

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.96 OF 2007

Chandrakant Nivrutti Pagar, Age 46 years,
R/o.Sayya Pimpri, Taluka District Nashik

Appellant

versus

The State of Maharashtra

Respondent

Mr.Satyavrat Joshi, Advocate for Appellant.

Mr.Y.Y.Dabake, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st June 2023

JUDGMENT :-

1. Appellant has challenged the Judgment and Order dated 12th January 2007 passed by Special Judge (Anti Corruption), Nashik in Special Case (ACB) No.9 of 2000 convicting the Appellant for the offences under Sections 7, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act ('P.C Act'). For the offence punishable u/s.7 of P.C.Act, Appellant is sentenced to suffer imprisonment for six months and to pay fine of Rs.1,000/- For rest of the offences punishable u/s.13(1)(d) r/w 13(2) of P.C Act, Appellant is sentenced to suffer imprisonment for one year and to pay fine of Rs.1,000/-. Both the sentences were directed to run concurrently.

2. The case of prosecution is as follows :-

(a) The complainant Kailas Bhaskar Khairnar is resident of Bhagur, District Nashik. He owns land on Plot No.15 out of Survey No.41/2/2(b) in joint ownership with his father. The land was purchased from one Prakash Khairnar on 10th June 1999 by

registered sale deed;

(b) The complainant submitted an application to Talathi of Village Bhagur through his advocate for mutation of their names. The complainant visited office of Talathi to pursue his application. Appellant was working as Talathi in the said office. The complainant requested him to take mutation of his name in the revenue record and issue 7/12 extract to that effect;

(c) The complainant again visited the office of Talathi on 1st March 2000. Appellant was present in his office. Complainant requested him to take mutation of his name to the revenue record and issue 7/12 extract. Appellant demanded Rs.500/- for mutation of his name in 7/12 extract. The complainant told him that he is having Rs.200/- on that day. Amount of Rs.200/- was parted to the accused. Accused then told to bring the balance amount of Rs.300/- on 3rd Monday of the said month;

(d) The complainant approached the office of Anti Corruption Bureau and lodged complaint on 3rd March 2000. PW-4 was present in the office of ACB. Complaint was recorded. Panch witnesses were called. Complainant was introduced to panch witnesses. The facts of complaint were narrated to panch witnesses. The complainant produced two currency notes of Rs.100/- and two currency notes of Rs.50/-. Arrangement was made for conducting raid. Instructions were given to the panch witnesses and the complainant. Anthracene powder was applied to the currency notes. The currency notes were handed over to the complainant;

(e) On 3rd March 2000 the complainant, panch witnesses and raiding party proceeded towards office of Talathi. Panch no.1 and complainant were instructed to proceed ahead in the office of Talathi with instructions;

(f) On entering the office of Talathi, complainant asked him as to whether he has done his work. The accused asked the complainant whether he has brought the amount as per his direction. Complainant told him that he has brought the amount of Rs.300/-. Accused told him that he has prepared 7/12 extract and he would hand over it to him. The extract was taken in custody by complainant and kept it in his pocket. Thereafter accused stated that he has done his work and amount be handed over to him. The complainant took out the currency notes from his shirt pocket and gave it to the accused, however, he requested the accused to reduce the amount. The amount was counted. One note of Rs.50/- was handed over to the complainant. Signal was given to the raiding party. The accused was apprehended. Currency notes were seized. Further procedure was completed. Panchanama was recorded. On completing investigation charge sheet was filed.

3. Charge was framed against accused vide order dated 10th July 2006. Pursuant to the order framing charge, prosecution examined four witnesses. PW-1 Kailas Bhaskar Khairnar is the original complainant. PW-2 Vasudev Yeshwant Chandras is the panch witness. PW-3 Pravin J. Shinde is the Deputy Collector/Sanctioning Authority. PW-4 Prabhakar P. Shelke is the Investigating Officer. Statement of accused was recorded u/s.313 of Code of Criminal Procedure.

