

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 747 of 2015

Dilip Kumar Roy

Vs

The State of West Bengal

For the Appellant

: Mr. Ayan Bhattacharya,
Mr. Amitava Raha,
Mr. Sounak Mandal.

For the State

: Mr. Joydeep Roy,
Ms. Sujata Das.

Hearing concluded on

: 05.04.2024

Judgment on

: 07.05.2024

Shampa Dutt (Paul), J.:

The Appeal:-

1. The appeal has been preferred against a Judgment dated 07.10.2015 and Order dated 08.10.2015 passed by the Learned Additional Sessions Judge, Third Court, and Judge Third Special Court, Bankura in connection with Special Court Case No. 2 of 2000, arising out of Chhatna Police Station Case No. 16/97 dated 30.04.97 and under Sections 463/464/465/420 of the Indian Penal Code, 1860 and Section 7 of the Prevention of Corruption Act, thereby convicting the appellant under Section 7 of the Prevention of Corruption Act and sentencing him to suffer Rigorous Imprisonment for three years and to pay a fine of Rs. 5,000/- in default to suffer Simple Imprisonment for another two months and also convicting the appellant under Section 13(1)(d)(ii) of the Prevention of Corruption Act and sentencing him to suffer Rigorous Imprisonment for three years and to pay a fine of Rs. 10,000/- in default to suffer Simple Imprisonment for another three months.

The Prosecution:-

2. **The prosecution case in a nutshell is that:-**

“On 30.04.97 at 15.29 hours in front of Chhatna P.S. Chhatna, Bankura inside Dulal Mistanna Bhandar, Chhatna at a distance of about 10 meters from Chhatna P.S., Sri Dilip Kumar Roy, B.L. & L.R.O., Chhatna while keeping after accepting Rs. 15,000/- in his brief case, during drinking Thums Up at Dulal

Mistanna Bhandar in front of Chhatna P.S. as gratification from de facto complainant Anupam Banerjee other than legal remuneration, as a motive of doing official act and also showing favour to de facto complainant Anupam Banerjee in exercise of his official function in the matter of record correction in L.A. case No. 35/88-89 Vis-à-vis payment of compensation upon acquisition of land in Dag no. 470 under Mouza Sonapur under P.S. Chhatna by WBSEB (having reference to Hon'ble High Court C.R. No. 2955(W)/1973 and Writ Petition No. 1820/(W)/1992 was caught red handed by some officials in plain cloth, namely, Haripada Roy, SDO(S), Bankura, Sri Pratap Chandra Das, Inspector of Police, Vigilance & Anti Corruption Unit, Bankura, S.I. Dilip Kumar Chanda of Vigilance Department, Bankura, H.G. Parasuream Singh and S.I. Mr. Swapan Das of Chhatna P.S. The accused accepted amount of Rs. 15,000/- was recovered from the possession of Sri Dilip Roy on the spot from a fiber sky colour attachi case including some papers and documents and cash amount of Rs. 8,691.30/-. Vigilance Inspector also seized one H.M.T. wrist watch, one golden ring with Pokraj stone, identity card of Dilip Kumar Roy, some official rubber stamp and order sheet. It is stated that as per complaint of de facto complainant, D.M./D.V.O., Bankura made the necessary arrangement for apprehending Dilip Roy. It is also stated that Rs. 15,000/- consisted of 30 nos. 500 Rupee currency notes each bearing the initial signature of D.M., Bankura Smt. R. Tempo, I.A.S."

3. On completion of investigation, charge sheet under Sections 463/464/465/467/468/474/471/420 of the Indian Penal Code, 1860 read with Section 7/13 of Prevention of Corruption Act vide Charge Sheet No. 36/97 dated 18.09.97 against the appellant. Subsequent to submission of the charge sheet the case has been registered as Special Court Case No. 2 of 2000.

