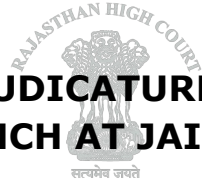




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S. B. Criminal Appeal No. 1498/2023

1. Kailash Chand Saini Son of Shri Shiv Shankar Verma, Resident of Hadota, Police Station Chomu, District Jaipur, Inspector Police Station Railway Protection Force, Reengus, District Sikar.
2. Jagveer Singh Son of Shri Soorat Singh, Resident of Dogli Post Karota, Police Station Nagnol, District Mahendra Gadh (Haryana) Constable JE No. 05505 Police Station Railway Protection Force, Reengus, District Sikar.
3. Sanwar Mal Meena Son of Shri Nook Lal Ram, Resident of Gyanpura, Police Station Reengus District Sikar Const. JE No. 1375, Railway Protection Force, Reengus District Sikar.

-----Accused-Appellants

Versus

State of Rajasthan, through Public Prosecutor

-----Respondent

For Appellants : Mr. Madhav Mitra, Sr. Adv. assisted by Mr. Kapil Meena, Adv., Ms. Jaya Mitra, Adv., Mr. Sharukh Khan, Adv. & Mr. Akshat Jain, Adv.
Mr. Girraj P. Sharma, Adv. with Ms. Sneha Gulati, Adv. & Ms. Shruti Chandgothia, Adv.
Mr. Rajeev Kumar Sogarwal, Adv. with Mr. Sahil Hussain, Adv.

For Respondent : Mr. Manvendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

RESERVED ON :: **21.11.2025**
PRONOUNCED ON :: **19.12.2025**

1. With the consent of both the sides, arguments on the appeal were heard finally.



2. Present criminal appeal is directed against judgment and order dated 29.05.2023 passed by the Court of Special Judge, Prevention of Corruption Act Cases No. 1, Jaipur Metropolitan-II (hereinafter to be referred as 'the trial court') whereby the appellants have been convicted for commission of offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter to be referred as 'the Act of 1988') and Section 120-B of the Indian Penal Code (hereinafter to be referred as 'IPC') and sentenced as under:

Appellants	Sections	Sentence
1. Kailash Chand Saini 2. Jagveer Singh 3. Sanwar Mal Meena	Section 7 of the Prevention of Corruption Act, 1988	One year's rigorous imprisonment with fine of Rs. 5,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for one month.
1. Kailash Chand Saini 2. Jagveer Singh 3. Sanwar Mal Meena	Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988	One year's rigorous imprisonment with fine of Rs. 5,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for one month.
1. Kailash Chand Saini 2. Jagveer Singh 3. Sanwar Mal Meena	Section 120-B of the Indian Penal Code	One year's rigorous imprisonment with fine of Rs. 5,000/-, in default of payment of fine to further undergo additional rigorous imprisonment for one month.
All the sentences were ordered to run concurrently.		

At the relevant time, Appellant No.1 was holding the post of Incharge of RPF Police Station, Reengus whereas Appellant No.2 was duty Officer/Constable and Appellant No. 3 was a Constable in the same Railway Police Station.





3. Facts of the case, in brief, are that the prosecution case hinges upon the complainant's allegation of demand and acceptance of bribe of Rs. 5,000/- by the accused-appellants for deleting the name of the complainant from a criminal case registered under the Railways Act, 1989. A written complaint was submitted by the complainant, Chiranjilal before the Superintendent of Police, Anti Corruption Bureau, Chowki Sikar on 25.07.2007 alleging therein that the complainant was an LIC agent. On 22.06.2007, the complainant had gone to Jaipur to collect LIC premium. When complainant's brother, Ramniwas, after taking a ticket from the counter came outside the boundary near the Municipal Council, he was stopped by Railway Officer, R.S. Kasana and allegation of illegal reselling of railway tickets was levelled against complainant's brother and after altercations, tickets were taken away by the officer. After one day, the complainant learnt that one case has been registered against the complainant as well as his brother in RPF Police Chowki. After registration of the case, the complainant and his brother were called in RPF Police Chowki. However, instead of reporting before the police officer, they approached the Court of Additional Sessions Judge, Jaipur and succeeded in getting the order of anticipatory bail. It was further alleged that they went to RPF Police Chowki, Sikar on 12.07.2007 along with order of anticipatory bail, however, they were asked to submit the same at Police Station Reengus. Accordingly, the complainant and his brother went to Police Station Reengus on 13.07.2007 where Police Station In-charge (Appellant No.1) stated that in case, they had contacted





him earlier, he would have closed the case at initial stage itself. Appellant No. 1 asked the complainant to meet Jagveer Singh Munshi (Appellant No. 2), who asked the complainant to give Rs. 5,000/- for the In-charge (Appellant No.1), so that his name would be struck off from the case and his brother would also be released after compounding of the offence on first date of hearing itself. Thereupon, the complainant informed that at that point of time, he had only Rs. 2,000/- with him which were taken by Appellant No. 2, Jagveer Singh, who asked the complainant to come with Rs. 3,000/- on 26.07.2007 and not to engage any advocate in the said case. After two days, Appellant No.2 went to complainant's shop and demanded remaining bribe amount. After narrating the facts of the case, the complainant stated in the written report that he did not want to give bribe to the appellants and wanted legal action against them.

4. On the basis of the above written report, initial interrogation was conducted from the complainant, who reiterated his allegations with regard to demand of Rs. 5,000/- by Appellant No. 2, out of which Rs. 2,000/- had already been given by him to Appellant No.2 and remaining amount of Rs. 3,000/- was to be given by the complainant to Appellant No. 1 as per complainant's wishes and convenience. After initial verification, trap proceedings were arranged wherein on 26.07.2007, in which Appellant No.3 was trapped red handed with Rs. 3,000/- which were received as bribe for Appellant No.3 himself as well as other co-accused. Accordingly, FIR No. 210/2007 was registered at Police Station ACB, Rajasthan, Jaipur for commission of offences punishable





under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988 and Section 120-B IPC and investigation commenced in the matter. During investigation, statements of the witnesses were recorded and the seized bottles having chemicals after washing of hands of Appellant No.3 were sent for forensic examination. After completion of investigation as also obtaining necessary prosecution sanction, on 08.12.2008, charge sheet for commission of offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988 and Section 120-B IPC was filed against the appellants before the trial court. Thereafter, cognizance for commission of aforesaid offences was taken by the trial court against the appellants. Later on, arguments on framing of charges were heard and charges were framed by the trial court against the appellants for commission of offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988 and Section 120-B IPC. The appellants denied the charges and claimed trial.

5. In order to prove its case, the prosecution examined as many as 19 witnesses and also produced documentary evidence as Exhibit P-1 to Exhibit P-32 as well as 16 Articles.

6. After completion of evidence of the prosecution, statements of the appellants were recorded under Section 313 Cr.P.C. by the trial court wherein all the allegations were denied by the appellants.

7. So far as Appellant No.1 is concerned, he submitted his explanation under Section 313 Cr.P.C. that he was falsely implicated in the case on account of conspiracy hatched by the





complainant and another officer of the department, namely, Shri I.D. Khan. He never demanded or received any bribe from the complainant, nor did he ask to give such bribe to any other person. He further submitted that on the directions of Internal Vigilance Group of RPF, the complainant as well as his brother were booked for illegal reselling of railway tickets and the said case was being investigated by Shri I.D. Khan, who found that the offences against the complainant and his brother were made out and accordingly, charge sheet was prepared by him, which was sent for necessary approval by Appellant No.1 to the office of Divisional Security Commissioner on 24.07.2007. Hence, no work of the complainant was pending with Appellant No.1 and false complaint has been lodged by the complainant against Appellant No.1 when the complainant came to know that charge sheet has already been prepared against him and his brother. Appellant No.1 further clarified that he was neither investigating officer in the aforesaid case, nor was in a position to extend any undue benefit to the complainant, nor could he have got such undue benefit for the complainant through any other person. He further explained that charge sheet had already been filed against the complainant and his brother. The investigating officer did not record statements of employees of Railway Court, who were very much present at the time of incident, nor did he record statements of employees of RPF, who were also present at the time of such incident and had submitted a faulty charge sheet in the case. Appellant No.1 submitted that he was innocent and had discharged his duties with due honesty.





8. Appellant No.2, in his statement recorded under Section 313 Cr.P.C., explained that he had been falsely and maliciously implicated in the case whereas he had never met the complainant, nor did he raise any demand of bribe from the complainant. The complainant never met him either on 13.07.2007 or on any other day at his shop. He was posted for government duties in the office of Divisional Security Commissioner, Jaipur from 24.07.2007 to 26.07.2007. Hence, even at the time of trap proceedings, he was not present at the site, yet he has been framed in the present case.

9. As regards Appellant No.3, he also denied all the allegations levelled against him while giving statement under Section 313 Cr.P.C. and explained that he was falsely implicated in the case on account of conspiracy hatched by the complainant and Shri I.D. Khan whereas at no point of time, he has raised any demand of bribe from the complainant, nor has he received the alleged bribe amount. He was never instructed by his higher officer, Kailash Chand Saini (Appellant No.1) for accepting any bribe amount from the complainant. Till trap proceedings, he never met Appellant No. 1 personally. The complainant and his brother attempted to forcibly put the alleged bribe amount of Rs. 3,000/- in the pocket of his trouser, but such attempt was unsuccessful as Appellant No.3 did not accept the amount and on account of his opposition and pushing hands of complainant, currency notes were scattered on the floor. He never touched the alleged currency notes and, therefore, FSL examination of the chemical solution was negative as the colour was sandy and not





pink. No work of the complainant was pending with Appellant No.3, nor was he competent to do the desired work of the complainant. He was innocent and performed his duties with honesty. However, he was falsely farmed in the case.

10. Thereafter, defence evidence was also led by the appellants wherein three defence witnesses were examined and seven documents were exhibited as D-1 to D-7. Thereafter, oral arguments from both the sides were heard by the trial court and the trial court vide its judgment and order dated 29.05.2023 convicted the appellants for commission of offences punishable under Sections 7, 13(1(d) read with Section 13(2) of the Act of 1988 and Section 120-B IPC and sentenced each of them in the manner as indicated above.

