



Crl.A.No.459 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2023

Pronounced on : 21.04.2023

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.459 of 2018
and
Crl.M.P.Nos.4105 & 4110 of 2023

1.P.Nagarajan

2.Johnson Devakumar

... Appellants/Accused 1 & 2

/versus/

State by

The Deputy Superintendent of Police,
SPE, CBI, ACB, Chennai.

... Respondent / Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C., praying to call for the records in C.C.No.7 of 2014 and set aside the Judgment passed on 31.07.2018 by the learned XII Additional Special Judge for CBI Cases, Chennai in so far as the appellants concerned.

For Appellants : Mr.A.Ramesh, Senior Counsel
for Mrs.R.Maheswari

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor(CBI Cases)

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The case of the prosecution is that the appellants herein, who were serving as Deputy Inspector General of Police, Group Centre, CRPF, Avadi and Assistant Sub Inspector (Quarter Master Clerk), Group Centre, CRPF, Chennai respectively, during the year 2012-2013 had obtained illegal gratification from one Sri.Vijay Khanna (A3), the supplier of 2,464 numbers of Coat Combats. For expediting the payment of the bills the gratification has been transferred to the accounts of these two appellants by way of money transfer from A3 firm's bank account. It being the illegal gratification obtained by abusing the position, they found liable to be prosecuted for the offence punishable under Section 120-B of I.P.C., and for the offence punishable under Sections 7, 12 and Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act.

2. The investigation against the appellants commenced on a reliable information received by the Deputy Inspector General, CBI disclosing that CRPF Group Centre, Avadi, inviting offer for the supply of 2,464 numbers of Coat Combat Disruptive (Detachable Lining) issued a open tender notification on 05.06.2012. One Vijay Khanna (A3), Director, M/s.Madhur Enterprises Private Limited, Kanpur, was the successful bidder. Hence order for supply of Coat

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Combat was placed with him and he has supplied the material. To expedite the process for the payment of bill, Mr.Nagarajan, DIGP, CRPF, Chennai, the 1st appellant and H.Johnson Devakumar, ASI, CRPF, the 2nd appellant had demanded gratification. Pursuant to that, Vijay Khanna getting the bank account of Nagarajan maintained at Axis Bank, Anna Salai, Ramapuram, Chennai and bank account of Johnson Devakumar maintained at State Bank of India, Pollachi, had deposited a sum of Rs.10,000/- each into the account of Nagarajan on 03.12.2012, 21.01.2013 and 25.02.2013. The said Vijay Khanna had also deposited a sum of Rs.20,000/- in the account of Johnson Devakumar at the rate of Rs.10,000/- each on 15.12.2012 and 23.01.2013.

3. First Information Report was registered on 22.03.2013 by SPE/CBI/ACB/Shastri Bhawan, Chennai against Nagarajan, Johnson Devakumar and Vijay Khanna.

4. The Deputy Superintendent of Police, CBI, ACB, Chennai took up the investigation and collected materials, which substantiated the information.



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Therefore, sanctioned to prosecute them for the offences under Sections 120-B of I.P.C., and Sections 7, 12 and 13(2) r/w.13(1)(d) of the Prevention of Corruption Act was obtained and Final Report was laid against them. The Trial Court, on perusing the material placed by the prosecution, has framed the following charges:

“Firstly, that you Shri. P. Nagarajan (A1), while working as Dy. Insp. General of Police, Group Centre, CRPF, Avadi, Chennai; Shri. Johnson Devakumar (A2) working as ASI, Group Centre, CRPF, Avadi, Chennai and Shri. Vijay Khanna A3 Director, M/s. Madhur Enterprises Pvt. Ltd.. 47/65, Swadeshi Bazar, General Ganj Kanpur, a successful bidder/tenderer of Group Centre, CRPF, Avadi, Chennai during 2012-2013 at Avadi, Chennai and other places, entered into a criminal conspiracy to lo an illegal act viz to demand and acceptance of illegal gratification by you Shri.P.Nagarajan (A1) and you Shri Johnson Devakumar (A2) from A3 in the matter of supply of stores materials and for expediting the payment of A3's bills and in pursuance of the conspiracy you Shri P.Nagarajan (A1) and you Shri.Johnson Devakumar (A2) in abuse of your official position and as abetted by



