IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 12586 OF 2024

BETWEEN:

SRI MANSOOR ALI,
S/O ABDUL AZEEZ,
AGED ABOUT 43 YEARS,
RESIDING AT M.S.PALYA VILLAGE,
S.KODIGE HALLI POST,
GUBBI TALUK,
TUMAKURU DISTRICT – 572 213.

... PETITIONER

(BY SRI D.R RAVISHANKAR, SENIOR ADVOCATE A/W
SRI SANDEEP NAIKAR, ADVOCATE)

AND:

Digitally signed by PADMAVATHI B K
Location: High Court of Karnataka

1 . THE STATE OF KARNATAKA,
REPRESENTED BY INSPECTOR OF POLICE
KARNATAKA LOKAYUKTHA
POLICE STATION, MANGALURU
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR,
SPECIAL COUNSEL KARNATAKA LOKAYUKTHA,
HIGH COURT OF KARNATAKA - 560 001.

2 . SRI GIRIDHAR SHETTY,
S/O JAYARAM SHETTY,
AGED ABOUT 55 YEARS,

RESIDING AT SAGAR COURT,
KOTTARA CHOWKI,
MANGALURU – 575 006.

... RESPONDENTS

(BY SRI B.B.PATIL, ADVOCATE FOR R-1;
SRI ANANDARAMA K., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.03/2024 REGISTERED BY LOKAYUKTHA POLICE STATION, MANGALURU FOR THE ALLEGED OFFENCE P/U/S 7(a) OF P.C. ACT AGAINST THE PETITIONER PENDING ON THE FILE OF THE III ADDL. DIST. AND SESSIONS JUDGE, DAKSHINA KANNADA AT MANGALORE REGISTERED BY THE RESPONDENT NO.1 POLICE STATION AGAINST THE PETITIONER.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before the Court calling in question the registration of a crime in Crime No.3 of 2024 for the offence punishable under Section 7(a) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short).

2. Heard Sri **D.R.Ravishankar**, learned senior counsel appearing for the petitioner, Sri **B.B.Patil**, learned counsel appearing for respondent No.1 and Sri **Anandarama K**, learned counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:

3.1. On 22-03-2024, the 2nd respondent - complainant, who is said to be the owner of Sagar Reality Promotion and is into the business of real estate, registers a complainant. The complainant is said to have purchased a land in Sy.No.57/p totally measuring an extent of 10.8 acres from one Raziya Shekh and others. The complainant and the earlier owners had generated a correspondence for the allocation of Transferrable Development Rights ('TDR') to extend the area for dumping solid waste. In terms of the said proposal of development of an area for solid waste management, the land comes to be registered in favour of Mangalore Mahanagara Palike. Thereafter, the Commissioner, Mangalore Mahanagara Palike is said to have transferred the file to the office of the Mangalore Urban Development Authority (‘MUDA’)

and it is the averment that the planners of MUDA have put up the file to the Commissioner, MUDA.

3.2. The Commissioner is alleged to have kept the file pending with him. The complainant alleges that the Commissioner was wanting some illegal gratification and, therefore, he did not process the file. Since the complainant was not interested in giving any illegal gratification, the complainant again visits the office of MUDA at 10.00 a.m. on 22-03-2024, at which point in time, as per the case of the complainant, the petitioner had demanded ₹25,00,000/-. Despite this, it appears that the complainant arranges funds. The complainant registers a complaint before the Lokayukta which becomes a crime in Crime No.3 of 2024 for the afore-mentioned offence. The Lokayukta Police then lay a trap along with the staff and panch witnesses and the complainant; they go to the parking area of Mangala stadium in Mangaluru and thereafter the complainant calls one Saleem, accused No.2 who was said to be waiting near the parking area at Mangala stadium and the complainant there handed over ₹25,00,000/- to accused No.2. Accused No.2 was apprehended on the spot.

3.3. The petitioner/accused No.1 who at that time was at Zilla Panchayat Office in a meeting hall was also taken into custody. The seizure panchanama was drawn on the same day and the investigation commenced. The petitioner is drawn as accused No.1 and is before this Court calling in question the said registration of crime.

4. The learned senior counsel Sri **D.R.Ravishankar** appearing for the petitioner, would vehemently contend that the petitioner/accused No.1 has nothing to do with the allegations. He has neither demanded nor accepted any money. If accused No.2 has accepted and placed the blame upon accused No.1, it cannot become an offence under Section 7(a) of the Act, which requires both demand and acceptance to be proved. He would seek to place reliance upon a plethora of judgments of the Apex Court to buttress his submissions.

5. *Per contra*, the learned counsel appearing for the 1st respondent/Lokayukta Sri **B.B.Patil**, would contend that accused No.2 has accepted the gratification in furtherance of the directions

of the petitioner/accused No.1, which is indicated by the voluntary statement of accused No.2, as is found in the trap mahazar. Learned counsel would further submit that Explanation-2 to Section 7 of the Act clearly indicates that it would be immaterial whether such person being a public servant obtains or accepts or attempts to obtain an undue advantage directly or through a third party; therefore, it is for the petitioner to come clean in a full-blown trial. The entire edifice of the objections of the Lokayukta is based on this explanation to Section 7.

6. Learned counsel for the 2nd respondent/complainant Sri **Anandarama K**, would toe the lines of the learned counsel for the 1st respondent/Lokayukta in submitting that though accused No.2 has accepted the gratification and not accused No.1, it is only in furtherance of the directions of accused No.1.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The entire issue gets triggered from registration of the complaint. The complaint reads as follows:

"ರಿಂದ,

ಶ್ರೀ ಗಿರಿಧರ್ ಶೆಟ್ಟಿ.
ಪ್ರಾಯ: 55 ವರ್ಷ
ತಂದೆ: ಜಯರಾಮ್ ಶೆಟ್ಟಿ
ವಾಸ: ಸಾಗರ್ ಕೋರ್ಟ್, ಕೊಟ್ಟಾರ ಚೌಕಿ
ಮಂಗಳೂರು ತಾಲೂಕು.
ಮೊ ನಂ : 9448480819

ರಿಗೆ,

ಪೊಲೀಸ್ ಉಪಾಧೀಕ್ಷಕರು,
ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ,
ಮಂಗಳೂರು.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಟಿ.ಡಿ.ಆರ್ ನೀಡಲು ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆಯನ್ನು ಸಲ್ಲಿಸಿರುವ ಬಗ್ಗೆ,

ನಾನು ಸಾಗರ್ ರಿಯಾಲಿಟಿ ಪ್ರಮೋಶನ್ ಎಂಬ ಹೆಸರಿನ ಸಂಸ್ಥೆಯ ಮಾಲಕನಾಗಿದ್ದು, ರಿಯಲ್ ಎಸ್ಟೇಟ್ ಮತ್ತು ಬಿಲ್ಡರ್ ವ್ಯವಹಾರವನ್ನು ನಡೆಸುತ್ತಿದ್ದೇನೆ.