11. Mr. Madhav Mitra, learned Senior Advocate as also learned counsels appearing on behalf of the appellants would submit that impugned judgment and order has been passed by the trial court in utter disregard to the facts of the case, material and evidence on record as also the law prevailing at the relevant time. Although, the prosecution utterly failed to prove the charges beyond reasonable doubt against the appellants, yet they have been convicted by the trial court by recording perverse, irrational and baseless findings.

12. While arguing on behalf of Appellant No. 2, Jagveer Singh, learned Senior Advocate as also learned counsels submitted that Appellant No. 2 had never met the complainant Chiranjilal. He was neither present at RPF Police Station Rengus on 13.07.2007, nor on the date of alleged trap on 26.07.2007. No





transcription of any demand whatsoever by Appellant No. 2 has been placed on record. The prosecution has also utterly failed to prove the presence of Appellant No. 2 either at the time of alleged initial demand on 13.07.2007 or on the date of alleged trap on 26.07.2007. It was further submitted that it has been admitted by all material witnesses that there is no voice recording of the alleged conversation which took place on 13.07.2007 and even thereafter for the purpose of verification of the demand by Appellant No. 2. No efforts whatsoever were made by the investigating officer for verifying the factum of demand. Even after alleged trap, when Appellant No. 2 was not present at the time of trap, no endeavour was made for verifying the allegation of demand of gratification by Appellant No. 2. It was submitted that no independent witness, except the complainant or his brother, was produced by the prosecution to prove the fact that the bribe was demanded by Appellant No. 2 for Appellant No. 1. Learned Senior Advocate and learned counsels also added that Appellant No. 2 was simply holding the post of constable and was duty officer/desk clerk, therefore, he was not competent to carry out the work alleged to be pending by the complainant, nor, in fact, any work of the complainant was pending with Appellant No. 2. It is also submitted that the allegation levelled by the complainant that Appellant No. 2 visited his shop for recovery of remaining bribe amount of Rs. 3,000/- was totally unverified and without any proof. No details of date and time of visiting at the shop was given, nor any witness, except the baseless statement of the complainant, was produced to prove such allegation. It was also





submitted that admittedly recovery of the alleged bribe amount has not been made from Appellant No. 2, therefore, the prosecution utterly failed to prove all the three necessary ingredients, i.e., demand of bribe, acceptance/recovery of bribe amount and motive on the part of Appellant No. 2. However, ignoring this important aspect, Appellant No. 2 has erroneously been convicted by the trial court without there being any proof of his involvement in the alleged crime.

13. While challenging impugned judgment of conviction and order of sentence, it was argued on behalf of Appellant No. 1 that the investigation with regard to illegal reselling of tickets by the complainant and his brother was never done by Appellant No. 1 and rather investigation was conducted by another officer, Shri I.D. Khan, who recorded statements of the relevant witnesses and even charge sheet was prepared by Shri I.D. Khan and not by Appellant No. 1. It was further submitted that after completion of investigation in the said case against the complainant and his brother, file was sent by Shri I.D. Khan to Appellant No. 1 on 23.07.2007 and the same was sent by Appellant No. 1 on 24.07.2007 to the competent authority for approval of the charge sheet. In the charge sheet, the complainant as well as his brother both were shown as accused. Therefore, as on the date of alleged trap, i.e., on 26.07.2007, no work whatsoever was pending with Appellant No. 1. It was also submitted that even otherwise, no evidence has been led by the prosecution to prove that the investigation against the complainant and his brother was either conducted by Appellant No. 1 or at any point of time, Appellant





No. 1 influenced Shri I.D. Khan for conducting investigation in a particular manner. Since, the charge sheet prepared by Shri I.D. Khan had already included the complainant as well as his brother as accused and the same was already sent by Appellant No. 1 to his higher authority for approval on 24.07.2007, he was not capable to make any change in the charge sheet thereafter. Therefore, it is clear that Appellant No. 1 was not in a position to extend any undue favour whatsoever to the complainant. It is submitted that Appellant No. 1 has been framed in the case maliciously on account of collusion of the complainant with Shri I.D. Khan. Learned Senior Advocate as also learned counsels would further submit that it is an admitted case of the complainant and the prosecution that on 13.07.2007, no illegal gratification whatsoever was demanded by Appellant No. 1 from the complainant and that there is no voice recording of alleged conversation which took place on 13.07.2007. Even transcription of voice recording on 26.07.2007 was not sufficient to prove any specific demand of bribe by Appellant No. 1 from the complainant and rather the transcription would clearly suggest that it was the complainant, who although voluntarily offered some amount which was not accepted by Appellant No. 1 in clear terms. Such vague and evasive conversation cannot be termed as a demand of gratification for the purpose of constituting offence under the provisions of the Act of 1988. Proving demand of bribe in specific and clear terms is *sine qua non* for proving the offence under the provisions of the Act of 1988. Further, the prosecution has utterly failed to prove the demand in the present case. The prosecution





has failed to prove that at any point of time, Appellant No. 1 instructed Appellant No. 3 Sanwar Mal Meena, who was charged with allegedly accepting remaining amount of bribe of Rs. 3,000/- from the complainant and admittedly, the alleged recovery of the bribe amount is not from Appellant No. 1. Thus, all the ingredients of demand of bribe, recovery of bribe and pendency of work could not be proved by the prosecution, still on the basis of irrelevant factors, the trial court has convicted Appellant No. 1 and impugned judgment and order passed by the trial court is liable to be quashed and set aside.

14. Learned Senior Advocate as also learned counsels arguing for Appellant No. 3 would submit that there is no allegation whatsoever against Appellant No. 3 for demanding any bribe from the complainant either on 13.07.2007 or on 26.07.2007. They would also submit that there is ample evidence to show that on 26.07.2007, at the time of alleged trap, currency notes were never accepted by Appellant No. 3, rather the complainant on his own attempted to put such currency notes in pocket of Appellant No. 3 and such attempt was also unsuccessful as the complainant's hand was pushed away by Appellant No. 3. Resultantly, all the currency notes scattered on the floor. Thus, the currency notes were not found from the possession of Appellant No. 3. Even, FSL examination of the solution prepared by ACB team at the time of trap would clearly indicate that the colour of the solution was not pink and was rather sandy. Therefore, by no stretch of imagination, Appellant No. 3 could have been convicted by the trial court.





15. In addition to above, learned Senior Advocate and learned counsels for the appellants submitted that from the evidence, it has come on record that on 26.07.2007, when ACB team plotted its trap and entered into the premises of incident, the Court of Railway Magistrate was in session and staff of Railway Court and other litigants/persons were present on the site. Even learned Railway Magistrate after hearing the ruckus and clamour asked ACB personnel about the reasons of such noise. Despite that, no independent person or even the learned Railway Magistrate was not produced as witness before the trial court in order to prove the recovery of alleged bribe as well as to prove the validity of the trap proceedings.

16. It was further submitted that as per story of the prosecution, initially, demand was raised by Appellant No. 2 for Appellant No. 1 on 13.07.02007, yet the complaint was lodged by him on 25.07.2007 and no explanation whatsoever has been given by the complainant for remaining silent for 12 days. Therefore, in the facts and circumstances of the present case, such delay is fatal and puts a reasonable doubt over the bona fides of the complainant as well as on prosecution story.

17. Learned Senior Advocate as also learned counsels for the appellants would further submit that in the entire judgment, no findings or observations have been recorded by the trial court for drawing presumption under Section 20 of the Act of 1988 and under such circumstances, where there is no proximity between the scattered evidence led for unsuccessfully proving the demand





and recovery of bribe, in absence of any finding with regard to presumption under Section 20 of the Act of 1988, the trial court could not have convicted the appellants. It is further submitted that prosecution sanctions under Section 19 of the Act of 1988 have also been granted in a quite mechanical manner as neither the complete record was sent to the sanctioning authority, nor draft charge sheet was provided to the said authority, nor the competent authority before granting prosecution sanctions has discussed the niceties of the matter with the investigating officer. Therefore, under such circumstances where the prosecution sanctions cannot be treated as empty formality, overlooking such significant factor, the appellants ought not have been convicted and sentenced by the trial court vide impugned judgment and order.

18. Learned Senior Advocate as well as learned counsels also submitted that although charge under Section 120-B IPC was also framed against the appellants, yet the prosecution has utterly failed to prove any meeting of mind or conspiracy between all the appellants, so as to commit alleged offence with common intention and object. Thus, on the basis of aforesaid submissions, learned counsels for the appellants prayed that this appeal be allowed and judgment and order passed by the trial court be quashed and set aside and the accused-appellants be acquitted of the charges framed against them.

19. In support of their submissions, learned Senior Advocate as also learned counsels for the appellants have placed





reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Madan Lal vs. State of Rajasthan, (2025) 4 SCC 624; Neeraj Dutta vs. State (Government of NCT of Delhi), (2023) 18 SCC 251; Soundarajan vs. State Rep. by the Inspector of Police Vigilance AntiCorruption Dindigul 2023 LiveLaw (SC) 314; B. Jayaraj vs. State of Andhra Pradesh, (2014) 13 SCC 55; Mir Mustafa Ali Hasmi vs. The State of A.P. (2024) 10 SCC 489; P. Somaraju vs. State of Andhra Pradesh, 2025 SCC OnLine SC 2291; State of Lokayuktha Police, Davanagere vs. C B Nagaraj 2025 SCC OnLine SC 1175; Madan Lal vs. State of Rajasthan (Criminal Appeal arising out of Special Leave Petition (Crl.) No. 6895 of 2022 decided on 07.03.2025); Dileepbhai Nanubhai Sanghani vs. State of Gujarat & Anr. 2025 SCC OnLine SC 441; Jagtar Singh vs. State of Punjab, (2023) 19 SCC 498; Selvaraj vs. State of Karnataka, (2015) 10 SCC 230; Satvir Singh vs. State of Delhi thru. CBI, AIR 2014 SC 3798; State of Punjab vs. Madan Mohan Lal Verma, (2013) 14 SCC 153; K. Shanthamma vs. State of Telangana, (2022) 4 SCC 574; decisions of Co-ordinate Benches of this Court at Principal Seat, Jodhpur in the case of **Kishore Singh Vs. State of Rajasthan (S.B. Criminal Appeal No. 163/1999 decided on 17.05.2024); Dr. Rajkumar Agarwal Vs. State of Rajasthan (S.B. Criminal Appeal No. 565/2017 decided on 31.05.2023); Babu Lal Vs. State of Rajasthan through PP (S.B. Criminal Appeal (sb) No. 2556/2023 decided on 16.08.2024);** decision of Karnataka High Court in the case of**





Imamsab Moulasab Toragal vs. State of Karnataka through Belgaum Rural Police, 2023 SCC OnLine Kar 158; decision of Madras High Court in the case of **State Rep. by Superintendent of Police, Vigilance & Anti Corruption, Chennai vs. Subramanian & Others, 2006 0 Supreme (Mad) 2053**; decision of High Court of Chhattisgarh at Bilaspur in the case of **Vijay Kumar Tiwari (Died and Deleted) through Lr as per Hon'ble Court & Another vs. State of Chhattisgarh, through Special Police Establishment, 2025 SCC OnLine Chh 8736.**

20. Learned Public Prosecutor opposed the appeal and submitted that impugned judgment has been delivered by the trial court after meticulous examination of the facts of the case, each and every limb of oral as well as documentary evidence and after considering the prevailing law. Therefore, no interference is called for in the impugned judgment.

