from the surrounding mob. They proceeded to the G.R.P.S. office where PW-8 lodged the F.I.R, completing the post-trap memorandum marked as Ext. 6, with PW-6's signature as Ext. 6/1. The signature of Rajib Debnath, who prepared the pre-trap memorandum, was marked as Mat. Ext. 5. The signature of PW-3 on the pre-trap memorandum was marked as Ext. 5/1.

25. PW-4 held the position of Inspector General-cum-Chief Security Commissioner of the Railway Protection Force, possessing the authority to appoint or dismiss R.P.F. inspectors. The sanction order dated 21.12.1995, marked as Ext. 7, was issued after careful examination of all pertinent documents submitted by the local C.B.I. This order was granted based on the authority vested in PW-4 to sanction actions after reviewing relevant information.

26. During cross-examination, PW-4, admitted having no personal knowledge of the incident as he was absent during its occurrence and gathered information solely from records. He confirmed awareness of the sanction order, stating it was not written in his presence but was typed in his room and signed by him, though he could not recall the date or time of its typing. He acknowledged an

erasure on the sanction order but could not recall specific details concerning it. Notably, the order lacked specifications regarding the nature of documents submitted for sanction or the identity of the individual presenting these pertinent documents.

27. PW-5 stated that he was working as a Development Officer in the General Insurance Co. at Burdwan on 26.9.1995. He further stated that, as directed by PW-1, the Divisional Manager, he accompanied a C.B.I. officer to Nataraj Hotel. At the hotel, he was informed about a complaint lodged by PW-2 against the appellant, an R.P.F. personnel, alleging a bribe demand of Rs. 10,000.

28. The C.B.I. officers demonstrated mixing a chemical with currency notes and changing the water's color when touched, sealing the altered water in a bottle marked Ext. I/3. Moving to Burdwan Railway Station, PW-5 was asked to stay at a distance while PW-1 remained near the R.P.F. Office. Later, amidst a commotion at the station, he entered the R.P.F. Office where a bundle of hundred-rupee notes lay on the table. PW-1 verified the first and last note numbers, confirming they were all hundred-rupee notes totaling Rs. 10,000. Subsequently, the C.B.I. officers sealed the notes at G.R.P.S. Office. PW-5 affirmed not witnessing the appellant accepting or giving the currency notes.

29. PW-5 was declared hostile.

30. During cross-examination, PW-5 acknowledged the obligation to cooperate with C.B.I. officers. He mentioned rescuing PW-1 from a crowded room during the incident. However, he affirmed his absence at the moment when the appellant's hands were placed in

the solution, changing its color. PW-5 also clarified not being present when the bottles were sealed and labeled. He identified his signature on the bottle marked as Ext. 3 and confirmed signing it at the G.R.P.S. office. Lastly, PW-5 denied having any prior acquaintance with the appellant.

31. PW-6, identified as a 'Mohorar' working at Burdwan Court, acknowledged being acquainted with the appellant.

32. PW-7, posted as the Inspector at G.R.P.S Burdwan, received a written complaint from PW-8 on 26.9.95, which led to the formal F.I.R. being filed by duty officer S.I. Dipak Kr. Chowdhury. However, this formal F.I.R. was unrelated to the current case.

33. PW-7 had prior knowledge of a dispute between R.P.F. and C.B.I. staff on that day. They mentioned assisting a C.B.I. team, headed by PW-8, for a raid at an undisclosed location in Burdwan Railway Station. Hearing of a commotion on platform no. 1, PW-7 intervened and pacified agitated R.P.F. personnel. The C.B.I. staff informed PW-7 about resistance during their raid at the appellant's office, leading to a written complaint and the initiation of Case No.62 on 26.9.1995, under the direction of S.I. Dipak Chowdhury for investigation, which PW-7 subsequently endorsed.

34. During cross-examination, PW-7 stated that the requisition for the incident was in writing and was duly recorded in the G.D. Book at the Police Station. It is customary for any officer leaving the Police Station to have the departure recorded in the book, although PW-7 could not recall the exact time of departure or return to the Police

Station. Similarly, he could not specify the total number or the names of the R.P.F. staff present at the time of the incident.

