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

CRIMINAL APPEAL NO.756 OF 1997

SHRIKANT CHIMAJI JAHAGIRDAR	..APPELLANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Kuldeep S. Patil for the appellant.

Mr. S. H. Yadav, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 23, 2024.

ORAL JUDGMENT :

1. The challenge in this appeal is to the judgment and order passed by the Special Judge, Solapur convicting the appellant (accused No.1) for the offence punishable under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereafter 'the PC Act' for short) and thereby sentenced him to suffer rigorous imprisonment for a period of one and half year and to pay fine of Rs.1,000/, in default, to suffer further rigorous imprisonment for a period of nine months. The appellant was further convicted for the offence punishable under Section 7 of the PC Act

and sentenced to suffer rigorous imprisonment for a period of one year and to pay fine of Rs.500/-, in default, to suffer further rigorous imprisonment for a period of six months.

2. The prosecution case in brief is as under :-

At the relevant time the appellant-accused No.1 was working as an Awai Karkun and Executive Magistrate in the Tahsil Office, North Solapur. The accused No.2 was working as a Writer in the Tahsil Office. One Ramesh Mansawale was related to PW-7 – Parshuram Khadgikar was detained in jail on 21.07.1992 in Chapter Case No.191 of 1992 registered by the accused No.1 on the basis of a report submitted by Jail Road Police Station, Solapur. PW-7 contacted Advocate Mr. Abaji - PW-5 from Solapur on 23.07.1992 for securing the release of Ramesh. A vakalatnama was handed over to PW-7 and an application was addressed to the Superintendent of Jail to obtain signature on the vakalatnama. PW-7 obtained such signature by visiting District Jail and handed over signed vakalatnama to PW-5 on 27.07.1992.

3. The complainant (since deceased) – Manik Waghmode

used to work as Advocate's Clerk with Advocate Abaji and other advocates. On 28.07.1992 the complainant visited the office of PW-5. PW-5 handed over the vakalatnama and asked the complainant to obtain orders for bail from the appellant-accused No.1 to release Ramesh. The complainant went to Tahsil Office. The appellant was discharging duties at Tahsil Office, North Solapur as Executive Magistrate. The complainant handed over the application to the appellant to release Ramesh on bond supported by the vakalatnama. At that time the accused No.1 asked the complainant to pay him Rs.100/- for releasing Ramesh on a personal bond. When the complainant requested for reduction of the amount of demand, the appellant declined to do so. The appellant asked the complainant to pay him Rs.100/- between 3.00 p.m. to 6.00 p.m. and returned to him the application and vakalatnama.

4. The complainant filed a complaint with Anti Corruption Bureau, Solapur ('ACB', for short). On recording of the complaint, Police Inspector Shaikh decided to lay a trap. In response to the request letter sent by Police Inspector

Shaikh, panch witnesses Shivaji Nanaware and Vyankatesh Dhale came in the ACB office. The typed copy of the complaint lodged by the complainant was handed over to the panch witnesses. Two currency notes of Rs.50/- were smeared with anthracene powder.

5. It is pertinent to note that the initial demand was not verified. So far as the initial demand is concerned, the complainant is the only witness. The trap was laid. Accordingly, on 28.07.1992 the complainant along with panch witnesses went to the Tahsil Office to handover the amount as demanded. The appellant asked the complainant to handover the amount to accused No.2. Accused No.2 accepted the amount. The raiding party was informed. The appellant and the accused No.2 came to be arrested.

6. The prosecution examined nine witnesses. PW-1 is Superintendent of District Prison Jail, Solapur before whom the vakalatnama was signed. PW-2 was working as a Clerk in the Tahsil Office, North Solapur. PW-3 is Naib Tahsildar who was examined for the purpose of explaining the procedure for securing the release of the person detained in

chapter cases. PW-4 is the panch witness who accompanied the complainant at the time of trap. PW-5 is the advocate who represented Ramesh. PW-6 was working as a Talathi at Tahsil Office, North Solapur. PW-7 – Parshuram Khadgikar who is the relative of Ramesh had been to PW-5 for securing the release of Ramesh. PW-8 is the Investigating Officer. PW-9 is the Collector, Solapur who was examined for the purpose of proving the sanction order.

7. I have heard learned counsel for the appellant who took me through the evidence on record. Learned APP opposed the appeal. My attention is invited to the observations made by the trial Court in support of the submissions made by learned APP.

8. At the outset, it is pertinent to note that before the trial could commence, the complainant died. The initial demand was not verified. The Supreme Court in *Neeraj Dutta vs. State (Govt. of N.C.T. of Delhi)*¹ has observed that demand for gratification and acceptance thereof are sine qua non for offence punishable under Section 7 of the PC Act. As the decision in *Neeraj Dutta (supra)* has an

¹ 2023 SCC OnLine SC 280

important bearing on the present case, I propose to quote the observations of Their Lordships in extenso. The Supreme Court dealt extensively with the scope of Section 7, 13(1)(d) of the PC Act. Paragraphs 8 to 14 are important which read thus :-

"8. Before we analyze the evidence, we must note that we are dealing with Sections 7 and 13 of the PC Act as they stood prior to the amendment made by the Act 16 of 2018 with effect from 26th July 2018. We are referring to Sections 7 and 13 as they stood on the date of commission of the offence. Section 7, as existed at the relevant time, reads thus:

"7. Public servant taking gratification other than legal remuneration in respect of an official act

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Explanations :

(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."