21. Learned Public Prosecutor pointed out that the plea raised by Appellant No. 2 that he was not present at the time when initial demand of bribe was raised on 13.07.2007 does not match with the record and evidence and there is ample material on record to show that Appellant No. 2 was very much there in his office and had demanded bribe for Appellant No.1. Learned Public Prosecutor submitted that merely the fact that on the date of trap, Appellant No.2 was not present would not absolve him from the charges framed against him as it is not incumbent for the prosecution to prove that the bribe has been received by the same person, who had raised the demand. While referring to Section 7





of the Act of 1988, it has been argued by learned Public Prosecutor that the offence is constituted even in the cases where the demand is raised by person concerned for himself/herself or for any other person.

22. Learned Public Prosecutor further argued that it is incorrect to state on the part of the appellants that no work of the complainant was pending with Appellant No. 1. He submitted that although, initially investigation was conducted by Shri I.D. Khan, yet the entire matter was taken up by Appellant No. 1 and all the proceedings were conducted by him only. Learned Public Prosecutor would further submit that from bare perusal of the transcription of voice recording would reveal that Appellant No. 1 has specifically asked the complainant to give remaining amount of bribe to Appellant No. 3. Learned Public Prosecutor submits that only on account of the fact that on the date of trap, currency notes were not found in the hands of Appellant No. 3 would not make any difference as the same were thrown by him after finding that ACB team had entered into the premise. Learned Public Prosecutor would also submit that the entire material was placed before the competent authority, who issued prosecution sanctions in the instant matter and there is no infirmity in the order of grant of prosecution sanction. Even otherwise, order of issuance of prosecution sanction was never challenged by the appellants by way of availing separate remedies.

23. Learned Public Prosecutor submitted that the evidence in the matters arising out of the provisions of the Act of 1988





cannot be read in piecemeal and the same has to be appreciated in entirety. The evidence led by the prosecution would make it clear that there is apparent, explicit and clear material on record to prove beyond reasonable doubt that the appellants have committed the offences as charged against them. It is further submitted that there is no requirement to record specific finding with regard to presumption under Section 20 of the Act of 1988 as it is settled proposition of law that where demand and recovery of bribe has been successfully proved, motive can be presumed without there being any specific finding in this regard. Learned Public Prosecutor, therefore, prayed for dismissal of the appeal filed by the appellants.

24. I have carefully considered the arguments raised by learned counsels for the appellants as well as learned Public Prosecutor, perused the record and meticulously examined the evidence led by both the sides.

25. Needless to mention here that for the purpose of proving offence under Sections 7, 13(1)(d) and 13(2) of the Act of 1988, it is required that the prosecution proves beyond reasonable doubt three essential ingredients, namely, demand of bribe, acceptance/recovery thereof and pendency of work with the accused persons.

26. For the purpose of examining the aforesaid three essential ingredients, evidence placed on record by the respective parties was analysed by this Court.





27. Maduram (P.W.1) was holding the post of ASI in Railway Police Station, Reengus and was discharging his duty as Duty Officer on 13.07.2007. In his examination-in-chief, this witness stated that on 13.07.2007, the complainant came to Railway Police Station Reengus with copy of order of anticipatory bail where the complainant and his brother were examined and necessary proceedings were drawn. This witness verified daily diary (Rojnamcha), Exhibit P-1, which was bearing signatures of Appellant No.1. He also stated that on 26.07.2007, trap party of ACB led by Satpal Singh, Dy.S.P., ACB, Sikar conducted trap where Appellant No. 3 was caught red handed while accepting Rs. 3,000/- from the complainant. However, in cross-examination, this witness stated that on 13.07.2007, duty of Appellant No. 2 was on reservation window from 7.45 A.M. and he was relieved from said duty at 4.50 P.M. Further, after being relieved from duty of reservation window, Appellant No. 2 straightway went to his railway quarter. He also stated that he was present on 26.07.2007 at the time of incident where Railway Magistrate Court was in session and conducting its functioning. This witness admitted that in respect of case registered against the complainant under the Railways Act, investigation was conducted by Shri I.D. Khan, Sub Inspector, who after completion of the investigation sent the file to Appellant No.1 for the purpose of forwarding the same for necessary approval for filing charge sheet. Thus, no work of the complainant was pending with Railway Police Station, Reengus. This witness further admitted that on 26.07.2007, Appellant No. 2 was not at Reengus and he was, in fact, at Jaipur since





24.07.2007. He stated that Appellant No.3 refused to accept sweets box from the complainant and while the complainant was forcibly putting currency notes in the pocket of Appellant No.3, he jerked and flicked the hand of the complainant. Consequently, currency notes were scattered on the floor. In his cross-examination, this witness further admitted that Sanwar Mal (Appellant No.3) did not accept the money, nor the same was ever demanded by him, rather the complainant was forcibly attempting to give him money. He also admitted the fact that entire incident was being watched by learned Railway Magistrate, who also objected to the noises occurred in the premises. Although, said statement of P.W.1 was not supporting story of the prosecution, yet the prosecution did not choose to declare him hostile and rather, the prosecution conducted re-examination of the witness. However, during re-examination, this witness did not support the case of the prosecution and reiterated his statement given during cross-examination.

28. Dr. P.M. Singh Dev (P.W.3) was Chief Security Commissioner, Railway Protection Force, North Western Railway, Jaipur and he was the competent authority to accord prosecution sanction for Appellant No. 1. He, in his cross-examination, stated that he did not remember as to whether any letter along with file was sent to him by ACB for issuance of prosecution sanction or not. Later on, he improved his version by stating that entire file was sent to him. This witness was shown prosecution sanction order of Appellant No. 1 (Exhibit P-4) and he admitted that in





Exhibit P-4, there was no reference with regard to details of the documents as well as details of statements of different persons.

29. This witness further stated that he himself did not hear the voice recording by operating audio cassette. However, he stated that he had read the transcription. This witness further stated that no recovery of bribe amount was made from Appellant No.1, rather, Appellant No.1 was not found present at the spot of incident at the time of trap. He failed to make any statement as to whether any work of the complainant was pending with Appellant No.1 or not.

30. Anil Kumar Das (P.W.4), at the relevant time, was holding the post of Divisional Security Commissioner, Railway Protection Force, North Western Railways and was prosecution sanctioning officer for Appellants No. 2 and 3. He, in his examination-in-chief, stated that on the basis of oral and documentary evidence available on the file, prosecution sanctions were granted by him after due application of mind. However, during cross-examination, this witness stated that the transcription of voice recording (Exhibit D-2) was although presented before him, but there was no such transcription regarding demand of any bribe by Appellant No.3, nor was there anything on the file with regard to verification of demand from Appellant No. 2. The transcript also did not have any reference of demanding bribe of Rs. 5,000/- by Appellant No.2. He also admitted that at the time of trap proceedings at Police Station Reengus, learned Railway Magistrate was holding camp court in the premise of police station itself. However, Appellant No.2 was





not present at that time in the police station. During cross-examination, this witness also admitted that orders of prosecution sanction (Exhibit P-5 and Exhibit P-6) issued in respect of Appellant No. 3 and 2 respectively were exactly similar without there being any difference of full stop and coma. He also admitted that charge sheet in the case lodged against the complainant was prepared by Shri I.D. Khan with recommendation to submit the same in Court on 24.07.2007. This witness also admitted that no complaint whatsoever was received by him from Shri I.D. Khan regarding any influence or coercion applied upon him by any other officer of the department. He also submitted that during trap proceedings, no amount of bribe was recovered from Appellant No. 1 and in Exhibit D-1, there was no specific reference with regard to demand of bribe or acceptance thereof by Appellant No.1. He admitted that the investigation in the case against the complainant was not conducted by Appellant No.1, nor such investigating was pending before him.

31. Islamudeen Khan (I.D. Khan) was examined as P.W.6 by the prosecution, who stated that although investigation of Case No. 644/2007 against the complainant was entrusted to him, however, the file of the case was taken away by Appellant No. 1 and he could not refuse to Appellant No.1 from taking the file and the statements were recorded by Appellant No.1. However, all the documents were signed by him (P.W.6). This witness submitted that he had applied for voluntary retirement, which was granted to him in December, 2007. During cross-examination, this witness admitted that no complaint of Appellant No.1 was ever made by





him regarding taking away file of the complainant from him, nor was there any complaint lodged by him against Appellant No.1 for pressuring him to sign investigation file of the complainant.

32. Ved Prakash Surajmal Sharma appeared as P.W.7 in the witness box and admitted during cross-examination that from 24.07.2007 to 26.07.2007, Appellant No. 2 was discharging duties in the office of Assistant Security Commissioner, RPF, Jaipur and Duty Certificate (Exhibit D-4) was signed by him. He also admitted that one complaint was made by the complainant against accused persons, which was found to be false after enquiry.