ನಾನು ಮಂಗಳೂರು ತಾಲೂಕು ಕುಡುಪು ಗ್ರಾಮದ ಸರ್ವೇ ನಂ 57/ಪಿ ರಲ್ಲಿನ ಒಟ್ಟು 10.8 ಎಕ್ರೆ ಜಮೀನನ್ನು ರಜೀಯಾ ಶೇಖ್ ಮತ್ತಿತರರು ಎಂಬವರಿಂದ ಖರೀದಿ ಮಾಡಿರುತ್ತೇನೆ. ಮಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ಬರುವ ಪಚ್ಚನಾಡಿ ಮತ್ತು ಕುಡುಪು ಗ್ರಾಮಗಳ ಸುತ್ತಮುತ್ತ ಪ್ರಸ್ತುತ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುವ ಘನತ್ಯಾಜ್ಯ ನಿರ್ವಹಣೆಯ ಘಟಕವನ್ನು ಭವಿಷ್ಯದಲ್ಲಿ ವಿಸ್ತರಿಸುವ ಬಗ್ಗೆ ಅವಶ್ಯವಾಗಿರುವ ಜಮೀನನ್ನು ಟಿ.ಡಿ.ಆರ್ ನಿಯಮದಡಿ ಖರೀದಿ ಮಾಡುವ ಬಗ್ಗೆ ಮಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆಯೊಂದಿಗೆ ನನಗೆ ಹಾಗೂ ಜಮೀನಿನ ಈ ಹಿಂದಿನ ಮಾಲಕರಿಗೆ ಪತ್ರ ವ್ಯವಹಾರವಾಗಿರುತ್ತದೆ. ಅದರಂತೆ ಸದ್ರಿ ಜಮೀನು 2024ರ ಜನವರಿಯಲ್ಲಿ ಮಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆಯ ಹೆಸರಿಗೆ ನೊಂದಣಿಯಾಗಿರುತ್ತದೆ. ಬಳಿಕ ಮಹಾನಗರ ಪಾಲಿಕೆಯ ಆಯುಕ್ತರು ಟಿ.ಡಿ.ಆರ್ ನೀಡಲು ಮುಡಾ ಆಯುಕ್ತರಿಗೆ ಫೆಬ್ರುವರಿ ತಿಂಗಳಲ್ಲಿ ಕಳುಹಿಸಿದ್ದು, ಮುಡಾ ಕಛೇರಿಯ ಟಿ.ಪಿ ಹಾಗೂ ಟಿ.ಪಿಎಂ ರವರು ಸದ್ರಿ ಫೈಲ್ ಅನ್ನು ಆಯುಕ್ತರಿಗೆ ಪುಟ್ ಅಪ್ ಮಾಡಿರುತ್ತಾರೆ. ಆದರೆ ಮುಡಾ ಆಯುಕ್ತರು ಸದ್ರಿ ಫೈಲ್ ಅನ್ನು