4. Learned advocate for Appellant submitted that prosecution has failed to establish demand of bribe. The evidence of complainant does not inspire confidence. The prosecution has not proved that Appellant had accepted the bribe amount for the purpose of carrying

out the work of complainant. The panch witness has stated that accused had demanded money, however, his evidence is silent with regards to the purpose for which amount was demanded. The prosecution has relied upon the documents viz. Exhibits-12,14,15. Exh.12 is the application preferred by complainant for mutation entries in the 7/12 extract in respect to the property purchased by him and his father. Exh.13 is the document relating to the property submitted along with application. Exh.14 is the sale deed executed between purchasers and seller in respect to the subject property and Exh.15 is the correction deed in respect to survey number relating to the subject property. Application Exh.12 refers to the fact that complainant had annexed sale deed and notice while applying for mutation entry in 7/12 extract. Apparently survey number appearing in the sale deed was different. Therefore correction deed was executed which was not submitted along with Exh.12. In these circumstances there is probability that application preferred by complainant was not adjudicated immediately and since complainant was aggrieved by said fact, false case has been registered against Appellant. It is further submitted that at the relevant time there was Government scheme to pursue the members of public more particularly those who attend the office of Talathi, to convince them to invest in Government schemes. This fact is spelt out in the evidence of PW-3 and the amount which was to be handed over by the complainant was for the purpose of investment in the government scheme. It is further submitted that complainant had negotiated at the time of handing over money on the date of trap and Rs.50/- was returned to the complainant. The conduct of complainant is apparently suspicious. The case of prosecution is that Rs.300/- was to be handed over to the accused. Instructions were

given to the complainant and panch witnesses in that regard. Anthracene powder was applied to the currency notes which were to be utilized in the trap. Hence question of negotiation about quantum of amount in the trap does not arise. While handing over the amount, complainant had informed the accused that amount may be negotiated and therefore currency note of Rs.50/- was handed over to the complainant which was kept by him in his pocket. The evidence of complainant is shaky. It is doubtful and cannot be relied upon for convicting the Appellant. The first demand referred by complainant (PW-1) had purportedly occurred in the month of January-2000. The deposition is apparently false since it is in the nature of omission. The complaint does not spell out any assertion about demand of bribe in January-2000. The second demand was purportedly made on 1st March 2000. It is submitted that version of complainant about demand in March-2000 as well as on 1st March 2000 is based on uncorroborated testimony. The case of complainant is that amount of Rs.500/- was demanded for the purpose of carrying the work relating to his application (Exh.12). The panch witness has stated that accused had asked the complainant whether the amount is paid by him as discussed earlier, however, the panch witness does not mention the fact that amount which was to be handed over was in relation to illegal gratification and hence on the basis of such version, the Appellant cannot be convicted. There are several discrepancies in the evidence of prosecution. The prosecution has failed to prove the demand and circumstances tried to be put forth by the prosecution are suffering from doubts. Hence conviction based on such evidence needs to be set aside.

5. Mr.Joshi has relied on following decisions :

- (i) Suraj Mal Vs. State (Delhi Administration)
(1979)4-SCC-725;
- (ii) State of Punjab Vs. Madan Mohan Lal Verma
(2013)14-SCC-153;
- (iii) State of Maharashtra Vs. Dnyaneshwar Laxman Rao
Wankhede – 2009-ALL MR (Cri)-3127 (S.C);
- (iv) Baburao Ganpati Bhoi Vs The State of Maharashtra
2023-ALL MR (Cri)-34;
- (v) Shankar Pandurang Waghere Vs. The State of
Maharashtra – 2022-ALL MR (Cri)-3901;
- (vi) Avinash Sitaram Garware Vs State of Maharashtra
2008-ALL MR (Cri)-15;
- (vii) Neeraj Dutta Vs. State (Govt. of NCT of Delhi)
2023-SCC OnLine-SC-280

6. Learned APP submitted that there is sufficient evidence to convict the Appellant. There is oral and documentary evidence adduced by prosecution which establishes charge against Appellant. The defense of Appellant is weak and cannot be accepted. The prosecution has examined the complainant, panch witnesses, sanctioning authority and the investigating officer. Assuming that the demand made in the month of January-2000 suffers from omission, prosecution has brought on record that there was further demand of Rs.500/- on 1st March 2000 and again on 3rd March 2000. On the date of trap search was conducted in the office of accused and several documents were recovered which includes the correction deed which shows that correction deed was submitted to the office of Talathi in connection with the application preferred by complainant for mutation entries in the 7/12 extract. Thus, there is no substance

in the defense of Appellant that on account of non submission of correction deed the application preferred by complainant could not have been adjudicated expeditiously and induced complainant to lodge the complaint. It is further submitted that other defense of the Appellant is that government has propounded a scheme for investment in government schemes and that instructions were given to the Government offices to convince the members of public to undertake investment in government schemes. The amount which was to be handed over by the complainant was for the purpose of such investment. However, there is no evidence to substantiate or support the claim of Appellant. There was no document in the office of accused in respect to the investment to be made by complainant in government scheme. The evidence of complainant is corroborated by the panch witnesses. On the date of raid, the panch witness was accompanying the complainant. He has categorically stated that accused had demanded money from the complainant. It is brought on record that as decided earlier the complainant has brought the amount and when the accused demanded the amount it was handed over by complainant. Apart from the evidence of PW-1 and PW-2 the circumstances brought on record and documentary evidence are sufficient to prove that Appellant had demanded and accepted bribe amount.