33. Kailash Chandra Meena (P.W.8) was Assistant Security Commissioner, Railway Protection Force, Izzatnagar, Bareilly and holding the post of Inspector, RPF Police Station Reengus at the relevant time in the year 2007. He was also predecessor of Appellant No.1. This witness, during cross-examination, admitted that Shri I.D. Khan did not submit any written or oral complaint against Appellant No.1 with regard to creating any pressure in the investigation against the complainant and the entire investigation was rather conducted by Shri I.D. Khan as per his discretion.

34. Chiranji Lal (P.W.9) was the complainant, who during his examination-in-chief, almost repeated his complaint and levelled allegation of demand of bribe by Appellant No. 2 for Appellant No.1 and acceptance of remaining bribe amount by Appellant No.3. He, in his cross-examination, submitted that in the matter pending against him under the Railways Act, investigation was conducted by Appellant No. 1 and 2, not by Shri I.D.Khan. He further submitted that record of conversation





between the complainant and accused persons on 13.07.2007 was not created as he was not carrying any tape recorder on 13.07.2007. He also submitted that in the statements taken by ACB at the time of making complaint, no dates were entered on the statement. This witness further admitted that for the purpose of submitting bail bonds, one surety, namely, Nagarmal was also accompanying him and was present in the police station and Rs. 2,000/- were given by the complainant to Appellant No.2 in front of surety, Nagarmal, yet the surety refused to give any statement in support of such allegations. He also admitted that he did not make any complaint on 13.07.2007 with regard to give Rs. 2,000/- to Appellant No. 2. This witness further admitted the fact that in his complaint (Exhibit D-1), there was no reference that Appellant No. 2 visited his shop in between 13.07.2007 to 25.07.2007 for recovery of remaining bribe amount. This witness also failed to give any proof of such visiting of Appellant No. 2 at his shop during the aforesaid period. He also admitted that in his complaint (Exhibit D-1), there was no reference of demand of Rs. 5,000/- as bribe by Appellant No.2. He stated that on 26.07.2007, he did not give any money to Appellant No.1 or Appellant No. 2. However, by his gestures, Appellant No.1 asked the complainant to give money to Appellant No. 3 and further, Appellant No. 1 never spoke him by words to give Rs. 3,000/- to Appellant No. 3. This witness further admitted that in the demand verification conversation and in its transcription, there was no reference about any offer by the appellants to dilute the criminal case against the





complainant and his brother, which has although been alleged by him in his complaint (Exhibit D-1).

35. Shravan Kumar (P.W.10), at the relevant time, was holding the post of Head Constable at ACB Chowki, Sikar and he was the person, in whose presence, the memo of giving tape recorder with cassette to the complainant for voice recording for the purpose of demand verification was prepared. He admitted that in the transcription of voice recording (Exhibit D-2), there was no reference of conversation with Appellant No.2 and this witness also admitted the fact that investigation against the complainant in criminal case under the Railways Act was conducted by Shri I.D. Khan.

36. Ramniwas (P.W.12) was the brother of the complainant and prime accused in the case registered under the Railways Act in respect of which allegation of demanding bribe was levelled by the complainant. In his examination-in-chief, this witness stated that on 13.07.2007, when they went to RPF Police Station, Reengus and appeared before Appellant No.1, he asked Appellant No. 2 (Bench Clerk) to conduct necessary proceedings for accepting the bail bonds of the complainant and his brother, whereupon Appellant No. 2 demanded bribe of Rs. 5,000/- out of which Rs. 2,000/- were given by the complainant to him. However, during cross-examination, this witness admitted that conversation with regard to demand of Rs. 5,000/- for disposing off the case registered against them had never taken place with this witness. He also admitted that on 13.07.2007, he had no conversation with Appellant No.2. This witness further submitted that on





26.07.2007, no conversation between him and Appellant No. 1 took place, nor Appellant No. 1 asked him to give remaining amount of bribe to Appellant No. 2.

37. Laxminarain (P.W.13), at the relevant time, was holding the post of Constable at ACB Chowki, Sikar and was also one of the member of trap party, who deposed to verify the trap proceedings. However, during his cross-examination, he admitted the fact that physical recovery of currency notes was never made from Appellant No. 3 and rather, the currency notes were recovered from the floor.

38. Rohitashav Singh (P.W.14) was also Constable in ACB Chowki, Sikar at the relevant time and also a member of trap team. However, during his cross-examination, he admitted that he did not hear any conversation at the time of handing over bribe money, nor did he have any personal knowledge as to whether the complainant attempted to forcibly put the currency notes in the pocket of Appellant No.3. This witness further admitted that currency notes were collected by Shraavan Singh, Constable from the floor and no recovery of currency notes was made from the possession of Appellant No.3.

39. Mahaveer Singh Gadwal (P.W.15) was also member of trap party and deposed before the trial court with regard to trap proceedings. However, during his cross-examination, this witness admitted that no record of conversation on 13.07.2007 was available on the file before the trial court, nor was there any evidence to prove that on 13.07.2007, the complainant ever met the appellants. Complaint made by the complainant (Exhibit D-1)





was shown to this witness, who verified that the fact of visiting the shop of the complainant by appellant No. 2 was not mentioned in the complaint. He further admitted that entire criminal case has been lodged by the complainant as a counter blast of the case lodged against him. He admitted the fact that on the date of trap, brother of the complainant, Ramniwas (P.W.12) was not there on the site of trap, rather he met him at crossing of Kalyan Circle, Sikar.

40. Arvind Kumar Beniwal (P.W.17) admitted the fact that on 26.07.2007, Appellant No. 2 was not present on the site and on 26.07.2007, no conversation for the purpose of demand verification was made from Appellant No.2. This witness failed to state as to whether any work of complainant was pending with Appellant No.1 or not, but admitted the fact that case file of the complainant was already sent by Appellant No. 1 in the office of Divisional Security Commissioner, RPF, Jaipur on 24.07.2007 for the purpose of granting approval for filing challan.

41. Chatrasal Singh (P.W.18), who at the relevant time, was Deputy Superintendent of Police of ACB, Sikar deposed that he received the complaint of demanding bribe by the appellants. However, during cross-examination, he admitted the fact that the complaint did not bear any signature of Ramniwas, brother of the complainant and also stated that investigation in respect of criminal case lodged against the complainant and his brother was conducted by Shri I.D. Khan. This witness also admitted that while verifying the demand on 25.07.2007, he did not ask the complainant with regard to lodging the complaint with delay on





25.07.2007 with regard to alleged incident which took place on 13.07.2007. He also admitted the fact that in complaint (Exhibit D-1) made by the complainant, there was no reference that Appellant No. 1 had ever demanded Rs. 5,000/- from the complainant and there was no record of conversation, which took place on 13.07.2007. This witness also admitted the fact that there was no oral or documentary evidence on record to prove that on 13.07.2007, any bribe amount was given by the complainant to Appellant No. 2. He further admitted the fact that on 26.07.2007, Appellant No. 2 was not present at the time of trap proceedings and rather, he was at Jaipur since 24.07.2007 for official work. This witness further admitted that at the time of trap proceedings or even thereafter, for the purpose of verification, no conversation was got conducted between Appellant No. 2 with either Appellant No. 1 or Appellant No. 3 for the purpose of demand verification through telephone. He also admitted that colour of washing solution of hands of Appellant No. 3 was sandy and not pink, and that no bribe amount was recovered from Appellant No. 1 and he did not take any amount from the complainant.

42. Leeladhar Jangid (P.W.19), another prosecution witness, who was holding the post of Police Inspector in ACB, SIW, Jaipur, admitted the fact that there was no conversation record of 13.07.2007 and there were no reasons available on record for making the complaint by the complainant of the alleged incident which took place on 13.07.2007 on 25.07.2007, after 12 days.





43. In the documentary evidence, Exhibit P-1, which is copy of daily diary (Rojnamcha) dated 13.07.2007 shows that on 13.07.2007, duty of Appellant No. 2 was on reservation window and not at the police station. Exhibit P-4 is the order of prosecution sanction of Appellant No. 1. However, the said document does not reveal that whether draft charge sheet was produced before the sanctioning authority or not. Similarly, Exhibit P-5 and Exhibit P-6 are prosecution sanction orders of Appellants No. 3 and 2 respectively. Comparison of Exhibit P-4, Exhibit P-5 and Exhibit P-6, which are different prosecution sanction orders, would reveal that although the authority for issuing Exhibit P-4 was different from the authority who issued Exhibit P-5 and Exhibit P-6. Further, the aforesaid documents would show that sanctions for prosecution were issued by different authorities in a draft format and they have acted on the dotted lines drawn by the ACB. In none of the aforesaid prosecution sanction orders, there is reference of sending draft charge sheet to the prosecution sanctioning authorities and although, role of each of the appellant was altogether different in the alleged criminal case, yet similar kind of orders have been passed for granting prosecution sanction. Exhibit P-19 and Exhibit P-20 are the transcription of voice recording on 25.07.2007 and 26.07.2007, which were meticulously examined by this Court. However, it comes out that though there is reference of conversation of the complainant with Appellant No.1 and Appellant No. 3, but, complete examination of transcription does not reflect that there was any specific demand of bribe in explicit terms either by Appellant No. 1 or Appellant No.





3. The transcription shows that the complainant himself, at different intervals during conversation, had voluntarily tried to offer some money for which Appellant No. 1 stated that it was not required and at one point of time, it was stated by Appellant No. 1 that there is no matter of any money and even if the complainant had any requirement, Appellant No. 1 himself give it would give it.

44. Demand of bribe money is *sine qua non* and there should be specific, clear and cogent evidence to prove demand of bribe. Mere insinuation or casual conversation, including any scratchy, incomplete, vague or evasive dialogue, cannot constitute a demand for the purposes of the Act of 1988. Rather, the demand must be in explicit and unambiguous words and cannot be inferred from ambiguous exchanges. Such evidence is indispensable for the purpose of constituting the alleged offences against the accused persons.