ಪೆಂಡಿಂಗ್ ಇಟ್ಟಿರುತ್ತಾರೆ. ಈ ಬಗ್ಗೆ ನಾನು ಮುಡಾ ಆಯುಕ್ತರಾದ ಮನ್ಸೂರ್ ಆಲಿರವರ ಬಳಿ ಹೋಗಿ ಮಾತನಾಡಿದಾಗ ಅವರು ಹಾಗೆ ಮಾಡಲು ಆಗುವುದಿಲ್ಲ ಏನಾದರೂ ಕೊಡಬೇಕು ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ನನಗೆ ಲಂಚದ ಹಣ ನೀಡಿ ಕೆಲಸ ಮಾಡಿಸಲು ಇಷ್ಟ ಇಲ್ಲದೇ ಇದ್ದುದ್ದರಿಂದ ನಾನು ದಿನಾಂಕ:21.03.2024ರಂದು ಮಂಗಳೂರು ಲೋಕಾಯುಕ್ತ ಕಚೇರಿಗೆ ಬಂದು ಅಲ್ಲಿನ ಓರ್ವ ಅಧಿಕಾರಿಯವರಲ್ಲಿ ವಿಚಾರ ತಿಳಿಸಿದಾಗ ಅವರು ಕಚೇರಿಯ ವಾಯ್ಸ್ ರೆಕಾರ್ಡರ್ ಅನ್ನು ನೀಡಿ ಸದ್ರಿ ವಾಯ್ಸ್ ರೆಕಾರ್ಡರ್ ಅನ್ನು ಉಪಯೋಗಿಸುವ ರೀತಿಯನ್ನು ನನಗೆ ತಿಳಿಸಿದರು. ನಾನು ವಾಯ್ಸ್ ರೆಕಾರ್ಡರ್ ಅನ್ನು ಪಡೆದುಕೊಂಡು ಮುಡಾ ಕಚೇರಿಗೆ ಹೋದಾಗ ಅವರು ಅಲ್ಲಿ ಇರದೇ ಇದ್ದು, ನಾನು ನನ್ನ ಮೊಬೈಲ್ ನಿಂದ ಕರೆ ಮಾಡಿದಾಗ ಅವರು ನಾನು ಡಿ.ಸಿ ಆಫೀಸ್‌ನಲ್ಲಿ ಮೀಟಿಂಗ್‌ನಲ್ಲಿ ಇದ್ದೇನೆ ನಾಳೆ ಬೆಳಿಗ್ಗೆ 9.30 ಗೆ ಬನ್ನಿ ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ಅದರಂತೆ ನಾನು ಈ ದಿನ 10.00 ಗಂಟೆಗೆ ವಾಯ್ಸ್ ರೆಕಾರ್ಡರ್ ಆನ್ ಮಾಡಿಕೊಂಡು ಕಛೇರಿಗೆ ಹೋಗಿ ಮನ್ಸೂರ್ ಆಲಿ, ಆಯುಕ್ತರು, ಮಂಗಳೂರು ನಗರಾಭೀವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ ಇವರ ಕಚೇರಿಗೆ ಹೋಗಿ ಮಾತನಾಡಿದಾಗ ಅವರು ನಾನು ಖರೀದಿಸಿರುವ ಕುಡುಪಿನ ಜಮೀನಿಗೆ ಟಿ.ಡಿಆರ್ ನೀಡಲು ರೂ 45 ಲಕ್ಷ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆಯನ್ನು ಒಂದು ಬಿಳಿ ಪೇಪರ್‌ನಲ್ಲಿ ಬರೆದು ನನಗೆ ತೋರಿಸಿದ್ದು, ನಾನು ಚರ್ಚಿಸಿದಾಗ "ಇಷ್ಟು ಮಾಡಿ ಮತ್ತೇನು ಮಾಡುದು ಬೇಡ" ಎಂದು ಹೇಳುತ್ತಾ 25 ಲಕ್ಷ ಎಂದು ಬರೆದು ಅದಕ್ಕೆ ರೌಂಡ್ ಮಾಡಿ ನನಗೆ ತೋರಿಸಿದರು. ಆಗ ನಾನು 20ಕ್ಕೆ ಮಾಡಿ ಸರ್ ಎಂದು ಹೇಳಿದಾಗ ಅವರು, ಇಲ್ಲ ಬೇಡಾ, ಇದಿಲ್ಲಾಂದ್ರೆ ಮಾಡಕಾಗಲ್ಲಾ ಎಂದು ತಿಳಿಸಿದ್ದು, ಆಗ ನಾನು ನನ್ನ ಬಳಿ ಈಗ ಹತ್ತು ಮಾತ್ರ ಇದೆ, ಬೇರೆ ವ್ಯವಸ್ಥೆ ಮಾಡಬೇಕು ಎಂದು ಹೇಳಿದೆನು ಆಗ ಅವರು ನೋಡಿ ಅದು ಎಂದು ಹೇಳಿದರು ಆಗ ನಾನು ಯಾರಿಗೆ ಕೊಡಬೇಕು ಎಂದು ಕೇಳಿದಾಗ, ಮತ್ತೆ ಫೋನ್ ಮಾಡಿ ಹೇಳುತ್ತೇನೆ ಎಂಬುದಾಗಿ ತಿಳಿಸಿರುತ್ತಾರೆ. ಈ ಸಂಭಾಷಣೆಗಳು ವಾಯ್ಸ್ ರೆಕಾರ್ಡರ್‌ನಲ್ಲಿ ರೆಕಾರ್ಡ್ ಆಗಿರುತ್ತದೆ.

ನಾನು ಸದ್ರಿ ಜಮೀನಿಗೆ ಹಾಕಿರುವ ಬಂಡವಾಳವನ್ನು ನಾನು ಪಡೆಯಬೇಕಾಗಿರುವುದರಿಂದ ನನಗೆ ಲಂಚದ ಹಣ ನೀಡಿ ಕೆಲಸ ಮಾಡಿಸಲು ಇಷ್ಟ ಇಲ್ಲದೇ ಇದ್ದುದ್ದರಿಂದ ನಾನು ನನ್ನ ಬಾಬು ಇದ್ದ ಹಣ ಹಾಗೂ ನನ್ನ ಸ್ನೇಹಿತರಿಂದ ಹಣವನ್ನು ಪಡೆದು ಈ 25,00,000/- ನಗದನ್ನು ಲಂಚವಾಗಿ ನೀಡಲು ತಂದಿರುತ್ತೇನೆ.

ನಾನು ಖರೀದಿಸಿರುವ ಕುಡುಪು ಗ್ರಾಮದ ಸರ್ವೇ ನಂ 57/ಪಿ ರಲ್ಲಿನ ಒಟ್ಟು 10 ಎಕ್ರೆ ಜಮೀನಿಗೆ ಟಿ.ಡಿ.ಆರ್ ನೀಡಲು ರೂ ಇಪ್ಪತ್ತೈದು ಲಕ್ಷ ರೂಪಾಯಿ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ ಮಂಗಳೂರು ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಆಯುಕ್ತರಾದ ಮನ್ಸೂರ್ ಆಲಿರವರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸುವ ಬಗ್ಗೆ ಈ ದಿನ ದಿನಾಂಕ:22.03.2024ರಂದು ವಾಯ್ಸ್ ರೆಕಾರ್ಡರ್ ನೊಂದಿಗೆ ಈ ದೂರು ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸುತ್ತಿದ್ದೇನೆ.

ಸ್ಥಳ: ಮಂಗಳೂರು.
ದಿನಾಂಕ:22.03.2024

ತಮ್ಮ ವಿಶ್ವಾಸಿ
ಸಹಿ/-"

Who is caught accepting the bribe is not the petitioner, it is accused No.2 who is trapped in a parking area of a place. It is accused No.2's statement that he has accepted money on the instructions of accused No.1. Whether this can amount to an offence under Section 7(a) of the Act against accused No.1/petitioner is required to be noticed. Section 7 of the Act reads as follows:

> "**7. Offence relating to public servant being bribed**.—Any public servant who,—
>
> **(*a*) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant;** or
>
> (*b*) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
>
> (*c*) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,
>
> shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

> *Explanation 1*.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.
>
> *Illustration*.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.
>
> *Explanation 2*.—For the purpose of this section,—
>
> (*i*) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
>
> (*ii*) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party."