35. PW-8 being the Deputy Superintendent of Police in CBI, A.C.B., Kolkata, supervised a raid conducted by C.B.I. on 26.9.1995. He took charge of the case on the same day, conducted investigation based on records, documents submitted by PW-3, and evidence from the trapping operation at the R.P.F. Office, Burdwan Railway Station. PW-8 conducted examinations of the complainant, disinterested witnesses, and officers involved in the operation, submitting a charge sheet based on findings and the C.F.S.L. report.

36. He produced a chemical report signed by PW-9, a Jr. Scientific Officer from C.F.S.L. Kolkata, and identified the report marked 'X'. PW-8 also referenced a memorandum dated 27.9.95 prepared by Inspector Biswajit Roy concerning a search at the appellant's residence in Liluah Railway Colony.

37. Additionally, PW-8 acknowledged a pre-trap memorandum and a post-trap memorandum prepared by PW-3, confirming recognition of PW-3's handwriting and signature on those documents and confirming their own signature on each paper of the pre-trap and post-trap memorandums.

38. During the cross-examination, PW-8 clarified his absence during the alleged search of the appellant’s house and reiterated that he was not the initial investigating officer in this case, with PW-3 being the initial investigator. He emphasized the necessity for

initialing any alterations made to maintain the integrity of official documents.

39. Regarding the pre-trap and post-trap memorandums, he stressed the significance of those documents, affirming that no erasures were allowed in those vital papers. Additionally, he disagreed with the assertion that the papers were fabricated or manufactured hastily.

40. PW-9 was posted as the Jr. Scientific Officer on 20.2.1996. He stated that, in response to a C.B.I. requisition, he examined documents and produced a report marked as Ext.8, bearing his signature and official seal. He further stated that Exhibits 899A and 899B, received in a packet from S.P.C.B.I., were examined, revealing the presence of phenolphthalein and sodium carbonate respectively. After analysis, remnants of the exhibits were returned separately, with PW-9's signatures and dates on the respective bottles marked as Ext.1/4 and 3/1.

41. During cross-examination, PW-9 noted that both bottles marked Ext.1/4 and 3/1 were dry and empty. He highlighted while dealing with perishable or evaporable items, it was the responsibility of the recipient to use preservatives, but there was no mention of preservatives being used in the instant case in their report.

42. He clarified that he was not associated with the C.B.I. department and disagreed with any insinuation that his report was improper. Additionally, he stated he had no knowledge regarding the management of meeting and T.A. bills and other related expenses in this case.

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

> *"8. Before we analyze the evidence, we must note that we are dealing with Sections 7 and 13 of the PC Act as they stood prior to the amendment made by the Act 16 of 2018 with effect from 26th July 2018. We are referring to Sections 7and 13 as they stood on the date of commission of the offence. Section 7, as existed at the relevant time, reads thus:*
>
>> *"**7. Public servant taking gratification other than legal remuneration in respect of an official act.-** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*
>>
>> ***Explanations.***
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>> *(a) "Expecting to be a public servant" If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*

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[1] 2023 SCC OnLine SC280

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

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

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

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

9. Section 13 as existed at the relevant time, reads thus:

*"**13.Criminal misconduct by a public servant.—** (1) A public servant is said to commit the offence of criminal misconduct,*

(a)............

(b).............

(c)...............

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) ……………………"

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 Bench4 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 Section 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 Criminal Appeal No.1669 of 2009 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.*
>
> *(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.*
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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 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 Criminal Appeal No.1669 of 2009 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 Criminal Appeal No.1669 of 2009 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 read with Section 13(1) and 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 Criminal Appeal No.1669 of 2009 of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj1 and P. Satyanarayana Murthy2. There is another decision of a three Judges' bench in the case of N.

Vijayakumar v. State of Tamil Nadu5, which follows the view taken in the cases of B. Jayaraj1 and P. Satyanarayana Murthy2. In paragraph 9 of the *decision in the case of B. Jayaraj1, 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, 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 subsection (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."*

44. In ***K. Shanthamma Vs. State of Telangana***[2], the Hon'ble Supreme Court held as follows:

"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 quo non for establishing the offence under Section 7 of the PC Act.