45. Admittedly, the complainant has alleged that initially demand was raised by Appellant No. 2 on 13.07.2007 from the complainant, however, the prosecution has utterly failed to prove the same as no other person, except the complainant, has given any statement in this regard. Furthermore, admittedly, there is no voice recording to prove any demand by Appellant No. 2 on 13.07.2007 from the complainant. Rather by giving suggestions to different prosecution witnesses during their cross-examination, the appellants have succeeded in creating reasonable doubt over the presence of Appellant No. 2 at RPF Police Station, Reengus on 13.07.2007 and it was shown that his duty was at railway reservation window from 7.45 A.M. to 4.50 P.M. and he was not



available in the police station. After being relieved from duties, Appellant No. 2 straightway went to his railway quarter. Thus, there is no legitimate piece of evidence to prove demand and acceptance of part of bribe amount on 13.07.2007 by either of the appellants, i.e. Appellant No. 1 and Appellant No. 2. So far as alleged verification on 26.07.2007 through voice recording is concerned, the transcription thereof do not suggest any specific overt act on the part of the appellants with regard to make any demand and rather, it was the complainant, who time and again, tried to offer some money voluntarily to Appellant No.1, who did not tender his specific acceptance for the same. Even the transcriptions of conversation of the complainant with Appellant No. 3 also do not reflect any clear demand of bribe money from the complainant. Thus, so far as aspect of demand of bribe is concerned, the prosecution has utterly failed to prove the same beyond reasonable doubt.

46. As regards question of pendency of work of the complainant with either of the appellant is concerned, Appellant No. 1 was in-charge of the police station where Appellant No. 2 was Bench Clerk (Munshi) and Appellant No. 3 was simply a Constable/Guard. The work alleged to be pending as stated by the complainant was that in a case registered against the complainant and his brother, Appellant No. 1 and 2 allegedly promised him to dilute the case at the time of filing of charge sheet and assured him that name of the complainant would be removed from the array of the accused and a weak case would be prepared against his brother Ramniwas so that the offence would be compounded





on the first date of hearing provided the complainant was agreed to pay Rs. 5,000/- as bribe to the appellants. From perusal of the material on record and statements of different witnesses and after analysis thereof, it has come out that the complainant and his brother were booked by one other officer, namely, R.S. Kasana and the investigation of the offence was assigned to Shri I.D. Khan. It has also come out from the record that investigation was conducted and entire documents were signed by Shri I.D. Khan and not by Appellant No. 1. It also emerges from the record that the complainant was allegedly called by Appellant No.1 and 2 on 26.07.2007 whereas the evidence on record reveals that after completion of investigation, charge sheet was prepared by Shri I.D. Khan and sent to Appellant No. 1 on 23.07.2007 for further forwarding the same to higher authorities for according necessary approval for the purpose of filing charge sheet before the competent court and accordingly, the charge sheet was sent by Appellant No. 1 to higher authorities on 24.07.2007 for necessary approval. It has also come on record that in the charge sheet, both, the complainant and his brother were arrayed as accused. Therefore, under these circumstances, it cannot be said that there was any work of the complainant pending with either of the appellants, nor the appellants were in a position to extend any undue benefit to the complainant. By the time, the trap party allegedly conducted its proceedings on 26.07.2007, the file was already sent by Appellant No. 1 to the office of higher authorities two days back on 24.07.2007. Thus, it has also not been proved





by the prosecution beyond reasonable doubt that any work of the complainant was pending with either of the appellants.

47. So far as recovery/acceptance of bribe money is concerned, it has been admitted by almost all prosecution witnesses that no recovery of bribe money was made either from Appellant No. 1 or Appellant No. 2. Prosecution has come out with a case that by his gestures, Appellant No. 1 asked Appellant No. 3 to accept remaining bribe amount from the complainant. However, there is no legitimate piece of evidence to prove such gestures, except the statement of the complainant himself. Even otherwise, there is ample evidence on record to prove that the complainant forcibly attempted to put the currency notes in the pocket of Appellant No. 3, which he did not accept and when the complainant forced, Appellant No. 3 pushed away complainant's hand and resultantly, all the currency notes were scattered on the floor. Later on, the trap party collected the currency notes from the floor. Even the chemical solution after washing of the hands of Appellant No. 3 did not give the required result as the colour of the solution was sandy and not pink, which is required for proving the recovery of currency notes.

48. It has also come on record that at the relevant time, Railway Magistrate was holding its camp court in Railway Police Station, Reengus and the alleged trap proceedings took place in front of his eyes and he also objected to the noises occurred at the relevant time. Staff of Railway Court and other persons were also present there on the spot, however, the prosecution has utterly failed to produce any of such independent witness or even





the Railway Magistrate to prove the factum of recovery/acceptance of bribe amount. Thus, the entire evidence produced by the prosecution was completely inconsistent and sketchy and the prosecution has utterly failed to prove the charges against the appellants beyond reasonable doubt.

49. As there is no evidence on record in order to prove demand and recovery of bribe money in the present case, there is no question of drawing presumption under Section 20 of the Act of 1988 and even otherwise, there is no observation/finding recorded by the trial court in the impugned judgment with regard to drawing any such presumption.

50. At the first place, it would be appropriate to reproduce Section 7 of the Act of 1988 as it was existing at the relevant time for understanding the essential ingredients of the offence and for easy reference:

"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 six months but which may extend to five 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."

51. The twin conditions i.e. 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 section 7 of the Act. In order to bring the accused to book, the prosecution has to prove the demand of 'illegal gratification' and its 'subsequent acceptance' either by direct evidence or circumstantial evidence. In the case at hand, the demand or recovery/acceptance of illegal gratification has not been proved beyond reasonable doubt by the prosecution.

52. In the case of **Selvaraj (supra)**, the Hon'ble Supreme Court observed as under :-

"15.Coming to the question whether the view taken by the trial court while acquitting the accused was probable, we find that in view of the fact that complainant Peter Philip, CW 1 died before the trial, as such he was not available for cross-examination with respect to the facts which were in his knowledge as to the demand of bribe and its payment. We have to carefully look into the other evidence available. In the absence of the complainant, the onus lay upon the prosecution to adduce credible evidence and to prove the guilt beyond the periphery of doubt. K.M. Eregowda, PW 2, had stated that 10 to 12 other officials were sitting in the same room in which bribe was paid. Taking of bribe in the presence of 10 to 12 other officials of the Treasury Office is quite improbable. It assumes significance in the circumstances from which place the money was recovered; whether it was from the possession of the accused. PW 1 has stated that he found currency notes on the table, and the accused was standing behind the table. Whereas K.N. Eregowda, PW 2, has stated that the currency notes were





kept by the accused beneath the book on the table. Another witness L. Somashekara, PW 8, IO, has stated that he recovered the money from the drawer of the table. The versions given by the three witnesses are different from each other. Even if we ignore the contradictions between the versions of PW 1 and PW 2, the contradiction with respect to place of recovery of money whether it was inside the drawer of table or was lying on the table beneath the book is material one and could not have been ignored."

53. In the case of **N. Sunkanna vs State of Andhra Pradesh, (2016) 1 SCC 713**, the Hon'ble Supreme Court has held as under :-

"5. The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW 3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked for any monthly mamool and he did not pay Rs 50 at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1) (d) 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. 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. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of the three-Judge Bench of this Court in *B. Jayaraj v. State of A.P.* (2014) 13 SCC 55 and *P. Satyanarayana Murthy v. State of A.P.* (2015) 10 SCC 152."

54. The Hon'ble Supreme Court in the case of **Neeraj Dutta (supra)** has observed as under:

"12. The Constitution Bench [*Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731] was called upon to decide the question which we have quoted earlier. In para 88, the conclusions of the Constitution Bench judgment have been





summarised, which read thus : (Neeraj Dutta case SCC pp. 775-77)

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

88.1. (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.

88.2. (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.

88.3. (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.

88.4. (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 Sections 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 Sections 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 Sections 13(1)(d)(i) and (ii) of the Act.





88.5. (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.*

88.6. (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.*

88.7. (g) *Insofar 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 Sections 13(1)(d) (i) and (ii) of the Act.*

88.8. (h) *We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5 (e), above, as the former is a mandatory presumption while the latter is discretionary in nature."*

(emphasis in original and supplied)"

55. Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt. Since, 'demand' and 'acceptance' is not proved beyond reasonable doubt in the instant case, the presumption under Section 20 of the Act of 1988 cannot be raised. Even in the case of **Neeraj Dutta (supra)**, the Hon'ble Apex Court, while dealing with the presumption under Section 20 of the Act of 1988 has held as under :-

"14. 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 *B. Jayraj v. State of A.P.*, (2014) 13 SCC 55] and *P. Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152]. There is another decision of a three-Judges' Bench in *N. Vijayakumar v. State of T.N.*, (2021) 3 SCC 687, which follows the view taken in *B. Jayraj and P. Satyanarayana Murthy.*"

56. The Hon'ble Supreme Court in the case of **K. Shanthamma (supra)** has held that:

"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. [(2015) 10 SCC 152], this Court has summarised the well-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)"

57. From the evidence of the prosecution witnesses, it appears that the witnesses have not supported the prosecution's case regarding demand and acceptance of money by the appellants. The prosecution has sought to place reliance on the testimony of its departmental witnesses, but their evidence suffers from infirmities and contradictions. Thus, the evidence on the point of demand and acceptance of bribe, has not been proved by the prosecution beyond all reasonable doubt.

58. As held by the Hon'ble Supreme Court in the case of **P. Somaraju (supra)**, the foundational facts of demand and





acceptance of a bribe must be proved beyond reasonable doubt before invoking statutory presumption under Section 20 of the Prevention of Corruption Act. The Supreme Court reiterated that appellate courts have the power to reappreciate evidence and that mere recovery of money without proof of demand is insufficient for conviction. Relevant paras of the above judgment are as reproduced as under:

*"18. The statutory presumption under Section 20 of the PC Act is **not** automatic and arises only once the foundational facts of demand and acceptance are proved. The same has been reiterated time and again by this Court; in the recent decision of Rajesh Gupta v. State through Central Bureau of Investigation⁹, it was held:*

"17. For an offence under Section 7 of PC Act, the demand of illegal gratification is a sine qua non to prove the guilt. Mere recovery of currency notes cannot constitute an offence under Section 7 of PC Act, unless it is proved beyond reasonable doubt that accused voluntarily accepted the money, knowing it to be a bribe. The proof of acceptance of illegal gratification can follow only if there is proof of demand."