9. Section 13(1)(d), as existed at the relevant time, reads thus:

"13.Criminal misconduct by a public servant :

(1) A public servant is said to commit the offence of criminal misconduct,-

(a)

(b)

(c)

(d) if he :

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

(ii) by abusing his position as a public servant,

obtains for himself or for any other person any valuable thing or pecuniary advantage; or

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

(e)"

The demand for gratification and the acceptance thereof are sine qua non for the offence punishable under Section 7 of the PC Act.

10. The Constitution Bench⁴ was called upon to decide the question which we have quoted earlier. In paragraph 74, the conclusions of the Constitution have been summarised, which read thus:

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

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under 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."

(Emphasis added)

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

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

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

(Emphasis added)

11. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as

mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj (supra) and P. Satyanarayana Murthy (supra). There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu 2021(3) SCC 687, which follows the view taken in the cases of B. Jayaraj (supra) and P. Satyanarayana Murthy (supra). In paragraph 9 of the decision in the case of B. Jayaraj (supra), this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:

"9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

(Emphasis added)

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

12. In the case of N. Vijayakumar⁵, another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1 and B. Jayaraj v. State of A.P. (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."

(Emphasis added)

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

13. Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand

and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

14. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore,

in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."

9. The Supreme Court has thus held that in the event the complainant has died, the 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. Their Lordships held that 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. So far as the presumption under Section 20 is concerned, it is held that the presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The

presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption. It also requires to be noted that the Supreme Court has while considering the cases under Sections 7, 13(1)(d) and 13(2) of the PC Act, has reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. Even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is

proved. Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt. So far as Section 7 of the PC Act as existed prior to 26.07.2018, 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.

10. Now coming to the evidence on record, according to the prosecution, the direct evidence is in the form of evidence of PW-4 - Shivaji Bhikaji Nanaware the panch witness. As indicated earlier, the complainant died before the commencement of the trial and furthermore the initial demand was not verified. PW-4 - the panch witness who accompanied the complainant at the time of the trap deposed that after they went to Tahsil Office, the appellant asked the complainant whether he has brought money. The complainant replied that he has brought Rs.100/- as suggested by him (the appellant). The appellant then handed over the papers to the person sitting by his side and asked that person to do the work of the complainant.

Subsequently the person concerned i.e. PW-2 Jagler removed two forms from his drawer and obtained the signatures of the complainant and handed it over to him. The appellant then called one person who was standing behind the complainant and asked him to accept Rs.100/- from the complainant. The accused No.1 asked the complainant to pay Rs.100/- to the accused No.2. The complainant asked accused No.1 whether the money is to be paid to the accused No.2. Tthe complainant indicated that the money is to be paid to the accused No.2. The complainant removed marked currency notes and handed over the same to the accused No.2. Thereafter, the appellant put his signatures on the papers given by PW-2 and then handed over the same to the complainant.

11. PW-2 in his evidence has deposed that he was not in a position to see where the accused No.2 was standing. PW-2 has deposed that the appellant had passed the order to release the opponent on execution of personal bond of Rs.500/- by the order dated 21.07.1992 and that it is only on 28.07.1992 the complainant had come to execute the

bond. So far as Section 313 statement of the accused No.2 is concerned, the accused No.2 has stated that he did not accept money at the instance of the appellant. The evidence of PW-4 indicates that he had no personal knowledge about the purpose for which the cash was allegedly handed over by the complainant to the accused No.2.

12. The question is whether, on the basis of the evidence on record, the prosecution has proved the demand of gratification by the accused. When the issue of proof of demand within the meaning of Section 7 of the PC Act is to be considered, it cannot be a simplicitor demand for money but it has to be a demand of gratification other than legal remuneration. Assuming that the statement of PW-4 and the examination-in-chief is correct, even then it is not possible to infer that the demand of Rs.100/- was made by the appellant by way of gratification. Every demand for payment of money is not a demand for gratification. It has to be something more than the demand for money.

13. From the evidence of PW-4 what can be seen is that when the complainant went to the Tahsil Office, the

appellant asked the complainant to handover Rs.100/- to the accused No.2. There is nothing in the evidence of PW-4 about there being any discussion in his presence between the appellant and the complainant on the basis of which the inference could have been drawn that there was a demand made for gratification by the appellant. PW-4 had no knowledge about what transpired between the complainant and the appellant earlier. In the Section 313 statement of the appellant, the appellant had stated that the complainant had come to his office in connection with the Advocate's work. He was very arrogant and he used to speak in threatening language. On 25.07.1992 the complainant had come to the appellant's counter when the complainant was dealing with the chapter cases and there was crowd of about 50 persons. The appellant asked the policemen to remove the crowd so that he could work. The appellant says that the complainant gave a threat to him. It is pertinent to note that the currency was recovered from the accused No.2. Accused No.2 was acquitted by the trial Court holding that the accused No.2 was at some distance from where he

could not hear the conversation between the complainant and the appellant about the demand. The accused No.2 in his Section 313 statement says that he did not accept the money at the instance of the applicant. In my opinion, in the present case, there are no circumstances brought on record which will prove the demand for gratification. Therefore, the ingredients of the offence under Section 7 of the PC Act were not established and consequently, the offence under Section 13(1)(d) will not be attracted.

14. The trial Court in my opinion was not justified in holding that the demand is proved on the basis of evidence of PW-4. According to me, the prosecution has failed to prove the charges beyond a reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Consequently, the impugned judgment and order of the trial Court is quashed and set aside. The appellant stands acquitted of the charges. The bail bonds stand cancelled. The fine amount has to be refunded.

15. The appeal is disposed of.

(M. S. KARNIK, J.)