7. Learned APP has relied upon decision of Hon'ble Supreme Court in the case of Neeraj Dutta Vs. State (Govt. of N.C.T of Delhi (Criminal Appeal No.1669 of 2009, decided on 15-12-2022)). Learned APP has adverted to the observations in paragraph 68 of the said decision more particularly clause-(c) therein, wherein it is observed that 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.

8. In rejoinder Mr.Joshi has submitted that after after answering the reference in the aforesaid decision, the matter was relegated to the concerned Bench and the case has ultimately resulted in acquittal, which is evident from the decision dated 17th March 2023 reported in 2023-SCC OnLine-SC-280 (supra).

9. PW-1 Kailas Bhaskar Khairnar has deposed that, he had purchased plot out of Survey No.41/1/2B bearing Plot No.15 in June 1999. To enter name on record, he submitted application in January 2000 to Talathi. He met accused. He told him that he will be required to give Rs.500/- to enter the name in the record. After three months he approached the accused on 1st March 2000. Accused demanded Rs.500/- for the work. He gave Rs.200/- and told him that he would give remaining amount of Rs.300/- later on. He was called on Friday. He went to office of ACB in the morning on Friday and lodged the report. He provided currency notes for raid. Pre-trap procedure was completed. Raiding party went towards office of Talathi. He went to office of accused with PW-2 (Panch). He enquired about work. The accused told him that work is done and he could hand over his papers immediately. Accused asked him whether he had brought money. He answered in affirmative. Accused gave 7/12 extract and 6-D extract. He took out amount and gave it to accused. While handing over the amount, he told accused that he should reduce some amount. Accused returned Rs.50/-. He took the note of Rs.50/- and kept in his pocket. He gave signal to raiding party. Accused was apprehended. Post trap procedure was

completed. In the cross-examination he stated that initially in the sale deed the survey number of the property was mentioned wrongly. Correction deed was done. His advocate informed him that there was typing mistakes as to survey number in the sale deed and therefore he will be required to get it corrected and till then his name could not be entered on record. He do not know the name of officer who recorded his complaint. Till the trap, name of government officer was not disclosed. It was mentioned in complaint. He has not stated in the report that after submitting application, he had been to the office of Talathi two to three times. In January he had been to office of Talathi only on one occasion. At the time of lodging the report he had forgotten about demand made in January. Therefore, he has not stated it.

10. PW-2 Vasudeo Chandras has stated that he was called in office of ACB to act as pancha. Complainant narrated his complaint. Pre-trap procedure was completed. The raiding party went towards office of Talathi. He accompanied PW-1 to office of Talathi. They met accused. PW-1 asked Talathi whether his work is done. Talathi asked him whether he has brought his amount. Complainant told him that he has brought amount of Rs.300/- as stated by him. Talathi collected the amount of Rs.300/- Complainant asked the accused whether amount could be reduced. Talathi returned him Rs.50/-. Before accepting money, Talathi gave 7/12 extract and one document. Complainant went out and gave signal. Raiding party apprehended accused. In the cross-examination he stated that the name of Government Officer was kept secret. He had stated in the statement that accused asked the complainant as to whether he has brought his amount. When statement was shown to him, he stated

that the word 'maze' is not mentioned.

11. PW-3 Pravin Shinde was Deputy Chief Officer of Sub-Divisional Office at Nashik. He stated that he had authority for removal and appointment of Talathi. He issued sanction order for prosecution against applicant. In the cross-examination he stated that during the relevant period the government had given target for small savings. Target was given to Tahsildar and Talathis. Accordingly the Talathis have issued the orders that they should encourage the khatedars or the persons in their contact to invest in small saving schemes. Accordingly, weekly or periodically or at the year end meetings were held and they were called to submit their report of investment in small savings and for that purpose, the concerned officer or the employee was required to accept the amount on investment and on making investment and receiving the certificate, he was required to take xerox of the same for the purpose of record to submit along with the report and the original certificate was to be issued to the concerned person or khatedar. The accused was felicitated by him on behalf of office for taking good efforts for investment in small savings and the certificate was also issued. Office orders issued by his office were shown to him which were marked as Exh.25,26,27 and 28. Photograph of felicitation by him was marked as Exh.29. Office certificate is marked as Exh.30. Photograph of felicitation of accused by Deputy Collector was marked as Exh.31. He issued sanction on the basis of documents of investigation. At that time the factory of investment was not before him. He was sent draft sanction order along with documents of investigation. Draft may be same if he may not be required to make change, if any.