11. In the case of P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another1, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere

[2] (2022) 4 SCC 574

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.""

45. In **M.W. Mohiuddin Vs. State of Maharashtra**[3], the Hon'ble Supreme Court held as follows:

"6. In stroud's Judicial Dictionary 5th Edn. Vol. 3, page 1729, the meaning of the word "obtain" is as under:

"Obtains (Larceny Act, 1916 (C.50) Section 32(1). meant obtains the property and not merely the possession (R.V, Lurie (1951)."

In Webster's third new international dictionary page 1559, the meaning of the word "obtain" reads thus:

"Obtain:-to gain or attain possession or disposal of USU, by some planned action or method, Hold, Keep, possess, occupy."

In Shorter Oxford English Dictionary, 3rd Edn. Vol. II, Page 1431, the meaning of the word "obtain" is given as under:

"Obtain:- To procure or gain as the result of purpose and effort; hence, generally, to acquire gel,"

[3] (1995) 3 SCC 567

Relying on the meanings of the word "obtain" given in these dictionaries, the leaned counsel further contended that the word "obtain" has a definite connotation and unless it is proved that the accused gained or attained the possession of the money and held the same, the requirement is not satisfied. According to the leaned counsel even if the prosecution is to be believed it may amount to a preparation or at the most to an attempt on the part of the accused and here is no completed offence.

7. We see no force in this submission whatsoever. In Ram Krishan and another v. State of Delhi, AIR (1956) SC 476, a Bench of three Judges of this Court while examining the requirements of Section 5(l)(d) of the Prevention of Corruption Act, 1947 observe thus:

> *"We have primarily to look at the language employed and give effect to it. One class of cases might arise where corrupt of illegal means are adopted or pursued by the public servant to gain for himself a pecuniary advantage. The word "obtains" on which much stress was laid does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver."*

Therefore whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by *way of acceptance of the bribe depends on the facts and circumstances in each case."*

46. In ***B.Jayaraj Vs. State of Andhra Pradesh[4]***, the Hon'ble Supreme Court held 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 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 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

[4] (2014) 13 SCC 55

order dated 25.4.2011 are set aside and the appeal is allowed."

47. In ***P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Anr.***[5], the Hon'ble Supreme Court held as follows:

> *"21. In State of Kerala and another vs. C.P. Rao (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.*
>
> *22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the*

Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

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

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[5] (2015) 10 SCC 152

24. The sheet anchor of the case of the prosecution is the evidence, in the facts and circumstances of the case, of PW1-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 PW1- 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 PW1- 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 13(1)(d)(i)&(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 PW1- 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 13(1)(d)(i)&(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)&(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)&(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 vs. State of Assam (2013)12 SCC 406 had held that suspicion, *however grave, cannot take the place of proof and the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.*

27. The materials on record when judged on the touch stone 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 un-safe to sustain the conviction of the appellant under Section 13(1)(d)(i)&(ii) read with Section 13(2) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order of the High Court is hereby set-aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately."

48. In ***Neeraj Dutta Vs. State (Government of NCT of Delhi)***[6], the Hon'ble Supreme Court held 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,

[6](2023) 4 SCC 731

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 de hors 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.

4. Before proceeding further, it would be useful to refer to the relevant provisions of the Act. Sections 7,13(1)(d)(i) and (ii) and 20 of the Act as they stood prior to their amendments are extracted as under:

"7. Public servant taking gratification other than legal remuneration in respect of an official act.— Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or

disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.

Explanations —(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

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

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

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

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

13. Criminal Misconduct by a public servant. – (1) A public servant is said to commit the offence of criminal misconduct-

(a)-(c)

(d) if he –

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

Explanation.- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

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

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

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or

offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub- sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub- sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

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;

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

vii) therefore, to make out an offence under this provision, there has to be actual obtainment.

viii) 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 vs. State of Gujarat (2002) 5 SCC 86 ("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 word "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 emphasized 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 with reference to Ram Krishan vs. state of Delhi AIR 1956 SC 476 ("Ram Krishan"), that for the purpose of Section 13(1)(a) and (b) of the Act:

"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."