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Shri. Vijay Khanna (A3), you Shri.P.Nagarajan (A1) and you Shri. Johnson Devakumar (A2) in order to obtain pecuniary advantage demanded illegal gratification and had furnished SB account details to you Shri Vijay Khanna (A3). In pursuance of that criminal conspiracy you Shri.P. Nagarajan (A1) through your Bank Account through your SB A/c. No.074010100119160 Axis Bank. Ramapuram Branch, Chennai and received the said illegal gratification of an amount of Rs.10,000/- each on three occasion i.e. on 3.12.2012, 21.01.2013 and 25.02.2013, totalling bribe amount of Rs.30,000/- from you Shri Vijay Khanna (A3) as a motive or reward for processing and expediting the bills to make payments for the supply of the materials and obtained pecuniary advantage of the said amount by corrupt or illegal means and that in pursuance of the conspiracy you Shri. Jhonson Devakumar (A2) by abusing and misusing your official position demanded and accepted as a motive or reward a bribe amount of Rs.10,000/- tech on two occasions, i.e., on 15.12.2012 and 23.01.2013; the first installment of bribe amount of Rs.10,000/- which was deposited on 15.12.2012 in SBI, Gumti Branch, Kanpur, UP, in the SB Account of you



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Shri Jhonson Devakumar (A2) maintained with SBI Pollachi Branch on the day of despatch of first installment of the consignment (Coat Combat) to GC, CRPF, Avadi, Chennai, subsequently you Shri. Jhonson Devakumar (A2) had received bribe amount of Rs.10,000/- on 23.01.2013 i.e., prior to the second and final dispatch of the consignment on 08.02.2013 which was deposited in SBI, Lajpatnagar Branch, Kanpur, in the SB Account of Shri Johnson Devakumar (A2) maintained with SBI Pollachi Branch through your SB A/c. No. 11103934455 and thereby you Shri.P. Nagarajan (A1) and Shri Johnson Devakumar (A2) and you Shri. Vijay khanna (A3) committed an offence punishable u/s.120-B IPC r/w Sec.7, 12 and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 and within my cognizance.

Secondly, that you Shri. P. Nagarajan (A1) during the period and the places mentioned in the first charge and in continuation of the conspiracy mentioned in the first charge by abusing your official position as Deputy Inspector General of Police, Group Centre, CRPF, Avadi, Chennai by corrupt or illegal means as a motive



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or reward for processing and expediting the payments for the bills of A-3 for the supply of materials done by A3 as mentioned in the first charge, demanded and accepted on 3.12.2012, 21.01.2013 and 25.02.2013 the bribe amount of Rs. 10,000/- each 2013 through your SB Account No.070410100119160 Axis Bank, Ramapuram Branch, Chennai in all totalling the bribe amount of Rs.30,000/- from Shri. Vijay Khanna (A3) and thereby you Shri.P. Nagarajan (A1) have committed an offence punishable u/s 7 of Prevention of Corruption Act 1988 and within my cognizance.

Thirdly, that you Shri.Johnson Devakumar (A2) during the period and the places mentioned in the first charge and in continuation of the conspiracy mentioned in the first charge by abusing your official position while working as Assistant Sub Inspector, Group Centre, CRPF, Avadi, Chennai by misusing or abusing your official position by corrupt or illegal means when functioning as Quarter Master Clerk and having dealt with the correspondence between the supplier company namely A3 and GC, CRPF, Avadi, Chennai demanded and accepted the bribe amount of Rs.10,000/- each on



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two occasions i.e. on 15.12.2012 and 23.1.2013 in all totalling Rs.20,000/- through your SB Account No.11103934455 held with State Bank of India, Pollachi Branch as a motive or reward for processing the said purchase bills and for expediting the payments for the bills submitted by Shri. Vijay f Khanna (A3) and thus you Shri. Jhonson Devakumar (A2) committed an offence punishable u/s.7 of Prevention of Corruption Act 1988 and within my cognizance.