9. It is trite law that for an offence to become punishable under Section 7(a) of the Act, the basic ingredients necessary would be demand and acceptance. If there is demand and no acceptance, it would not become a crime, except in exceptional circumstances. If there is acceptance and no demand, it would become a triable issue, as it would require as to why the accused accepted the alleged bribe if he has not demanded. But if there is no demand and no acceptance, in the considered view of this Court,

no crime can spring. Jurisprudence is replete with judgments of the Apex Court on both the issues as to when it would meet the demand and acceptance and as to when it would not. I deem it appropriate to notice them.

INTERPRETATION UNDER THE UN-AMENDED ACT:

9.1. The Apex Court in the case of **B.JAYARAJ v. STATE OF ANDHRA PRADESH**[1] interprets Section 7 of the Act and holds as follows:

"…. …. ….

> **7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.** The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in **C.M. Sharma v. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [(2009) 3 SCC 779: (2009) 2 SCC (Cri) 1].**"

9.2. The Apex Court later, in the case of **N.VIJAYAKUMAR v. STATE OF TAMILNADU**[2] has held as follows:

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[1] (2014) 13 SCC 55
[2] (2021) 3 SCC 687

"…. …. ….

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

27. The relevant paras 7, 8 and 9 of the judgment in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] read as under: (SCC pp. 58-59)

> **"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M. Sharma v. State of A.P. [C.M. Sharma v. State of A.P., (2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .**

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. **Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7.** The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. 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."

> The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

9.3. The Apex Court in the case of **K.SHANTHAMMA v. STATE OF TELANGANA**[3] has held as follows:

> "…. …. ….
>
> **10.** We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. **The proof of demand of bribe by a public servant and its acceptance by him is sine qua non for establishing the offence under Section 7 of the PC Act.**
>
> **11.** In P. Satyanarayana Murthy v. State of A.P. [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] , this Court has summarised the well-

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[3] **(2022) 4 SCC 574**

settled law on the subject in para 23 which reads thus : (SCC p. 159)

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

12. The prosecution's case is that the appellant had kept pending the return of commercial tax filed by the said Society for the year 1996-97. The appellant had issued a notice dated 14-2-2000 to the said Society calling upon the said Society to produce the record. Accordingly, the necessary books were produced by the said Society. The case made out by PW 1 is that when he repeatedly visited the office of the appellant in February 2020, the demand of Rs.3000 by way of illegal gratification was made by the appellant for passing the assessment order. However, PW 1, in his cross-examination, accepted that the notice dated 26-2-2000 issued by the appellant was received by the said Society on 15-3-2000 in which it was mentioned that after verification of the books of accounts of the said Society, exemption from payment of commercial tax as claimed by the said Society was allowed. PW 1 accepted that it was stated in the said notice that there was no necessity for the said Society to pay any commercial tax for Assessment Year 1996-97.

13. According to the case of PW 1, on 23-3-2000, he visited the appellant's office to request her to issue final assessment order. According to his case, at that time, initially, the appellant reiterated her demand of Rs 3000. But she scaled it down to Rs 2000. Admittedly, on 15-3-2000, the said Society was served with a notice informing the said Society that an exemption has been granted from payment of commercial tax to

the said Society. Therefore, the said Society was not liable to pay any tax for the year 1996-97. The issue of the final assessment order was only a procedural formality. Therefore, the prosecution's case about the demand of bribe made on 23-3-2000 by the appellant appears to be highly doubtful.

14. PW 1 described how the trap was laid. In the pre-trap mediator report, it has been recorded that LW 8, Shri R. Hari Kishan, was to accompany PW 1 — complainant at the time of offering the bribe. PW 7 Shri P.V.S.S.P. Raju deposed that PW 8 Shri U.V.S. Raju, the Deputy Superintendent of Police, ACB, had instructed LW 8 to accompany PW 1 — complainant inside the chamber of the appellant. PW 8 has accepted this fact by stating in the examination-in-chief that LW 8 was asked to accompany PW 1 and observe what transpires between the appellant and PW 1. PW 8, in his evidence, accepted that only PW 1 entered the chamber of the appellant and LW 8 waited outside the chamber. Even PW 7 admitted in the cross-examination that when PW 1 entered the appellant's chamber, LW 8 remained outside in the corridor. Thus, LW 8 was supposed to be an independent witness accompanying PW 1. In breach of the directions issued to him by PW 8, he did not accompany PW 1 inside the chamber of the appellant, and he waited outside the chamber in the corridor. The prosecution offered no explanation why LW 8 did not accompany PW 1 inside the chamber of the appellant at the time of the trap.

15. Therefore, PW 1 is the only witness to the alleged demand and acceptance. According to PW 1, firstly, the demand was made of Rs.3000 by the appellant on 24-2-2000. Thereafter, continuously for three days, she reiterated the demand when he visited the appellant's office. Lastly, the appellant made the demand on 29-2-2000 and 23-3-2000. On this aspect, he was cross-examined in detail by the learned Senior Counsel appearing for the appellant. His version about the demand and acceptance is relevant which reads thus:

> "In the vicinity of office of AO the jeep, in which we went there was stopped and I was asked to go into the office of AO and the trap party took vantage positions. Accordingly, I went inside the office of AO. I wished AO. At that time apart from AO some other person was found in the office room of AO and he was

> talking to the AO. AO offered me a chair. After discussion with the AO the said other person left the room of AO. I informed AO that I brought the bribe amount as demanded by her and also asked her to issue the final assessment orders. Then I took the said tainted currency notes from my shirt pocket and I was about to give the same to the AO and on which instead of taking the same amount directly by her with her hands she took out a diary from her table drawer, opened the diary and asked me to keep the said amount in the diary. Accordingly, I kept the amount in the said diary. She closed the said diary and again kept the same in her table drawer and locked the drawer and kept the keys in her hand bag which was hanging to her seat. She pressed the calling bell and a lady attender came into the room of AO, then she instructed the lady attender to call ACTO concerned to her along with the society records concerned.