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 vs. Government of India (1997) 9 SCC 477 ("C.K. Damodaran Nair"). That was a case under the Prevention of Corruption Act, 1947 ('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 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 Section 5(1)(a) and (b) and not under Section 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 Indian Penal Code (for short, 'IPC')., which, can be, established by proof of either "acceptance" or "obtainment".*

...

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.

(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 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 inturn 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.*

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) 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.

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 and P. Satyanarayana Murthy with the three judge Bench decision in M. Narasinga Rao, with regard to the nature and quality of proof necessary to sustain a conviction for 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."

49. In the instant case the prosecution failed to prove the elements of 'motive or reward' to induce the complainant to act in his favour. None of the prosecution witnesses mentioned the offer of gratification to the appellant to have been witnessed by any one of them. Apart from the statements of PW-2, the intention to 'accept' or to 'obtain' gratification by the appellant from the complainant

could not be proved. Mere possession or recovery of currency notes is insufficient in absence of proof of demand of illegal gratification.

50. PW-1 denied having witnessed any transaction. He stated to have heard certain conversation inside the room, however could not specify the narrative. Subsequently in midst of a commotion he witnessed the CBI officers grasping the appellant as money was lying on his table.

51. PW-2, the complainant during his cross-examination declined to have been acquainted with the appellant who had claimed the gratification.

52. PW-3, in his deposition stated that the complainant went in the chamber of R.P.F. Inspector. Immediately complainant came out from the chamber and informed them that he was asked by Inspector-in-Charge of R.P.F. to bring a mohuri for releasing the scraps. After half an hour/ forty minutes a mohuri came with the complainant and entered in the chamber of R.P.F. Inspector and they took position accordingly and one of the witnesses disclosed to them about over hearing conversion of complainant and the Inspector-in-Charge, R.P.F. Thereafter as per their direction the complainant scratch his head and the officers entered into the chamber of Inspector, R.P.F. After entering the room one of the officer i.e. Rajib Debnath caught both of his hands and disclosed his identity along with others. The hands of the Inspector were caught at the time after taking money from the complainant and keeping in his pocket. The accused at the material time was wearing a trouser and a genji. Being nervous Inspector kept money

on the table. Then his hands were washed in a sodium carbonate solution. One of the witnesses along with complainant counted the money and tallied it with the pre-trap memorandum which was earlier made in the hotel. After washing the hands the colour of the solution became pink and the water was poured in a bottle and it was sealed and labeled and all the witnesses including the officers put their respective signatures. Bottle did not bear his signature (marked 'X' for identification). However, the officer Rajib Debnath was not examined.

53. He further stated that after washing the hands of the accused, they requested the accused to sign on the bottole. At that time he started shouting calling for the other officers named A.K. Singh, Gobinda etc. and immediately 15/20 officers arrived there and surrounded all of them and at that time accused managed to escape and fled away from their custody. Money was also seized from the possession of the accused and thereafter money was kept in a cover duly sealed and signed by the witnesses.

54. According to PW-3, the money was seized from the possession of the appellant who eventually fled from the spot, however PW-1 in his deposition stated the CBI officers caught hold of the appellant as money was lying on his table.

55. PW-4 did not have any personal knowledge of the incident and issued the sanction order mechanically without perusing the documents in particular.

56. PW-5 and PW-6 were declared hostile by the prosecution.

57. There are inconsistencies in the evidence of the prosecution witnesses.
58. The prosecution failed to prove corroborative oral as well documentary evidence of demand and acceptance of the gratification. The illegal motive on the part of the appellant could not be established. The circumstantial evidence too is absent to prove the guilt of the appellant.
59. In view of the above discussions, the impugned judgment and order dated 03.03.2003 passed by the Learned Additional Sessions Judge, 1st Special Court, Burdwan in Special Case No. 8 of 1998 thereby holding the appellant guilty of offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 is set aside.
60. The criminal appeal being CRA 64 of 2003 is allowed.
61. Accordingly, CRA 64 of 2003 stands disposed of. Connected application, if there be any, also stands disposed of.
62. There is no order as to cost.
63. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
64. 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.)