Fourthly, during the period and the places mentioned in the first charge and in continuation of the conspiracy mentioned in the first charge that you Shri. Vijay Khanna (A3) abetted Shri. P.Nagarajan (A1) and Shri. Johnson Devakumar (A2) in the commission of an offence u/s.7 of P.C. Act 1988 by offering the bribe of Rs.10,000/- each on 3 occasions namely 3.12.2012, 21.01.2013 and 25.02.2013 in all totalling Rs.30.000/- to Shri.P.Nagarajan (A1) and by offering the bribe amount of Rs.10,000/- each on 2 occasions namely on 15.12.2012 and 23.01.2013 to Shri. Johnson Devakumar (A2) totalling a sum of Rs.20,000/- as a motive or reward in the matter of processing and



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expediting payment for the bills submitted by you Shri. Vijay Khanna (A3) for the supply of the materials to CRPF, Avadi, Chennai and thus you Shri. Vijay Khanna(A3) Director of M/s.Madhur Enterprises have committed an offence punishable u/s 12 of PC. Act, 1988 and within my cognizance

Fifthly, during the period and the places mentioned in the first charge and in continuation of the conspiracy mentioned in the first charge by abusing your official position that you Shri. P.Nagarajan (A1) and Shri Jhonson Devakumar (A2) by abusing and misusing your official position as such officers have obtained for yourself a pecuniary advantage of Rs.30,000/- by you Shri.P. Nagarajan (A1) on 3 occasions ie, on 3.12.2012, 21.01.2013 and 25.2.2013 from A3 by an amount of Rs.10,000/- each and you A2 received a bribe amount of Rs.10,000/- each on 2 occasions totalling Rs.20,000/- namely on 15.12.2012 and 23.01.2013 from A3 as a motive or reward for processing the purchase bills and in expediting the payment for the bills submitted by Shri. Vijay Khanna (A3) and thus you Shri.P. Nagarajan (A1) and Shri Jhonson Devakumar (A2)



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committed an offence punishable u/s.13(2) r/w 13(1)(d) of P.C. Act 1988 and within my cognizance.”

5. To prove these charges the prosecution has examined 17 witnesses and marked 45 Exhibits and 3 Material Objects. On appreciating the evidence, the Trial Court held A1 to A3 guilty and they are convicted and sentenced as follows:

<i>Rank of the accused</i>	<i>Charges</i>	<i>Findings of the Trial Court</i>	<i>Punishment</i>
A1 to A3	u/s.120-B IPC r/w. Sec.7, 12 & Sec. 13 (2) r/w 13(1) (d) of P.C. Act, 1988	Guilty	To undergo R.I., for 6 months each and to pay a fine of Rs.5,000/- each, in default to undergo Simple Imprisonment for 1 month each.
A1 and A2	Sec.7 of P.C. Act, 1988	Guilty	To undergo R.I., for 2 years each and to pay a fine of Rs.10,000/- each, in default to undergo Simple Imprisonment for 3 months each.
	Sec. 13 (2) r/w 13(1)(d)of P.C. Act, 1988	Guilty	To undergo R.I., for 2 years each and to pay a fine of Rs.10,000/- each, in default to undergo Simple Imprisonment for 3 months each.
A3	Sec.12 of P.C. Act, 1988	Guilty	To undergo R.I., for 2 years and to pay a fine of Rs.10,000/-,



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<i>Rank of the accused</i>	<i>Charges</i>	<i>Findings of the Trial Court</i>	<i>Punishment</i>
			in default to undergo Simple Imprisonment for 3 months .
Total fine imposed Rs.65,000/-			

The sentences of the imprisonments which are imposed for A1 to A3 ordered to run concurrently as per section 427 Cr.P.C and the period of detentions if any, which were already undergone by each accused ordered to be set-off as per section 428 Cr.P.C. The default sentences ordered to run in addition to the substantive sentences of imprisonment awarded to the respective charges to each accused.

6. Aggrieved over the conviction and sentence, A1 and A2 had preferred Crl.A.No.459 of 2018. A3 filed Crl.A.No.454 of 2018. Pending appeal, A3 died hence, his appeal is abated.

7. The learned Senior Counsel appearing for the appellants submitted that there is a gross error in the appreciation of evidence by the Trial Court, which has lead to serious miscarriage of justice. The Trial Court has erred in ignoring the settled principle of law that in the absence of proof for the foundational fact that



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illegal gratification has been demanded by the public servant, the presumption under Section 7 cannot be drawn. Further, offence under Section 13(1)(d) of the P.C.Act, is not presumable under Section 20 of P.C.Act. While so, the deposits in the accounts of the accused persons without their knowledge cannot be construed as an illegal gratification demanded and obtained.