19. It is therefore vital to examine these elements before the circumstance of recovery can assume any significance. We once again rely on the observation of this Court in Rajesh Gupta (supra):

"16.The law is well-settled by the judgments of this Court in Panna Damodar Rathi v. State of Maharashtra, (1979) 4 SCC 526 and Ayyasami v. State of Tamil Nadu, (1992) 1 SCC 304, whereby it has been clarified that the sole testimony of the complainant, who is the interested witness, cannot be relied upon without having corroboration with the independent evidence."

23. In contrast, the defence has consistently maintained that the alleged demand and acceptance of bribe never took place. According to the appellant, the complainant entered his office alone and during the appellant's brief absence, placed the tainted amount in the left-drawer of the table. Accordingly, when the trap-party entered, the appellant immediately denied having received any money, and the phenolphthalein test on both hands yielded negative results."

59. Similarly, in **State of Lokayuktha Police, Davanagere vs. C B Nagaraj (supra)**, the Hon'ble Apex Court ruled that mere recovery of tainted money does not suffice; the





entire chain of demand, acceptance and recovery must be established. The Hon'ble Supreme Court held as under:

"25. *It is pertinent to note that till 05.02.2007, when the Respondent had conducted the physical/spot inspection, there is not even a whisper of there being any demand of bribe. Moreover, when the Complainant went back to the Respondent's office at 5:30 PM with the money, the prosecution case itself as per the deposition of its witnesses makes it clear that the Respondent had informed the Complainant that he had already forwarded the concerned file. Thus, if the same is accepted, there was no occasion for the Complainant to go ahead with paying the amount, which he claims to be in the nature of bribe demanded by the Respondent, after the work for which the bribe was purportedly sought, had already been done. The observation of the High Court to this extent is correct that just because money changed hands, in cases like the present, it cannot be ipso facto presumed that the same was pursuant to a demand, for the law requires that for conviction under the Act, an entire chain - beginning from demand, acceptance, and recovery has to be completed. In the case at hand, when the initial demand itself is suspicious, even if the two other components - of payment and recovery can be held to have been proved, the chain would not be complete. A penal law has to be strictly construed [Md. Rahim Ali v. State of Assam, 2024 SCC OnLine SC 1695 @ Paragraph 45 and Jay Kishan v. State of U.P., 2025 SCC OnLine SC 296 @ Paragraph 24]. While we will advert to the presumption under Section 20 of the Act hereinafter, there is no cavil that while a reverse onus under specific statute can be placed on an accused, even then, there cannot be a presumption which casts an uncalled for onus on the accused. Chandrasha (supra) would not apply as demand has not been proven. In Paritala Sudhakar v. State of Telangana, 2025 SCC OnLine SC 1072, it was stated thus:*

'21. *As far as the submission of the State is that the presumption under Section 20 of the Act, as it then was, would operate against the Appellant is concerned, our analysis supra would indicate that the factum of demand, in the backdrop of an element of animus between the Appellant and complainant, is not proved. In such circumstances, the presumption under Section 20 of the Act would not militate against the Appellant, in terms of the pronouncement in Om Parkash v. State of Haryana, (2006) 2 SCC 250:*

'22. *In view of the aforementioned discrepancies in the prosecution case, we are of the opinion that the defence story set up by the appellant cannot be said to be wholly improbable. Furthermore, it is not a case where the burden of proof was on the accused in terms of Section 20 of the Act. **Even otherwise, where demand has not been proved, Section 20 will also have no application.** (Union of India v. Purnandu Biswas [(2005) 12 SCC 576 : (2005) 8 Scale 246] and T. Subramanian v. State of T.N. [(2006) 1 SCC 401 : (2006) 1 Scale 116])'*

(emphasis supplied)

(emphasis in bold is original, underlining is ours)"





60. In the case of **Madan Lal (supra)**, conviction was reversed by the Hon'ble Supreme Court, where bribe notes were recovered from floor, negating presumption under Section 20. It was held as under:

"18. On an examination of the evidence, there is considerable doubt raised in our mind, which qualifies as reasonable doubt, as to whether there was acceptance of bribe amounts by both the accused. True, the officers of the trap team spoke about the handing over of the money by the complainant to the 1st accused who handed over half, to the 2nd accused; which amounts were said to have been put by both the accused in their trouser pockets. PW 8 who led the trap team merely spoke of a recovery of the bribe amounts from the possession of the accused and the hands and trousers of the accused having positively reacted to the test solution. The said deposition is contrary to the statements made by the independent witnesses that some notes were found thrown on the floor. None of the officers spoke of any of the accused having taken out the notes and thrown it on the floor."

61. In **Dileepbhai Nanubhai Sanghapi (supra)**, the Hon'ble Supreme Court quashed proceedings citing lack of credible demand or acceptance evidence. The Hon'ble Supreme Court held as under:

10. The learned Senior Counsel appearing for the appellant had clearly pointed out that at this stage no presumption can be raised under Section 20 especially when the provision speaks of proof offered at a trial; that the public servant accused of an offence, has demanded, accepted or obtained or attempted to obtain for himself or for any other person any undue advantage from any person. Only on such proof offered, the presumption can be raised that the demand or receipt of illegal gratification was as a motive or reward such as is mentioned in Section 7; without consideration or inadequate consideration. In the present case from the materials produced before the Special Court there is nothing indicating even an allegation of demand of bribe by the second accused which would clearly indicate that there is no question of any proof being offered, on that aspect, at the trial. In this context, we have to look at the Constitution Bench decision in Neeraj Dutta⁴.

11. Neeraj Dutta³ held so, in paragraph 88:

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





88.1.(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.*

88.2.(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.*

88.3.(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.*

88.4.(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 Sections 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 Sections 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 Sections 13(1)(d)(i) and (ii) of the Act.*

88.5.(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.

88.6.(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.

88.7.(g) Insofar 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 Sections 13(1)(d)(i) and (ii) of the Act.

88.8.(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature."

12. It has been categorically held by the Constitution Bench that the proof of demand (or an offer) and acceptance of illegal gratification by a public servant is a fact in issue in the criminal proceeding and is a sine qua non to establish the guilt of the accused public servant under Sections 7 and 13 of the Act. Unless proof is offered to the satisfaction of the Court that there is a demand and acceptance of illegal gratification, the presumption would not arise. The presumption under Section 20 of the Act cannot arise on the mere allegation of a demand and acceptance of illegal gratification as rightly pointed out by the appellant. The question of presumption does not arise in the present case where the Special Court had merely examined the complainant and also summoned three witnesses, the officers of the investigation team, under Section 3001 of the Cr.P.C. for the purpose of recording their statements. This is pre-charge evidence based on which summons have been issued to the accused Nos. 2 to 7. However, even a prima-facie finding has to be on the basis of allegations containing the definite ingredients for which proof could be offered at the trial, giving rise to the presumption under Section 20 of the Act, which presumption is also rebuttable."

62. Co-ordinate Bench of this Court at Principal Seat Jodhpur in the case of **Babu Lal vs State of Rajasthan (supra)** emphasized the necessity of establishing both demand and





acceptance beyond reasonable doubt, warning against convicting solely on recovery in traps. Relevant observations are quoted hereunder:

"13. From very inception especially at the time of trap spontaneous explanation of the appellant was that Rs.3000/- paid to him by the complainant was processing fee. The complainant(PW.1) has admitted that he was conscious of the fact that processing fee, service tax and documentation charged are to be borne by the complainant. He further admitted that 3% of the loan amount is charge as processing fee besides other expenses. His experience is based on the previous personal loan of Rs.50,000/- taken by him from the bank. PW.2 Ramakant Purohit, an Officer of the Bank of Baroda has deposed that from 3% to 5% of the loan amount are charged from borrower as processing fee besides stamp of Rs.100/-, this amount is charged either before sanction of the loan or it can be deducted from the account of the borrower.

It is not disputed that processing fee was not paid by the complainant borrower nor it was deducted from his bank account. PW.2 admitted in cross-examination that it is not necessary that processing fee should be recovered from the bank account only, the borrower can deposit in cash as well. In the last paragraph, he has given calculation of the processing fee + services charges, which is 10.30% + Expenses Charged and stamp duty, which comes to the calculation of Rs.3,000/-. The prosecution has not controverted the evidence of PW.2 on the aforesaid issue, rather PW.2 is a competent witness, being an Officer of the Bank to make statement on the issue. PW.9 Ulhas Prabhakar Sangekar is General Manager of Bank of Baroda, who had accorded sanction for prosecution of the appellant, this witness has also deposed about requirement of processing fee, which is 3% of the loan amount along with service tax etc. Thus, from the evidence on the record, it transpires that no processing fee was ever paid by the complainant earlier nor processing fee was deducted from his bank account and instantaneous explanation of the appellant was that Rs.3,000/- was paid against processing fee creates doubt that the prosecution has proved acceptance of bribe.

In N. Sunkarna Vs. State of A.P. reported in (2016) 1 SCC 713, the Hon'ble Supreme Court stated as follows:-

"It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence Under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence.

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 for bearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of





this Court in *B. Jayaraj v. State of Andhra Pradesh* (2014) 13 SCC 55 and *P. Satyanarayna Murthy v. The District Inspector of Police and Anr.* (2015 (9) SCALE 724].”

Identical issue was there before the Hon’ble Madras High Court in **State Rep. By Superintendent of Police, Vigilance & Anti Corruption, Chennai Vs. Subramanian & Ors. reported in 2006 2 MLJ (Cri.) 1001** stated as follows:-

“23.....It is settled law that where the accused gives a spontaneous explanation right at the moment the crime is committed the explanation becomes *res gestae* within the meaning of Section 6 of the Evidence Act. Even if such statement is of doubtful admissibility in a case of corruption because the investigation could be set to have started before the statement was made, it should be admissible especially when it is exculpatory statement as the conduct of the accused under Section 8 of the Evidence Act. P.W.5 has expressly admitted that A.1 and A.2 Immediately explained MO.1 and MO.2 as having been received for flag day. This spontaneous reaction has been corroborated by the Head of the Office in his questioning under Section 313 Cr.P.C., But the prosecution has Insidiously scuttled the evidence of the same by posthumously casting him as the third accused. This afterthought is clearly attested by the fact that A.3 had signed as witness and stood as surety for A.1 and A.2.