12. PW-4 Prabhakar Shelke was attached to ACB. He conducted

investigation of case. He deposed that on 3rd March 2000 complainant came to him in the office and lodged one complaint. He called panchas. Complaint was narrated to them. Pre-trap arrangement was made. Complainant provided currency notes. The raiding party proceeded to office of Talathi. Complainant and panch no.1 went ahead in the office of Talathi. The complainant gave signal. The members of raiding party entered the office of accused. Panch told that accused accepted bribe amount. Trap panchanama was recorded. Amount was recorded from accused. Rs.50/- note was recovered from complainant. Complaint was lodged against accused with Deolali Camp Police Station. Investigation was completed. Papers were sent to sanctioning authority. On receiving sanction charge sheet was filed. In the cross-examination he stated that at the time of trap other persons and Talathi from Donwade were present. Their statements were recorded. He was not required to ascertain during investigation whether there was any mistake in sale deed. Complainant did not tell him that initially there was mistake in the sale deed at the time of lodging complaint. At the time of lodging report by him, it is not mentioned that when the accused was caught he was frightened and said that he had committed mistake.

13. On scrutiny of evidence on record it can be gathered that the prosecution case is that the complainant and his father had purchased certain property and with a view to mutate the entry in the 7/12 extract, the complainant submitted an application to the office of Talathi (Exh.12) on 18th January 2000. The application makes a reference to the property situated at Mauje Bhagur bearing Survey No.41/1/2B/15, Plot no.15. Application also indicate

enclosure of two documents viz.sale deed and notice. Exh.15 is correction deed. Notice is marked as Exh.13 and sale deed dated 10th June 1999 is marked as Exh.14. The sale deed described the property as S.No.48/1/2B/15. Since the survey number was incorrect, correction deed was executed on 12th November 1999, stating that S.No.48/1/2B/15 has been typed inadvertently and the corrected number is S.No.41/1/2B/15. It is pertinent to note that application Exh.12 does not refer to correction deed. It was not enclosed along with application Exh.12. The correction deed was executed for the purpose of rectifying the survey number and which was a vital document for adjudicating application Exh.12. It is relevant to note that application Exh.12 was submitted on 18th January 2000. The defense of accused is that on account of non compliance of the requirements to mutate the entries, the application was not adjudicated immediately. The delay in deciding the application of the complainant for mutation of entries in 7/12 extract had enraged him and he filed false complaint. From the circumstances on record, the said defense appears to be probable.

14. The prosecution has failed to establish the demand of illegal gratification beyond reasonable doubt. First demand according to the complainant was made in January-2000. As noted above, application was preferred on 18th January 2000. From January-2000 till March-2000, there was no follow up by PW-1. Complainant is silent from January-2000 to March-2000. It was alleged that second demand was made on 1st March 2000. It is pertinent to note that demand on January-2000 is in the nature of omission as it is not reflected in the complaint made by PW-1. The demand dated 1st March 2000 is in the form of uncorroborated testimony of

complainant, as it is not supported by any corroborative evidence. The prosecution then relies upon demand made on the date of raid. PW-2 panch witness has stated that the complainant asked accused as to whether his work is done. The accused asked him whether he has brought his amount. Complainant told him that he has brought amount of Rs.300/-. The accused collected amount. In the cross-examination he stated that at the time of statement he stated that the accused asked the complainant as to whether he has brought his amount. Whatever he stated in the statement and panchanama about it is correct. He was shown his statement. He admitted that there is no mention about word 'Maze' (His). Thus, the statement does not mention the fact that the accused asked complainant whether he has brought his amount. It is also pertinent to note that complainant (PW-1) has stated that he asked accused whether his work was done. The accused asked him whether he had brought the amount. The complainant told him that he has brought the amount. Thus, PW-1 does not state that the accused asked him whether he has brought his amount. The evidence on record does not show that in the presence of independent person (PW-2), the accused had demanded money by way of bribe for completing work of PW-1 (complainant). The defense of accused is that amount was for the purpose of investment in government scheme. It is relevant to note that PW-3 in his evidence has deposed that indeed there were instruction to the government offices for pursuing khatedars to invest in the government schemes. The appellant was felicitated for such work. Thus, the aforesaid defense can be said to be a probable defense. Thus, the case of prosecution with regards to the demand of illegal gratification suffers from serious doubt and it is difficult to accept that prosecution has establish that accused has demanded