8. The learned Senior Counsel for the appellants admitted the entries in the inward deposit in their respective accounts and primarily confined his argument that such deposit is neither a proof for demand nor acceptance. Mere proof of deposit in the account of the appellants is not a proof for neither demand nor acceptance. Particularly, when the prosecution witnesses had not supported the prosecution case that those deposits were made with the knowledge of the accused and it was deposited pursuant to the demand made by the appellants in connection with passing of bills pertaining to M/s.Madhur Enterprises Private Limited of Vijay Khanna. He also submitted that there is no proximity of dates between the sanction of Bills and the deposits.

9. The learned Senior Counsel further submitted that the prosecution has



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attempted to prove that there was a telephonic conversation between Vijay Khanna, the 3rd accused and the public servants namely A1 and A2, but the so called telephonic conversation recorded in the CD has not been marked in the manner known to law. Being an electronic evidence, the provision of Section 65B of the Evidence Act, ought to have been scrupulously followed. Whereas, in this case, the prosecution has given a go by to the mandatory provision and had marked certain electronic evidences without accompanying valid certificate. Those in admissible evidence not proved that conversation alleged to have been found recorded in the CD, marked as M.O.1 are between the accused persons and it was regarding demand of illegal gratification. The transcript of the conversation alleged to have been recorded in M.O.1 was not provided to the Court for appreciation.

10. The sanction order to prosecute these two appellants was accorded without proper application of mind and proper scrutiny of the documents. PW.1, the Sanctioning Authority had admitted that Ex.P2 sanction for prosecution dated 20.03.2014 was prepared jointly by the officers of the CBI, CRPF and Ministry of Home Affairs and he being satisfied himself signed it. Thus, it is clear that the Sanctioning Authority has not applied his mind independently, but acted upon the



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borrowed wisdom of officers from CBI, CRPF and Ministry of Home Affairs.

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11. PW.17, Saurabh Kapoor, who is the staff of the 3rd accused had turned hostile and he has not supported the case of the prosecution that the money deposited in the accounts of A1 and A2 was done at the instance of A3. He has deposited the money on the instructions of his senior one Madhan Mohan Pondey and he could not identify the voices in the CD marked as M.O.1 played to him. Since he has not supported the case of the prosecution to prove the voice of the persons indulged in the conversation recorded in CD [M.O.1]. He was treated as hostile witness.

12. The bank account statement relied by the prosecution has not been certified as per the provision of Bankers Book Evidence Act and therefore, the ledger entries found in Ex.P3 to Ex.P5 are all inadmissible.

13. The tender for supply of Coat Combat was floated and finalised as per the procedure by Tender Processing Committee presided by I.G. CRPF, Southern



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Zone. The successful bidder M/s.Madhu Enterprises Private Limited has supplied the order and is lawfully entitled for the bills, which he has claimed. After the goods received by the supplier, the Line Committee will check the goods for quality. As per the procedure after receiving the invoice, detailed bill is prepared by the Accounts Branch, CRPF, Avadi and is sent to Regional Pay and Accounts Office, Hyderabad for passing the bills. In case of the supply made by the 3rd accused, the entire bill was properly scrutinized, approved and paid by the Accounts Officer, GC, CRPF, Avadi, Chennai on 02.04.2013. The accused/appellants herein are neither competent nor have authority to approve the purchase of store materials worth over and above Rs.10 lakhs and they have no role in finalising the tender or payment of bills to the supplier. The allegations that they both along with the supplier entered into criminal conspiracy and demanded illegal gratification for expediting the payment of bill raised by the 3rd accused is unfound and there is no iota of evidence to indicate bribing by A1 and A2. The only incriminating material against the appellants is the inward entries in the Bank accounts maintained by them. To co-relate the inward entry towards the payment of bills to A3, there must be some link evidence which is completely absent in this evidence. Therefore, the case of the prosecution through PW.5 and PW.12 would



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clearly show that there is no role for A1 or A2 to play in expediting the bills of A3 or by receiving the illegal gratification, they expedite the payment process.