4. Charge was framed under Sections 463/464/465/420 of the Indian Penal Code, 1860 and Section 7/13 of the Prevention of Corruption Act, to which the appellant pleaded 'not guilty' and claimed to be tried.
5. In order to prove its case the prosecution examined as many nineteen prosecution witnesses. The defence did not adduce any witness.
6. On completion of trial, the Appellant was sentenced as above.

The Evidence:-

7. The relevant witnesses are discussed here:-

- i) **Prosecution witness no. 1** is brother of the owner of the Sweet Shop at the alleged place of occurrence. This witness was taken from the shop to the Police Station and he signed as a seizure witness. The attaché was opened by the Vigilance Officer, in his presence and 30 currency notes of Rs. 500 denomination were recovered along with other articles belonging to the appellant.
- ii) **P.W. 2** is a retired Revenue Officer.
- iii) **P.W.3**, on 30.04.07, found the complainant Anupam Banerjee sitting in the B.L. & L.R.O.'s chair. This witness saw the accused change an Order Sheet. On being cross examined, he stated that on that day the B.L.& L.R.O. and other office staff drew salary.

iv) **P.W. 10, Anupam Banerjee is the Complainant in this case.**

This witness has reiterated the incident in this case but has not supported the case in respect of the Appellant. In fact though not formally declared hostile, this witness did not support the case against the Appellant. Nor did he reiterate his allegations against the Appellant as stated in the written complaint.

v) But the total incident as stated in the complaint has been duly corroborated by **P.W. 12, 13**, constables in the Vigilance Unit, Bankura.

vi) **P.W. 18**, S.I. of police has totally corroborated the prosecution case.

vii) **P.W. 19, Vigilance Inspector, Bankura, was part of the raiding team and has also totally corroborated the prosecution case.**

8. In *Neeraj Dutta Vs State (Govt. of N.C.T. of Delhi)*, in Criminal Appeal No. 1669 of 2009, on 15th December, 2022, a Constitution Bench of the Supreme Court held:-

“1. The present reference, concerning the Prevention of Corruption Act, 1988, arises out of the order dated 28.02.2019, passed by a two-judge bench of this Court, wherein they expressed certain doubts as to the validity of the position of law as expounded by this 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 under Sections 7 and 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 was impermissible in law.

2. However, the Court, vide order dated 28.02.2019, highlighted a number of judgments, such as *Kishan Chand Mangal vs. State of Rajasthan*, (1982) 3 SCC 466; *Hazari Lal vs. State (Delhi Administration)*, (1980) 2 SCC 390; and *M. Narsinga Rao vs. State of A.P.*, (2001) 1 SCC 691, **wherein this 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.**

3. Noting the divergence in the treatment of the evidentiary requirement for proving the offence under Sections 7 and 13(1)(d) read with Section 13(2), Prevention of Corruption Act, 1988, the Court referred the following question of a law for determination by a larger bench:

“The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution.”

2. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short ‘the Act’) would not arise. Thus, the proof of demand is a sine qua non for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and 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. Relevant provisions of the Act.

68. What emerges from the aforesaid discussion is summarised as under:

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

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

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

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

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

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

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without

anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act.

Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

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

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

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

(i) and (ii) of the Act.

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

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. 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.*

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.”

- 9.** Thus considering the said Judgment of ***Neeraj Dutta Vs State (Govt. of N.C.T. of Delhi), (Supra)*** this Court finds that as **all the formal witnesses (Govt. Officers) have totally corroborated the prosecution case** and all the documentary and material evidence has proved the charge against the appellant beyond reasonable doubt. Thus, the judgment under appeal being in accordance with law and requires no interference and is **thus affirmed.**

10. CRA 747 of 2015 is dismissed.

11. Appellant’s bail bonds stands cancelled.

- 12.** Accused is directed to surrender within 30 days from the communication of this order to service out the sentence in default trial Court to proceed in accordance with law.
- 13.** All connected applications, if any, stand disposed of.
- 14.** Interim order, if any, stands vacated.
- 15.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 16.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)