bribe amount. Conduct of the complainant suffers from doubt. His evidence does not inspire confidence. It is further relevant to note that complainant has alleged that accused has demanded Rs.500/- as bribe. He has handed over amount of Rs.200/- to the accused. Handing over of Rs.200/- is based on the sole testimony of complainant. The complainant has further alleged that amount of Rs.300/- was demanded by accused and it was to be handed over to him on the date of raid. The complaint was recorded. Instructions were given to the raiding party, anthracene powder was applied to the currency notes of Rs.300/- which were to be handed over to the accused. Complainant and panch witnesses were clearly instructed that bribe amount was to be handed over on the demand being made by accused. According to complainant (PW-1) and panch witness (PW-2) while handing over amount to accused, the complainant requested him to reduce the bribe amount and Rs.50/- note with anthracene powder was returned to him. The raiding party recovered the currency note of Rs.50/- from the complainant, which he had kept in his shirt pocket. The averments recorded in the pre-trap panchanama, the fact of negotiation and handing over amount of Rs.250/- instead of Rs.300/- creates doubt about authenticity of the evidence of complainant.

15. The complainant has stated that he approached office of accused in January 2000. Accused told him that he will be required to give Rs.500/- to enter the name in the record. He does not remember the date on which said talk took place. The complainant then waited till 1st March 2000. The accused again demanded money on 1st March 2000. He gave Rs.200/-. Complainant went to office of ACB on 3rd March 2000 in the morning and not on 1st or 2nd

March 2000. Apparently documents required by complainant were ready and the same were handed over to complainant on 3rd March 2000. The amount was allegedly handed over after receiving 7/12 extract and 6-D extract. It is not the case of prosecution that documents were prepared after acceptance of amount. On the same day of lodging complaint raid was conducted. There was no verification of demand of bribe. All these circumstances speaks volumes of doubt about case of prosecution.

16. In the case of Suraj Mal Vs State (Delhi Administration), it was observed that recovery by itself cannot prove the charge of the prosecution against the appellant in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. In the case of State of Punjab Vs. Madan Mohan Lal Verma (supra), it is held that the law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the P.C.Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. The burden rests on the accused to displace the statutory presumption raised u/s.20 of the P.C.Act by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by hi, other than as a motive or reward as referred to in Section 7 of P.C.Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the

explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede (supra), it is held that demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. Demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of S.20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. In the case of Avinash Sitaram Garware Vs State of Maharashtra, it was held that once the prior demand is not proved, the rest of the prosecution case regarding

money allegedly demanded by the accused, will have to be read with great caution and where a person is charged with offences under the P.C.Act, he is required to refute the presumption of guilt contained in the said Act but the burden on him is not heavy. He has not to establish his defence beyond reasonable doubt. He may rebut the presumption by showing a mere preponderance of probability in his favour.

17. In the case of Neeraj Dutta Vs. State (Govt. of NCT of Delhi) (Criminal Appeal No.1669 of 2009 and other connected petitions and appeals, the five Judges Bench of Supreme Court answered the reference made by Three Judges Bench of Supreme Court vide order dated 27th August 2019. The reference was arising out of the order dated 28th February 2019, passed by a two Judge Bench of Supreme Court, wherein they expressed doubts as to validity of the position of law as expounded by Supreme Court in the case of P.Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another (2015)10-SCC-152. In that case, the Court held that, in the absence of primary evidence of the complainant due to his death, inferential deductions in order to sustain a conviction u/s.7 and 13(1)(d)(i) and (iii) of P.C.Act, 1988 was impermissible in law. Vide order dated 28th February 2019, the Court highlighted number of judgments, such as Kishanchand Mangal Vs. State of Rajasthan (1982)3-SCC-466, Hazarilal Vs. State (Delhi Administration) (1980)2-SCC-390 and M.Narsinga Rao Vs. State of A.P. (2001)1-SCC-691, wherein the Supreme Court, despite the absence of primary evidence of the complainant, sustained the conviction of the accused by relying on other evidence, and raising a presumption under the statute. The two Judges Bench referred the question of a law for