14. The prosecution relies upon the alleged conversation between A1 and A2 with A3 touching upon demand of bribe money. According to PW.7 the conversation was intercepted by way of burning 35 calls which were found relevant to the facts leading to the prosecution of the case. PW.7 claims that he has certified the document as per Section 65(B) of Indian Evidence Act. However, in the cross examination, he has admitted that he has not given the entire data collected during the interception by him and he has chosen only 35 calls which according to him are relevant and further he admits that the CD, which he burnt the intercept call is rewritable. Therefore, when there is possibility of tampering the data recorded in the CD and the certificate is not in accordance with Section 65(B) of the Evidence Act. No weightage could be given to the said electronic evidence pertaining to the conversation. Similarly the call details collected from BSNL marked as Ex.P10, Vodafone marked as Ex.P11 also suffers defective certificates. Therefore, the appellants seek reversal of the findings of the Trial Court by allowing the Appeal.



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15. In response to the submission made by the learned Senior Counsel appearing for the appellants, the learned Special Public Prosecutor appearing for the CBI submitted that PW.17-Saurabh Kapoor, who was employed under the 3rd accused in his firm, M/s.Madhur Enterprises Private Limited, had deposed that on the advice of his senior he deposited Rs.10,000/- in the account of A1-Nagarajan. He has identified the counterfoil written by him and Ex.P13 (series) relating to the deposit of Rs.10,000/- in the account maintained by Nagarajan (A1) Axis bank at Erode branch. He likewise has identified the counterfoil dated 25.02.2013 through which he had deposited Rs.10,000/- in the account of Nagarajan maintained at Axis bank of Erode branch. Again he has deposited a sum of Rs.10,000/- on 15.12.2012 in the account of Johnson Devakumar (A2) maintained in the State Bank of India, Pollachi branch. All these documents are marked under Ex.P13 (series). The person, who has deposited, has come before this Court and has spoken about the said deposit. Though he was treated hostile for other reasons, his evidence categorically prove the fact that on the instructions of his senior in the company which is owned and administered by the 3rd accused, money has been deposited in the accounts maintained by Nagarajan and Johnson Devakumar.



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16. Admittedly, this money has been deposited by the staff of A3 and A3 had a contractual relationship with CRPF regarding the supply of store materials. A1 as a D.I.G of Police, A2 as a Quarter Master Clerk had role in processing the bills and receipt of the store materials. Both had habitually received money from a particular source, which requires explanation from the account holder, who are public servants. In this case the appellants are trying to find fault with the investigation and lapses which are trivial in nature but had never ventured or attempted to explain how and why they received the said money in their account. It is not a mere presumption that this money, been received as an illegal gratification for expediting the bills, but the circumstances and the telephonic conversation intercepted had substantiated the allegations and proved the charges beyond doubt.

17. Further, the learned Special Public Prosecutor for CBI submitted that the company which is a supplier to CRPF having its operation at Kanpur had been periodically depositing the money into the accounts of the first accused SBI, Pollachi, Coimbatore District, Tamil Nadu and in the bank account maintained by second accused in Axis bank, Mount Road, Ramapuram at Chennai. More



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particularly, when Nagarajan as DIG been the Chairman of Price for the tender floated for purchase of cloth leopard gray and Coat Combat and A2 is the Store incharge to check and receive the goods and the firm of A3 is the successful bidder, which has deposited the money in their account. The sanctioning authority having gone through the records, applied his mind and accorded sanction to prosecute A1 and A2. No doubt, PW.1 has admitted that there was a consultation process, but it cannot be considered as the decision was not taken independently.

18. The learned Special Public Prosecutor prayed that there been no interference in the judgment of the Trial Court. Since the Trial Court considered the evidence in detail had held that there is sufficient oral, documentary and circumstantial evidence to prove that A1, A2 and A3 had entered into criminal conspiracy and in pursuant to the criminal conspiracy, A3 has paid illegal gratification for expediting the payment of bills and on receipt of the illegal gratification, A1 and A2 had accomplished the requirement of A3, the money deposited in the accounts of A1 and A2 is the motive or reward for the processing and expediting the bills of A3. A cash deposited by A3 through his employee and absence of explanation for the said deposit which can emanate only from the



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person concerned, who had an exclusive knowledge about it, the guilty of offence under Section 120-B I.P.C., and Sections 7, 12 and Sec 13(2) r/w 13(1)(d) of P.C.Act gets proved.