Accordingly, ACTO came to AO along with record. After going through the ledger and cash book, etc. AO signed on the last page of the said ledger and cash book mentioning 26-2-2000 below her signature in the said register though she signed on 27-3-2000 in my presence. AO directed her attender to affix official rubber stamp below her signature in the ledger and cash book and accordingly attender affixed the same. AO also signed on the office note of final assessment orders at that time. Thereafter, I collected the general ledger and cash book from the attender after affixing the said rubber stamp thereon and came out of the office of AO and relayed the pre-arranged signal to the trap party."

(emphasis supplied)

16. Thus, PW 1 did not state that the appellant reiterated her demand at the time of trap. His version is that on his own, he told her that he had brought the amount. What is material is the cross-examination on this aspect. In the cross-examination, PW 1 accepted that his version regarding the demand made by the appellant on various dates was an improvement. The relevant part of the cross-examination of the appellant reads thus:

> "I did not state to ACB Inspector in Section 161 CrPC statement that on the evening of 24-2-2000 I met

> the AO and that she demanded the bribe. I did not mention in Ext. P-3 complaint that continuously for 3 days after 24-2-2000 I met the AO and the AO reiterated her demand. I did not mention in Ext. P-3 complaint that on 29-2-2000 I approached the AO and the AO demanded bribe of Rs 3000 and that unless I pay the said bribe amount she will not issue final assessment orders. I did not state in my Section 164 statement before the Magistrate that 13-3-2000 to 16-3-2000 I was on leave and from 1-3-2000 to 12-3-2000, I was engaged in recovering the dues of the society. It is not true to suggest that I did not meet the AO continuously 3 days i.e. on 25-2-2000, 26-2-2000 and 27-2-2000 and that 27-2-2000 is Sunday. It is not true to suggest that I did not meet the AO in the evening of 24-2-2000 and that AO did not demand any money from me. I did not state in my Section 161 CrPC statement to Inspector of ACB that before I left the office of DSP on the date of trap I made a phone call enquiring about the availability of AO and the AO was in the office and informed me that she should be available in the office from 6.00 to 7.00 p.m. on that day so also in my Section 164 CrPC. I made such a phone call from the office of the DSP, ACB. I do not remember as to from which phone number I made phone call on that day. I cannot describe office telephone number of the AO. It is not true to suggest that I did not make any such phone call to AO and that she did not give any such reply to me. I did not state to ACB Inspector in my Section 161 CrPC statement or to the Magistrate in my Section 164 CrPC statement that I went inside the office of AO and I wished AO and at that time apart from AO some other person was found in the office room of AO and that he was talking to the AO and that the AO offered me a chair and that after discussion with the AO the said person left the room of AO and then I informed the AO that I brought the bribe amount. I did not state that said aspects to DSP during the post trap proceedings also."
>
> (emphasis supplied)

17. Thus, the version of PW 1 in his examination-in-chief about the demand made by the appellant from time to time is an improvement. As stated earlier, LW 8 did not enter the appellant's chamber at the time of trap. There is no other evidence of the alleged demand. Thus, the evidence of PW 1 about the demand for bribe by the appellant is not at all

reliable. Hence, we conclude that the demand made by the appellant has not been conclusively proved.

18. PW.2, Shri B.D.V. Ramakrishna had no personal knowledge about the demand. However, he accepted that on 15-3-2000, the said Society received a communication informing that the said Society need not pay any tax for the year 1996-97. PW 3 Shri L. Madhusudhan was working as Godown Incharge with the said Society. He stated that on 15-3-2000, when he visited the appellant's office, ACTO served the original notice dated 26-2-2000 in which it was mentioned that the Society was not liable to pay any tax. It is his version that when he met the appellant on the same day, she enquired whether he had brought the demanded amount of Rs 3000. However, PW 3 did not state that the appellant demanded the said amount for granting any favour to the said society.

19. PW.4 Ahmed Moinuddin was ACTO at the relevant time. He deposed that on 27-3-2000, the appellant instructed him to prepare the final assessment order, which was kept ready in the morning. He stated that he was called at 6 p.m. to the chamber of the appellant along with books of the said Society. At that time, PW 1 was sitting there. He stated that the appellant subscribed her signature on a Register of the said Society and put the date as 26-2-2000 below it. He was not a witness to the alleged demand. However, in the cross-examination, he admitted that the appellant had served a memo dated 21-3-2000 to him alleging that he was careless in performing his duties."

The afore-quoted judgments were rendered interpreting Section 7 of the Act as it stood prior to amendment. The Apex Court holds that demand and acceptance are *sine qua non* for an offence under Section 7 of the Act.

INTERPRETATION POST AMENDMENT:

9.4. The Constitutional Bench of the Apex Court has further interpreted Section 7(a) of the Act post its amendment, in the case of **NEERAJ DUTTA v. STATE (GOVT. OF NCT OF DELHI)**[4], and has held as follows:

"…. …. ….

> **8.** Before we analyze the evidence, we must note that we are dealing with Sections 7 and 13 of the PC Act as they stood prior to the amendment made by the Act 16 of 2018 with effect from 26th July 2018. We are referring to Sections 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.

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[4] 2023 SCC OnLine SC 280

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) ……."

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

11. The Constitution Bench[4] 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)

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

> **"76.** Accordingly, the question referred for consideration of this Constitution Bench is answered as under:
>
> **In the absence of evidence of the complainant (direct/primary, oral/ document-tary 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)

13. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment 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[1] and P. Satyanarayana Murthy[2]. There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu[5], which follows the view taken in the cases of B. Jayaraj[1] and P. Satyanarayana Murthy[2]. In paragraph 9 of the decision in the case of B. Jayaraj[1], 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)

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

15. In the case of N. Vijayakumar[5], another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

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

> also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."
>
> (emphasis added)

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

17. Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided 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.

18. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."

9.5. Subsequent to the judgment of the Constitutional Bench of the Apex Court in the case of **NEERAJ DUTTA** *supra*, the Apex Court in the case of **SOUNDARAJAN v. STATE**[5] has held as follows:

"…. …. ….