determination by a larger bench viz. “The question whether in the absence of evidence of complaint/direct or primary evidence of demand of illegal gratification is not permissible to draw inferential deduction of culpability/guilt of a Public Servant u/s.7 and Section 13(1)(d) read with Section 13(2) of P.C.Act, 1988 based on other evidence adduced by the prosecution”. Vide order dated 27th August 2019, the three Judges bench observed that two three Judge Benches of Supreme Court, in the cases of B.Jayraj Vs. State of Andhra Pradesh (2014)13-SCC-55 and P.Satyanarayana Murthy Vs. District Inspector of Police, State of A.P. and another (2015)10-SCC-152 are in conflict with an earlier three Judge bench decision of Supreme Court in M.Narsinga Rao Vs. State of A.P. (2001)1-SCC-691 regarding the nature and quality of proof necessary to sustain a conviction for the offences u/s.7 and 13(1)(d) r/w Section 13(2) of P.C.Act, 1988 when the primary evidence of the complainant is unavailable. The five Judges bench considered the question by way of reference that, in the absence of 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. 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 complainant not being available on account of his death or for any other reason. By way of analysis in paragraph 57 of the decision it was observed that in the case of B.Jayaraj, the complainant did not support the prosecution case. In P.Satyanarayan Murthy, the complainant died prior to letting in his evidence in the case. In M.Narsinga Rao, the question was whether a legal presumption could be based on a factual presumption. In

Hazari Lal, it was observed that, it is not necessary that passing of money should be proved by direct evidence, it could be proved by circumstantial evidence. In *Madhukar Bhaskarrao Joshi Vs. State of Maharashtra* (2000)8-SCC-571, it was observed that in order to draw a presumption u/s.20 of the Act, the premise is that there was payment or acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted as a “motive or reward” for doing or for bearing to do any official act. In paragraph 59 it was observed that in all the cases leading to the reference, it is either the death or the refusal to support the prosecution case that has led to the legal presumption u/s.20 of the Act not being raised and not bringing home the guilt of the accused. What emerged from the discussion was summarised in paragraph 68 which reads as follows :

- (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 u/s.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 u/s.13(1)(d)(i) and (ii) of the Act.

(iii) In both the 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 u/s.7 or Section 13(1) (d), (I) and (ii) respectively of the Act. Therefore, u/s.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 u/s.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.

18. The conclusion in the aforesaid discussion was reflected in

paragraph 69 and 70, which is as follows :

“69. 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.Nrasingha 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.

70. 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.”

19. The individual cases were directed to be considered before appropriate bench. The case of Neeraj Dutta was listed before the Bench of two Judges. It was decided on 17th March 2023 (2023-SCC OnLine-SC-280). Appeal was allowed and conviction was set aside. The submission on behalf of appellant was that there is no evidence of demand of illegal gratification by the applicant. Proof of demand of gratification by a public servant is a sine qua non for the offences punishable u/s.7 ad 13(1)(d) of the P.C.Act. The prosecution

submitted that PW-5 (shadow witness) has proved demand. On the basis of circumstantial evidence, the demand and acceptance are established. There was a presumption that the acceptance of gratification proves the existence of motive or reward. The facts of the case indicate that complainant died before trial commenced. PW-5 was the shadow witness. After analysing evidence and various decisions it was held that the demand for gratification and its acceptance must be proved beyond reasonable doubt. Paragraph 17 and 18 of this decision reads as follows :-

“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 u/s.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/o 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 the 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 or 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.”

20. In the facts of the case, it was held that there are no circumstances brought on record which will prove the demand for gratification. Therefore, the ingredients of the offence under Section 7 of PC Act were not established and consequently the offence u/s.13(1)(d) will not be attracted.

21. In the present case the complainant has deposed before the Court. His evidence does not inspire confidence. Evidence of panch

witness is not reliable to prove the demand and acceptance of amount as illegal gratification. The foundation of charge itself is not established. No other circumstances can be relied upon to convict the appellant for the offences for which he is charged.

22. Applying the principles enunciated in various decisions referred above, it can be seen that prosecution has failed to establish the demand and acceptance of bribe. Considering the aforesaid circumstances, conviction is required to be set aside.

ORDER

- (i) Criminal Appeal No.96 of 2007 is allowed and disposed off;
- (ii) Impugned Judgment and Order dated 12th January 2007 passed by Special Judge (Anti Corruption), Nashik in Special Case (ACB) No.9 of 2000 is set aside and Appellant is acquitted of all the charges.

(PRAKASH D. NAIK, J.)

MST