19. Heard the learned counsels and records perused.

20. The Learned Counsel for the appellants referring about the charge framed against these appellants regarding Section 7 of Prevention of Corruption Act, submitted that, there is no substance for demand mentioned in the charge to attract offence under Section 7 of P.C.Act. In the absence of proper charge for offence under Section 7 of P.C.Act without any particulars about the demand of illegal gratification, the appellants cannot be convicted for the said charge. In support of his submission, he rely upon the judgment of the Hon'ble Supreme Court rendered a week before on 17.04.2023 in ***Soundarajan Vs. State Represented by the Inspector of Police, Vigilance Anticorruption, Dindigul*** reported in ***2023 SCC Online SC 424***.

21. The learned Special Public Prosecutor (CBI) distinguishing the facts



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of the case relied by the counsel for the appellants submitted that, the facts of the case in *In re: Soundarajan cited supra* is in respect of the trap laid based on the complaint by the person aggrieved by the demand. The trap laid on 12.08.2004, was unsuccessful and the second trap ended in success. In this case, charge for the alleged demand on 06.08.2004 and 13.08.2004, was not framed. Charge was only framed in respect of alleged earlier demand made on 12.07.2004 the complainant later turned hostile and did not support the case of the prosecution regarding the demand on 12.07.2004. In the said circumstances, the Hon'ble Supreme Court has held that, to establish the commission of offence punishable under Section 7 of P.C.Act, proof of demand of gratification and acceptance of gratification is *sine quo non*. Contrary to the facts of that case, in the case in hand, it is not an explicit demand made by the accused person, but an implicit understanding between the bribe giver and the bribe taker. Consequent to the said understanding, illegal gratification has been paid as reward for expediting the process of Bill payment. The acceptance proved and not denied in the case in hand.

Section 7 of Prevention of Corruption Act is concerned it reads as below:-

“7. Public servant taking gratification other than



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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.—(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.”

22. For the purpose of proving the charge under Section 7 of P.C.Act, the



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prosecution is supposed to prove the demand of money for other than illegal gratification. The Courts have made observation time and again that proof of demand of gratification and acceptance of gratification is a *sine quo non*. This rule will apply only in case where the person to whom demand made not inclined to give illegal gratification and reports the matter to the Authorities and not in cases where the bribe giver concedes for the demand and pay the illegal gratification without any protest so as to get favour from a public servant in the discharge of official act. There will be rarely direct evidence for the demand in such cases. Only the circumstantial evidence will prove the obtainment of illegal gratification preceded a demand or expectation of illegal gratification as reward or motive by the public servant to do favour to a person from whom he or on his behalf gets the said illegal gratification as reward or motive.

23. Therefore, the Learned Government Advocate (Crl.Side) for the respondent submitted that, in view of the peculiar facts of this case, where the bribe giver also been arrayed as accused and the case was registered based on the source information, the standard test for proof of demand need not be applied. Hence, submitted the charge framed for offence under Section 7 of P.C Act is not



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erroneous, which will vitiate the trial on the ground of failure of justice.

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24. From the material placed, this Court could find that, pursuant to the information collected during the interception of phone calls and source report, case has been registered by the C.B.I and taken up for investigation. From the investigation, C.B.I has collected materials to show that the employee of A3 had deposited Rs.10,000/- on 5 occasions in the accounts of A1 and A2 during a short span of time, a sum of Rs.30,000/- has been deposited in the account of A1 and Rs.20,000/- in the account of A2. These are the facts, which are proved by the prosecution through the particulars collected from the respective banks and the testimony of PW.17 who had made the said deposits. Except denying knowledge about the deposits, there is no explanation forthcoming from the accused persons, why they allowed the receipt and enjoyed it. The prosecution has established the fact that PW.17, who has deposited the money, has done so on the instruction of his superior who is also an employee under A3. A3 is not a stranger to the appellants or to the institution in which the appellants are working. He is the successful supplier of Coat Combat and after supplying the goods, he had received the price for the goods supplied. These facts are not disputed and admitted by the



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accused persons.

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25. The point for consideration boils down as to whether the money found in the account of A1 and A2 which traces the source to A3 is an illegal gratification obtained on demand as a reward or motive to expedite the processing of the bills of the supplier. For the question why the company at Kanpur should deposit money regularly into the accounts of A1 and A2, who are serving in Tamil Nadu, the answer can emanate only from the accused persons. In this case, except claiming ignorance of those deposits, the accused has not come out with any plausible explanation.