FINDING ON PROOF OF DEMAND:

[5] **2023 SCC OnLine SC 424**

9. We have considered the submissions. It is well settled that for establishing the commission of an offence punishable under Section 7 of the PC Act, proof of demand of gratification and acceptance of the gratification is a sine qua non. Moreover, the Constitution Bench in the case of Neeraj Dutta[3] has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.

10. As stated earlier, complainant PW-2 has not supported the prosecution. He has not said anything in his examination-in-chief about the demand made by the appellant. The public prosecutor cross-examined PW-2. The witness stated that there was no demand of a bribe made by the appellant. According to him, he filed a complaint as the return of the sale deed was delayed. Though PW-2 accepted that he had filed the complaint, in the cross-examination, he was not confronted with the material portions of the complaint in which he had narrated how the alleged demand was made. The public prosecutor ought to have confronted the witness with his alleged prior statements in the complaint and proved that part of the complaint through the concerned police officer who had reduced the complaint into writing. However, that was not done.

11. Now, we turn to the evidence of the shadow witness (PW-3). In the examination-in-chief, he stated that the appellant asked the PW-2 whether he had brought the amount. PW-3 did not say that the appellant made a specific demand of gratification in his presence to PW-2. To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26th July 2018, is 'gratification'. There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused.

12. There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the

> **offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved."**

The Constitutional Bench of the Apex Court in the case of **NEERAJ DUTTA** *supra* holds that the proof of demand and acceptance of gratification is *sine qua non* for any allegation under Section 7 of the Act, be it pre-amendment or post-amendment. This is reiterated in **SOUNDARAJAN** *supra*.

10. On a coalesce of the judgments rendered by the Apex Court, as quoted *supra*, the soul of Section 7(a) of the Act is demand and acceptance. The unmistakable inference on the interpretation, in the considered view of the Court, would be if there is demand but no acceptance, it would not make an offence under Section 7(a) of the Act. If there is acceptance but no demand, it would then also make no offence under Section 7(a) of the Act. An act alleged under Section 7(a) of the Act should have the ingredients of demand and acceptance and it is for the performance of a public duty or forbearance from performance. Therefore,

demand and acceptance should be for the purpose of performance of some public duty. For such performance, there should be work pending at the hands of the public servant against whom Section 7(a) of the Act is alleged.

11. The latest judgment of the Apex Court in the case of **BHARAT RAJ MEENA v. CENTRAL BUREAU OF INVESTIGATION**[6] would steer clear the issue. The Apex Court observes that acceptance of bribe amount by an intermediary would not be of enough circumstance to drive home the offence punishable under Section 7(a) of the Act. What is necessary is, clear demand and acceptance. The Apex Court holds as follows:

> "…. …. ….
>
> **44.** Over the years, this Court has consistently held that proof of demand and acceptance of illegal gratification constitutes the gravamen of the offence and forms the indispensable foundation upon which a conviction under the Act must rest. The law in this regard is no longer res integra.
>
> **45.** The jurisprudence governing offences under the Prevention of Corruption Act has evolved on the fundamental premise that criminality does not arise merely because money changes hands. **What the prosecution is required to establish is that the public servant demanded, accepted or obtained gratification other than legal remuneration as a motive or reward for performing, forbearing or**

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[6] 2026 SCC OnLine SC 1904

facilitating an official act. Consequently, proof of demand and acceptance occupies a position of central importance in prosecutions under the Act.

46. In *C.M. Girish Babu* v. *CBI*[8], this Court held that mere recovery of tainted currency notes is insufficient to sustain a conviction unless the prosecution proves beyond reasonable doubt that the accused voluntarily accepted the money knowing it to be illegal gratification. The Court observed that recovery, divorced from proof of demand and acceptance, cannot by itself establish the commission of an offence under the Act.

47. The principle was reiterated and emphatically restated in *B. Jayaraj* v. *State of Andhra Pradesh*[9]. **This Court held that proof of demand is an indispensable essentiality for establishing the offence and that in the absence of proof of demand, possession and recovery of currency notes from an accused would not establish the offence. This Court further held that the statutory presumption under Section 20 of the Act does not arise unless the foundational facts giving rise to such presumption are first established by the prosecution**, as under:—

> *"8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself.* ***Mere possession and recovery of***

> ***the currency notes from the accused without proof of demand will not bring home the offence under Section 7.*** *The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.*
>
> *9.* ***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."*

We are aware that in the aforesaid case, the complainant did not support the Prosecution, as in the present case, but the legal principle remains that the foundational facts have to be proved for attracting Section 20 of the Act.

48. A similar view was adopted in *P. Satyanarayana Murthy* v. *District Inspector of Police*[10], wherein this Court observed that proof of demand of illegal gratification is *sine qua non* for constituting offences under Sections 7 and 13 of the Act and that mere acceptance or recovery of money without proof of demand would not bring home the guilt of the accused.

49. The law was comprehensively examined by a Constitution Bench of this Court in *Neeraj Dutta* v. *State (Government of NCT of Delhi)*[11]. After an exhaustive survey of precedents, the Constitution Bench reaffirmed that proof of demand and acceptance of illegal gratification remains the gravamen of offences under the Prevention of Corruption Act. At the same time, the Court

clarified that proof of demand need not invariably be by direct evidence and may, in an appropriate case, be established through circumstantial evidence. The Constitution Bench also clarified that the absence of the complainant's testimony would not necessarily be fatal if demand and acceptance can otherwise be proved through reliable evidence and surrounding circumstances. The Constitution Bench further explained that the presumption under Section 20 of the Act is not intended to relieve the prosecution of its primary burden. The presumption operates only after the prosecution establishes the foundational facts necessary to show that the accused accepted or obtained gratification other than legal remuneration. Once such foundational facts are established, the burden shifts to the accused to offer a satisfactory explanation. However, where the prosecution itself fails to establish the foundational facts, the presumption does not arise.