24. In the landmark judgment of *Sitaram Vs. State of Rajasthan* (AIR 1975 SC 1432) the Apex Court held that mere recovery of money was not enough to entitle the drawing of presumption under Section 20 of the Prevention of Corruption Act. This principle was further reinforced by the same Supreme Court in the case of *Surajmal Vs. State of Delhi* (AIR 1979 SC 1408) in which it held that mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in this case was not reliable to prove payments of prior demand to show that the accused voluntarily accepted the money as illegal gratification. In this case obviously the circumstances in which the money was paid clearly and directly contradict the prosecution's imputations.”

14. To summarise, the prosecution has failed to prove beyond reasonable doubt that any demand or acceptance of gratification was made out against the appellant. Furthermore, the prosecution case is apparent that entire allegation of demand and payment was made only after the loan was sanctioned and disbursed to the bank account of the of complainant. Since the complainant had grudge for not getting loan of entire Rs.1 lakh as claimed, the complainant purposely put the authorities of ACB under misunderstanding and managed a concocted case against the appellant. The spontaneous explanation of the appellant that amount, as paid to the appellant, was against the processing fee of the loan and there is no evidence that processing fee was not paid earlier nor was deducted from





the bank account. The prosecution failed to dispel the explanation of the appellant which creates further doubt on the prosecution case."

63. In **Jagtar Singh (supra)**, the Hon'ble Supreme Court clarified demand and its acceptance as sine qua non for conviction under the Prevention of Corruption Act and held as under:

"9. The conclusions of the Constitution Bench judgment [*Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731 referred above, have been summarised in para 88, which read thus : (*Neeraj Dutta case*², SCC pp. 776-77)

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

88.1. (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.

88.2. (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.

88.3. (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.

88.4. (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.

88.5.(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.

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

88.7.(g) Insofar 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.

88.8.(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature."

10. The referred question was answered in para 90 of the aforesaid judgment, which reads thus: (Neeraj Dutta case², SCC p. 777)

"90. 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 in original and supplied)

11. In the case in hand, Jit Singh, complainant as well as Chamkaur Singh, shadow witness have turned hostile. The trial court had specifically held that there is no evidence produced on record to prove the demand of illegal





gratification. It is not the case in which the demand was reiterated when the money was allegedly paid to him. Gurjinder Singh (PW 8) is only a witness who stated that he had recovered the money from the appellant. The High Court has passed its judgment on the assumption that the money having been recovered from the appellant, there was demand of illegal gratification. This is not a case where there was circumstantial evidence to prove the demand.

12. *If the evidence produced on record by the prosecution is examined in the light of the law laid down by the Constitution Bench in Neeraj Dutta v. State (NCT of Delhi)², the conviction and sentence of the appellant cannot be legally sustained.*

13. *The appeal is, accordingly, allowed. The impugned order passed by the High Court and that of the trial court are set aside. The appellant is acquitted of the charges and his bail bond stands discharged."*

64. In the case of **K. Shanthamma (supra)**, while holding that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act.

65. In the case of **Selvaraj (supra)**, while observing that recovery of tainted money is not sufficient to convict the accused and rather demand is required to be proved by adducing clinching evidence, the Hon'ble Apex Court held as under:

"17. *In A. Subair v. State of Kerala (2009) 6 SCC 587, this Court has laid down that illegal gratification has to be proved like any criminal offence and when the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest the conviction on such evidence. This Court while recording acquittal, has laid down thus : (SCC p. 594, para 31)*

"31. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. It is true that the judgments of the courts below are rendered concurrently but having considered the matter thoughtfully, we find that the High Court as well as the Special Judge committed manifest errors on account of unwarranted inferences. The evidence on record in this case is not sufficient to bring home the guilt of the appellant. The appellant is entitled to the benefit of doubt."

18. *In State of Kerala v. C.P. Rao (2011) 6 SCC 450, it has been laid down that recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe and when the complainant is not*





available for examination during the trial, court has to be cautious while sifting the evidence of other witnesses. Charge has to be proved beyond reasonable doubt. This Court has laid down thus : (SCC pp. 452-53, paras 12-13)

"12. Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in para 28 of A. Subair made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.

13. In coming to this conclusion, we are reminded of the well-settled principle that when the Court has to exercise its discretion in an appeal arising against an order of acquittal, the Court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in *Sanwat Singh v. State of Rajasthan* AIR 1961 SC 715. At SCR p. 129, Subba Rao, J. (as His Lordship then was) culled out the principles as follows : (AIR pp. 719-20, para 9)

'9. The foregoing discussion yields the following results : (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup case v. King Emperor*, 1934 SCC OnLine PC 42 afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

19. In *G.V. Nanjundiah v. State (Delhi Admn.)* [1987 Supp SCC 266], it was laid down that the allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by adducing clinching evidence. When the fact indicating that the complainant was aware of the amount, was not withheld by the accused, this Court disbelieved the allegation of the complainant meeting the accused and presence of strangers at the time of giving bribe was held to be unnatural.





20. Thus, acceptance of the bribe has not been established by adducing cogent evidence. In view of the circumstances discussed above, the view taken by the trial court was a plausible one and could not have been interfered with by the High Court, that too without coming to the close quarters of the reasoning and reappraisal of the evidence. The judgment of the High Court is not only cryptic but also no attempt has been made to look into the evidence — both oral and documentary. Thus, we have no hesitation in setting aside the judgment and order passed by the High Court and restore that of the trial court. The appeal is allowed."

66. Similarly in the case of **Satveer Singh (supra)**, the Hon'ble Supreme Court reinforced this legal principle creating a well-settled precedent on the mandatory requirement to prove demand along with acceptance beyond reasonable doubt and held as under :

"33. The learned senior counsel for the appellant has also placed reliance upon the case of *Banarsi Das* (AIR 2010 SC 1589) referred to *supra* wherein it was held that:

"24. In *M. K. Harshan v. State of Kerala* (AIR 1995 SC 2178) this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under:

"8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification."

The above-said paragraph from the above mentioned case would go to show that the divergent findings recorded by the High Court on the factum of demand and acceptance of illegal gratification by the appellant is not proved in this case. In the said case this Court in unequivocal terms has held that mere demand by itself is not sufficient to establish the offence under the Act. The other aspect, namely acceptance is also very important. There must be clinching evidence with the tacit approval of the accused that money was put by PW 2 on the steel cot as stated by him in his evidence as illegal gratification. In the case in hand, as per the evidence of PW-2 and PW-3, the illegal gratification was in a black rexine bag with a broken zip which was put on a steel cot. As the contents of the bag were not within the





knowledge of the accused, therefore, the relevant aspect of the case that the appellant has accepted the illegal gratification as required under Section 7 of the Act is not proved by the prosecution by adducing cogent evidence in this regard.

36. The prosecution has placed reliance upon the judgment of this Court viz. *State of Madras v. A Vaidhyanatha Iyer*¹⁰ in support of the prosecution to justify the findings and reasons recorded by the High Court on the charges levelled against the appellant, to reverse the acquittal and to convict and sentence him for the offence, the relevant portion from the above referred case reads thus:

"13.Where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words "shall presume" and not "may presume", the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but Section 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of law of evidence e.g. presumptions, and therefore should have the same meaning. "Shall presume" has been defined in the Evidence Act as follows: Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under Section 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a branch of jurisprudence. While giving the finding quoted above the learned Judge seems to have disregarded the special rule of burden of proof under Section 4 and therefore his approach in this case has been on erroneous lines".

It is rightly contended by the learned senior counsel on behalf of the appellant that the presumption of the guilt is not proved in the case on hand as the prosecution has failed to prove the ingredients of the provision of Section 7 of the Act, viz. demand and acceptance of illegal gratification by the appellant to constitute an offence alleged to have been committed by him. Therefore, the reliance placed on the evidence of prosecution witnesses i.e. PW-2, PW-3 and others by the respondent's counsel, the relevant portion of which is extracted in the aforesaid portion of the judgment, does not amount to presumption of offence as provided under Section 20 of the Act. Therefore, the question of onus of proof to disprove the presumption did not arise at all on the part of the appellant."

67. Furthermore, in the case of **State of Punjab vs Madan Mohan Lal Verma (supra)**, the Hon'ble Supreme Court held that before calling accused to explain recovered money, the





prosecution must first establish foundational facts of demand and agreement clearly. Para no. 10 and 11 of the judgment being relevant are being reproduced as under:

"10. *It is a settled legal proposition that in exceptional circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse i.e. if the conclusions arrived at by the court below are contrary to the evidence on record; or if the court's entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice; or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the court below bolsters such presumption of innocence. (Vide Abrar v. State of U.P. [(2011) 2 SCC 750] , Rukia Begum v. State of Karnataka [(2011) 4 SCC 779] and State of M.P. v. Dal Singh [(2013) 14 SCC 159)*

11. *The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide Ram Prakash Arora v. State of Punjab [(1972) 3 SCC 652] , T. Subramanian v. State of T.N. [(2006) 1 SCC 401], State of Kerala v. C.P. Rao [(2011) 6 SCC 450] and Mukut Bihari v. State of Rajasthan [(2012) 11 SCC 642.)"*

68. In the case of **B. Jayaraj (supra)**, the Hon'ble Supreme Court has held 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."

69. Further, in the case of **Mir Mustafa Ali Hasmi (supra)**, it has been held by the Hon'ble Supreme Court, as under:

"32. It is the settled convention in such cases that the Trap Laying Officer, makes efforts to verify the factum of demand of bribe by the public servant before initiating the trap proceedings. The factum of demand of bribe can also be verified by recording the telephonic conversation between the decoy and the suspect public servant. Often, a recording device is secretly placed on the person of the decoy to record the conversation which would transpire during the course of acceptance of bribe by the public servant. However, no such steps were taken by the DSP (PW 10), who straight away organised the trap without making any effort whatsoever to verify the factum of demand attributed to the appellant (AO-1) and AO-2.