Section 13(1)(d) of Prevention of Corruption Act reads as below:-

“Section 13 in The Prevention of Corruption Act, 1988

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



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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”

26. There are catena of judgments in which, the Hon'ble Supreme Court has held that it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Sections 7, 12 and 13(2) r/w. 13(1)(d) of the P.C.Act based on the circumstantial evidence adduced by the prosecution in the absence of direct/primary, oral/documentary evidence. The latest judgment in this line is the constitutional bench judgment rendered in ***Neeraj Dutta Vs. State (Government of NCT Delhi)*** reported in ***2022 SCC Online SC 1724***. The principle laid down by the Hon'ble Supreme Court of India in response to the order of reference summarized as under:-

“74. What emerges from the aforesaid discussion is summarized as under:



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

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

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

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the 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



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Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

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

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



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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 of complaint 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 presumption 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



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proof of the facts in issue, Section 20 mandates the court to raise a presumption that 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.”

27. As far as the dictum relevant is underscored it is clear that demand and acceptance of illegal gratification can also be proved through circumstantial evidence. Mere acceptance or receipt of an illegal gratification without any plausible reason is a case of acceptance attracting offence under Section 7 as well as Section 13(1)(d) of P.C.Act.

28. It is to be noted that Section 7 as well as 13(1)(d) uses the expression accepts or obtains or agrees to accept gratification other than legal remuneration as



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a motive or reward to do any service or disservice. This in other words means the gratification may be a motivative factor to do an act in future or it may be a reward for the act already done. In India the general public are now getting accustomed to the fact that in several Government offices, even to do a legal act, public servant expect and accept gratification to motivate them. Those who are frequent visitors to any public office get accustom to this practice by learning from others or by themselves. Even without express demand they know well that unless they grease the palm, the work will not be done. More frequent they visit, get more accustom to the norms fixed by those corrupt officials to do their legal work. The public then start offering bribe without even making any explicit demand. Only in cases where strangers to the practice face difficulty for not greasing the palm, they at some point of time get agitated or either succumb to the pressure. They either pay gratification or give complaint to the authorities. In some cases, both the bribe giver and the bribe taker are comfortable with the implicit arrangement and bury their ugly dealing.

29. When the bribe giver as well as bribe taker are on the same page, no one can expect direct evidence for demand or obtainment. Then the charge can be



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proved through other circumstantial evidence. In such case, it is sufficient to prove that the obtainment was not a legal remuneration, but it is an illegal gratification.

In the days of digital era, hardly direct eye witness for demand or obtainment will be available. As we find in this case, money from Kanpur bank been transferred to the bank in Chennai and Pollachi. It cannot be prudent to search for direct evidence for demand when the bribe giver as well as the bribe taker not intend to disclose paying illegal gratification or getting illegal gratification respectively. If a person receiving illegal gratification as reward without demand is exonerated that no proof for demand or no substantive charge for demand is framed, then it will be easy for all corrupt persons, at all level to justify the receipt of illegal gratification through online transfer and plead it is given without demand and no proof for demand.

30. This is not an intention and object of the Prevention of Corruption Act, either when was enacted in the year 1947 or substituted in the year 1988 or substantially amended in the year 2018. Hence this Court holds that just because the prosecution evidence regarding the bank account and telephonic conversation is faulty due to procedural error, the fact that Rs.10,000/- each on three occasions



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flowed into the account of A1 at the instance of A3 and Rs.10,000/- each on 2 occasions flowed into the account of A2 at the instance of A3 cannot be ignored to hold as an innocuous transaction without any relevance to the discharge of duty by A1 and A2 in connection with the Bills of A3.

31. Therefore, this ***Criminal Appeal is dismissed.*** Consequently, the connected Criminal Miscellaneous Petitions are also dismissed. The conviction and sentence awarded by the learned XII Additional Special Judge for CBI Cases, Chennai, in C.C.No.7 of 2014, vide impugned judgment dated 31.07.2018, are hereby confirmed. It is made clear that the period of incarceration undergone by the appellants/accused during the course of investigation/trial is ordered to be set-off under section 428 Cr.P.C.

21.04.2023

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To,

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- 1.The XII Additional Special Judge for CBI Cases, Chennai.
- 2.The Deputy Superintendent of Police,
SPE, CBI, ACB, Chennai.
- 3.The Public Prosecutor (CBI),
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN.J.,

rpl

Pre-Delivery Judgment made in
Criminal Appeal No.459 of 2018

21.04.2023