50. Equally well settled are the principles governing prosecutions where the alleged gratification is received for another public servant. The law does not require that the public servant must personally receive the money for himself in every case. Acceptance for another person or through another person by way of an intermediary acting on behalf of the public servant may, in a given case, satisfy the statutory requirement. In this regard, it is apposite to note the legal proposition as set out in the observations of this Court in *State by Lokayuktha Police* v. *K. Rangayya*[12],:

> "***22. Thus, such an offending act can be done by "another public servant" also under the personal influence of the concerned public servant. What we, therefore, understand from the reading of Section 7 (a) of the PC Act read with Explanation 2, is that, it is not necessary that the public servant who has been charged of the offence under Section 7 of the PC Act has to obtain the undue benefit for himself, but it also covers cases where he does the offensive act for obtaining undue advantages for "another person", and this act may be done by himself by abusing his position, or may be executed through another***

public servant by using his personal influence over the other public servant.

Therefore, in the light of the above provision, a public servant may not be directly a recipient or the executor of the offensive act and thus, may not be in the limelight and remain in the background. Nevertheless, he can be instrumental in ensuring obtaining, accepting or attempting to obtain from another person the undue advantage for "another person" by taking the help of "another public servant". Such public servant who has been charged of offence under Section 7(a) may be the main instrumentality, through whom undue advantage is obtained and/or arranged through other public servant....

23. …….

24. The High Court fell into a grave error in characterizing the aforesaid conduct of the Respondent No. 1 as insufficiently proximate to constitute a 'demand' within the meaning of Section 7 of the PC Act. ***The High Court appears to have imported a requirement of a direct, personal, and express demand by the public servant himself by not taking into consideration Explanation 2, a standard not warranted by the broad statutory language. The PC Act does not countenance any such straitjacketed formulation limiting to acts of demand and acceptance of bribe by the official himself as explained by expansive provision of Explanation 2. It can be for obtaining the undue advantage "for another person" also. Further, an attempt to obtain a bribe through subordinates who are also public servants, is precisely the kind of indirect corruption that the legislature, by enacting Explanation 2 to Section 7, has sought to bring within the fold of the statute.***

25. The interpretation adopted by the High Court, if permitted to stand, would limit the broad scope of Section 7 read with Explanation 2, and would create a pernicious loophole in the anti-corruption law by permitting senior public officials to orchestrate and direct the collection of illegal gratification through their public servant

> ***subordinates and park the benefits in the account of the "another person" for whose benefit the public servant intends, while maintaining personal deniability. Such a construction would subvert the manifest purpose and policy of the PC Act and render the Explanation 2 redundant, and thus, cannot be countenanced."***
>
> (emphasis supplied)

51. However, before criminal liability can be fastened upon the public servant, the prosecution must establish by reliable evidence that the intermediary was acting under the authority, direction or for the benefit of the accused and that the demand itself was attributable to the accused. Mere receipt of money by a third person cannot automatically result in criminal liability being imputed to a public servant.

…. …. ….

61. Incidentally in his deposition, he does not make any reference of the appellant asking him to collect the money from Nandakumar. From the above evidence of Nandakumar and Anantha Narayanan the following aspects emerge that though Nandakumar had requested Anantha Narayanan to be present with him when he meets the appellant, though Anantha Narayanan went with Nandakumar, he came out and Nandakumar alone met the appellant for about 5-10 minutes. What transpired between Nandakumar and the appellant for about 10-15 minutes is not known though the only purpose of meeting the appellant was to give money. Further**, Nandakumar had gone along with money to the office of the appellant but the appellant apparently did not accept the money from Nandakumar even though it was offered to him in the office where no one else was present. It is quite surprising that even though the appellant had himself allegedly demanded bribe from Nandakumar, but when it was offered to him directly where no one else was present, the appellant did not take it and instead asked Nandakumar to give it to Anantha Narayanan. At the same time, when the appellant allegedly demanded money from Nandakumar, he was not told at that time that the money was to be given through Anantha**

Narayanan. It is also to be noted that when Nandakumar talked to Anantha Narayanan, Anantha Narayan asked Nandakumar to give the money directly to the appellant. Thus, the statements of Nandakumar and Anantha Narayanan do not fall neatly together, but with variations where these matter the most.

…. …. ….

63. If the prosecution wanted to show that it was the strategy of the appellant that he would not directly accept money himself in the office to leave any trail, but only through the intermediary, Anantha Narayanan, it is inconsistent with the statement of Anantha Narayanan who told Nandakumar that he handover the money directly to the appellant. It is also notable that the appellant never told Nandakumar earlier to give the money to Anantha Narayanan.

There is nothing to suggest that the appellant was apprehensive of a trap or had any reason to insulate himself from the transaction, on the contrary, as per the prosecution, the appellant made the demand himself directly to Nandakumar. In these circumstances, it is not comprehensible why a direct demand, made in person by the appellant and offer made to him directly, should have been redirected through an intermediary rather than simply accept it.

As we shall see later, this behaviour of the appellant is not consistent with his act in the other complaint case, where the appellant asked the bribe giver Gopi Kumar to meet him at his residence.

64. Another interesting aspect is that when the money was given by Anantha Narayanan to the appellant, the appellant explained to Anantha Narayanan that the money was given for reducing the punishment of two ASI Kanakraj and Muthuswamy in DAR Enquiry. Why should a superior officer give an explanation with regards to the reasons for accepting bribe to a constable working under him? Also, why did not the appellant keep the money with himself when he took it from Anantha

Narayanan. This behaviour of the appellant is certainly quite weird, if not unbelievable. This unusual behaviour attributed to the appellant casts a serious doubt on the credibility of the prosecution case.

65. Another feature of PW-2's account of this envelope episode involving Rs. 10,000/- invites comment. The aforesaid transaction was a matter which was the subject of separate prosecution in C.C. No. 3 of 2014 and in which the appellant was, in fact, acquitted on trial. That PW-2 was, at the very moment of the trap, simultaneously holding monies attributed to a wholly separate transaction, one that did not survive scrutiny at trial, is a circumstance that bears on the reliability of treating him as a mere conduit acting strictly on the appellant's specific instructions in every instance, and lends some support to the alternative hypothesis already noticed above, that PW-2 dealt with such amount with independence of his own, where the appellant was not a party.

Interestingly enough, further, when PW-2 was caught with other extra-money of Rs. 8,000/- and Rs. 5,000/- which he claimed to be his personal money, the same were not seized by the CBI. At the time of such seizure, PW-2 was an accused and not yet an approver. This Court, thus finds it extremely queer that the CBI would accept his plea of the said amount to be his personal money at face value and returned the same to PW-2. How did the CBI distinguish at that moment that it was not tainted bribe money, but personal money of PW-2? The act of the CBI thus becomes questionable.

…. …. ….

71. To hold the appellant guilty of obtainment or acceptance for the purposes of Section 7 of the Act, this Court would have to draw the further inference that the appellant would, in fact, have received the money at his residence had the trap not intervened, and that this was his established modus operandi for consummating such transactions. That inference is not compelled by the record, it is, at best, one possible suggestion of what might have happened next, competing on equal footing with the equally available hypothesis that PW-2 claiming

to be close to the appellant having himself pocketed the sums in these transactions and retained the money for himself, or intended to deal with it in some other manner not sanctioned or even unknown to the appellant. Nothing in the record excludes that hypothesis. As held in *Neeraj Dutta* (supra), an inference of guilt from circumstances is permissible only where the circumstances are "*incompatible with the innocence of the accused or any other reasonable hypotheses*", a standard this record does not meet on the specific question of acceptance/obtainment by the appellant.

72. The permission to draw an inferential deduction where certain foundational facts are proved is not an invitation to bridge, relying on circumstantial evidence, whatever residual gap separates the "money collected by an intermediary at the accused's apparent direction" from "the accused himself obtained or accepted that money." As observed in *Neeraj Dutta* (supra), "obtain" requires initiative and effort on the part of the recipient, and here, on the specific question of final receipt, the appellant took no further step of any kind apart from the alleged demand made. On the contrary, he left the scene, and the transaction was intercepted at the door of an alleged intermediary before its final leg could occur, if it was ever to occur as described.

73. Moreover, in *R.P.S. Yadav* (supra) the accused was alleged to have directed the complainant to hand the bribe money to a co-accused, acting as intermediary. This Court found the evidence consistent only up to the handing-over of money to the intermediary. Beyond that, the key witness gave contradictory versions as to whether the recovery was from the intermediary's own pocket or the accused's, and no hand-wash test was conducted on the accused himself to show the money had actually reached him. Holding that neither witness furnished acceptable evidence that 'the demand, acceptance and recovery was chronologically proved as against the appellant', this Court set aside the conviction. The case thus shows that a demand and an initial

> **handover to an intermediary are not enough; the chain must be carried through, by cogent evidence, to the point where the money is shown to have actually reached or been intended for the accused failing which the conviction cannot stand.**"

12. On the touchstone of the principles of law as elucidated by the Apex Court, if the facts obtaining in the case at hand had a rehash, the unmistakable inference is that the petitioner cannot be permitted to be investigated, for reason that the petitioner had not accepted any bribe. The evidence that is placed before the Court is bleak to contend that the petitioner has demanded any amount and it is an admitted fact that the petitioner has not accepted any amount. There is no trap laid against the petitioner and no pre-trap mahazar is drawn against the petitioner nor did the hands of the petitioner turn pink in the phenolphthalein test. In fact all these have happened *qua* accused No.2.

13. If accused No.2 is instrumental in receiving the amount and is caught redhanded, it is understandable as to how the axe would fall upon the petitioner. The submission of the learned counsel for the 1st respondent is that these are triable issues; therefore, the Court must not interfere at this stage. No doubt,

certain issues are undoubtedly triable, but for issues to become triable, basic ingredients, as a foundation, must necessarily be present. Any amount of deciphering the complaint and the recording that is projected by the counsel for the 1st respondent does not indicate that the petitioner has demanded and accepted the amount. Admittedly, he has not demanded nor accepted any amount. Therefore, permitting further investigation even in case at hand would become an abuse of the process of law.

14. The Apex Court in **BHARAT RAJ MEENA** *supra* clearly holds that if a third person accepts bribe on behalf of another Government servant, it would not suffice for the prosecution to draw the other accused as an accused in the crime. The Apex Court holds that at least there must be some semblance of demand and acceptance in any given case. The trap panchanama that is drawn and the conversation that is produced along with the pre-trap panchanama of 13 minutes and 1 second is that of accused No.2. The trap is laid against accused No.2. Even in the trap panchanama there is nothing against accused No.1/petitioner. If the petitioner has to be pinned down on voluntary statement of accused No.2 that

he had accepted the amount of ₹25,00,000/- on behalf of accused No.1/petitioner it would run completely counter to the law laid down by the Apex Court.

15. Insofar as the judgment of the Apex Court relied on by the learned counsel Sri B.B. Patil in the case of **A.KARUNANITHI v. STATE REPRESENTED BY INSPECTOR OF POLICE** reported in **2025 SCC OnLine SC 1677**, it was a case where accused No.1 had directly accepted ₹500/- on a demand. Both demand and acceptance were completely proved in the said case. The said judgment would not become applicable to the case at hand. Merely because there is a fancy figure of ₹25,00,000/- involved in the case at hand, the same would not mean that the petitioner can be held guilty even *prima facie*, for alleged demand and acceptance. If it were to be a case where the petitioner himself had demanded and accepted it would have been a different circumstance, as it is not the case at hand that there was neither demand nor acceptance by the petitioner. The conversation of demand and acceptance are all that of accused No.2. In that light, permitting further investigation

against the petitioner would run foul of the law laid down by the Apex Court in the judgments quoted hereinabove.

16. In this regard, it becomes apposite to refer to the judgment of the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**[7], wherein it is held as follows:

> "…. …. ….
>
> **102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> **(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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[7] 1992 Supp (1) SCC 335

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis supplied at each instance)

17. In the light of the foregoing discussions, the following:

O R D E R

(i) Criminal Petition is **allowed**.

(ii) FIR in Crime No.3 of 2024 registered by the Lokayukta Police and pending before the III Additional District and Sessions Judge, Dakshina Kannada, Mangalore stands quashed *qua* the petitioner.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BKP
CT:BR