33. It is relevant to mention here that PW 2 was the only witness associated by the DSP/TLO (PW 10) to accompany the complainant (PW 1) for witnessing the transaction of demand and acceptance of bribe. Evidently thus, PW 2 was kept as a shadow witness in the case. During the course of trial, the complainant (PW 1) and PW 2 both admitted that they were close friends. The complainant (PW 1) and PW 2 being close friends, it can safely be assumed that PW 2 was an interested witness. Hence, it is also manifested that TLO/DSP (PW 10) did not make any effort whatsoever to associate an independent person to act as a shadow witness in the trap proceedings. It is recorded in the memorandum of the pre-trap proceedings (Ext. P-4) that it was the DSP (PW 10) who summoned PW 2 and asked him to act as a shadow witness to oversee and overhear the transaction of acceptance of illegal gratification. However, this fact is totally contradicted by the version as set out in the evidence of the complainant (PW 1) and PW 2. Both categorically stated that it was the complainant (PW 1) who asked PW 2 to accompany him during the trap proceedings scheduled to take place on the morning of 23-1-2003.

34. In normal course, before proceeding to the stage of trap, it was incumbent upon the DSP (PW 10) to get an independent verification done of the alleged demand which fact assumes prominence considering the circumstance that the accompanying shadow witness, Ramesh Naidu (PW 2) is a close friend of the complainant (PW 1) who himself bore a grudge against the appellant (AO-1) on account of the fine of Rs 50,000 imposed on the sawmill."

70. Co-ordinate Bench of this Court at Principal Seat, Jodhpur in the case of **Dr. Rajkumar Agarwal (supra)** has held as under :

"77. In order to establish commission of offence under Section 7 of the Act which relates to a public servant taking bribe, it is required that a demand of illegal gratification is made and then, there is acceptance in that respect. The requirement of proof of demand is the most essential ingredient to be proved in order to sustain a conviction under Section 7 of the Act against the accused. Even if there is recovery from the accused or the accused is found to be in possession of the amount of illegal gratification, then too, the element of demand is required to be established in order to book the accused for the offence relating to a public servant taking bribe. In the present facts and circumstances, it is very much evident that though there is alleged recovery from the drawer of the public servant, i.e., the appellant, but the same is not preceded by a demand or an attempt to obtain any undue advantage or any acceptance on part of the appellant. There is no material available on record that reflects that the accused communicated the assurance of conducting the operation upon receiving a certain amount and the same is cemented by the testimonies of the patient herself as well as her husband as discussed in the preceding paragraphs of the judgment. The proof of demand of bribe by a public servant and its acceptance by him are sine qua





non for establishing the offence under Section 7 of the Act and failure of the prosecution to prove the demand would entitle the accused for acquittal since mere recovery of amount cannot be the sole basis for conviction of an accused under Sections 7 to 13 of this Act.

79. The twin conditions required to be fulfilled so as to constitute an offence under Section 7 of the PC Act have not been satisfied in the facts and circumstances of the instant matter.

81. The judgment of **N. Vijayakumar Vs. State of Tamil Nadu** reported in **AIR 2021 SC 766** passed by a three-judge bench of Hon'ble the Supreme Court sheds light in this regard and it is considered important to reproduce the relevant paragraph of the said judgment herein below for reference:

"12. 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 the case of *C.M. Girish Babu v. CBI, Cochin, High Court of Kerala: (2009) 3 SCC 779* and in the case of *B. Jayaraj v. State of Andhra Pradesh: (2014) 13 SCC 55*. 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 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."

(Emphasis Supplied)

82. The charge against the accused cannot be considered proved by the mere recovery of the alleged illegal gratification payment alone and conviction cannot stand in the absence of proof of exchange of a bribe or proof that the accused accepted the money knowing it to be a bribe or proof that a demand was, in fact, made in the first place. Furthermore, this Court also finds that the concerned person, i.e. the patient for whose operation the bribe was allegedly taken herself deposed in favour of defence as defence witness no. 2 and therefore, the superstructure upon which the presumption has been drawn against the accused by the learned court below is without any sufficient foundation; since it has neither been proved that a demand of illegal gratification was made by the accused herein nor does there remain any witness whose testimony speaks to the culpability of the accused.

83. The mere fact of recovery of tainted amount from the accused does not ipso facto bring the matter within the scope of Prevention of Corruption Act unless a fact of demand and acceptance of bribe is established and the recovery is effected from the exclusive and conscious possession of the accused.





84. As an upshot of the discussion made herein above, it is observed that sufficient material is not there on record to bring home the guilt of the appellant. The order impugned suffers from serious illegality and gross impropriety and therefore, the same is not sustainable in the eyes of law. There is force in the criminal appeal and therefore, the same deserves acceptance."

71. The criminal appeal filed by the accused persons requires a thorough examination of both the prosecution evidence and the settled legal principles applicable under Sections 7 and 13 of the Act of 1988. The allegations against the appellants revolve primarily around the charge of demanding and accepting illegal gratification. The crucial question is whether the prosecution has satisfactorily established a clear and specific "demand" by the accused for such gratification and whether the recovery of the bribe amount was legitimately established.

72. In the light of above legal principles, when the facts and evidence of the present case is analysed, this Court finds that the essential ingredients for establishing the commission of offence, i.e. the demand and acceptance are not fully proven by the prosecution. The complainant's testimony and prosecution evidence in this case is riddled with inconsistencies, contradictions and lacks credible independent corroboration on the crucial issues of demand and acceptance.

73. The Hon'ble Supreme Court in **Neeraj Dutta v. State (supra)** along with in other cases such as **B. Jayaraj (supra)**, has elucidated that a "demand" must be a specific and proactive solicitation by the public servant in connection with the discharge of official duties. The mere voluntary offer of money by the complainant, particularly when unaccompanied by any active





solicitation or coercion by the accused, does not satisfy the requirement of demand under the statute. Further, mere recovery of money from the floor, without proof of demand and acceptance, does not constitute an offence and the presumption under Section 20 of the Act of 1988 is not attracted in such cases.

74. In this case, the prosecution has also failed to establish the recovery of the bribe amount in a legally acceptable manner. It is on record that the accused Sanwarmal (Appellant No. 3) did not accept the currency notes, which were the subject matter of the alleged bribe. Instead, these notes were found scattered on the floor at the time of the trap, evidently placed there due to the complainant's coercion or forcing. Such a recovery, where the accused has neither accepted, nor possessed the currency notes, cannot be construed as a valid "recovery" under the law.

75. The absence of both a clear demand and a lawful recovery underscores a fatal gap in the prosecution's case and thus, no credible evidence exists to demonstrate that the accused persons demanded a bribe. The currency notes allegedly constituting the bribe were neither accepted, nor voluntarily possessed by the accused, rendering the so-called recovery ineffective in the eyes of law. The prosecution has consequently failed to discharge the burden of proof beyond reasonable doubt.

76. The appellants have also been convicted for offence under Section 13(1)(d) of the Act of 1988. At this stage, it is also relevant to refer to the provisions of Section 13(1)(d) of the Act of 1988 prior to amendment made in the year 2018, which reads as under:-





"13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

(a) xxxxxx

(b) xxxxx

(c) xxxxxx

(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"

77. It is clear from a reading of clause (d) that all the three wings of clause (d) of Section 13(1) of the Act of 1988 are independent and alternative and disjunctive for constituting the ingredients for the offence under Section 13(1)(d) of the Act of 1988 as is clear from the use of the word 'or' at the end of each clause. Thus, under Section 13(1)(d)(i) obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would satisfy the requirement of criminal misconduct under Section 13(1)(d) of the Act of 1988. On the same reasoning "obtaining a valuable thing or pecuniary advantage merely by abusing official position" as contemplated under Section 13(1)(d)(ii) of the Act of 1988 in itself would satisfy the ingredients of criminal misconduct under Section 13(1)(d) of the Act of 1988. However, a charge under Section 13(1)(d) of the Act of 1988 has to be fairly specific in respect of the offence, the accused is required to face in a criminal trial. It would not be enough to say that the accused committed criminal misconduct





punishable under Section 13(1)(d) of the Act of 1988. The offence of criminal misconduct is one contemplated in all or any of the four clauses (a) to (d) of Section 13(1) of the Act of 1988 and where the accused is sought to be made guilty only under clause (d), it must be specified. The prosecution has to prove that the public servant intentionally, dishonestly, fraudulently made any efforts in obtaining pecuniary advantage either for himself or others. The element of dishonesty is implicit in Clauses (i) & (ii) of Section 13(1)(d) of the Act of 1988.

78. It is settled proposition of law that so far as the offence under Section 13(1)(d) read with 13(2) of the Act of 1988 is concerned, the necessary ingredient for constituting aforesaid offence is that public servant has used corrupt or illegal means or otherwise abused his position as public servant and obtained a valuable thing or pecuniary advantage for himself or any other person. The intention of the legislation is not to punish a public servant for erroneous decision, but to punish for corruption. To fall within the four corners of sub-clause (ii) of Clause (d) of subsection (1) of Section 13 of the Act of 1988, the decision/conduct of the public servant must be dishonest, amounting to corruption.

79. To attract the term 'abuse' as contained in Section 13(1)(d) of the Act of 1988, the prosecution has to establish that the official concerned used his position for something which is not intended. The sum and substance of the discussion is that dishonest intention is the gist of the offence under Section 13(1)(d) of the Act of 1988. A fundamental principle of criminal



jurisprudence with regard to the liability of an accused is the element of mens rea.

80. Hon'ble Apex Court in the case of **C.K. Jaffer Sharief Vs. State (through CBI), 2013(1) SCC 205**, while considering the question of criminal liability, has observed as under :-

"17. It has already been noticed that the appellant besides working as the Minister of Railways was the head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 CrPC show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar v. State of Kerala [AIR 1963 SC 1116] while considering the provisions of Section 5 of the 1947 Act."

81. In the present case, since the prosecution failed to produce any material to prove the demand of bribe, its acceptance on the part of appellant so also pendency of work on the date of trap, therefore, as a consequential corollary, the prosecution has failed to show that the appellants, with dishonest intention, committed any acts and obtained any valuable thing or pecuniary





advantage. Moving on to the concept of standard of legal proof, the well-entrenched principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt is required to be considered here.

82. The sum and substance of the above reasonings go to show that there is no acceptable or clinching evidence proving that the appellants, with dishonest intention, committed any acts and obtained any valuable thing or pecuniary advantage. However, the trial court has utterly failed to appreciate the evidence in right perspective, nor has correctly applied the principles of law.

83. In light of above facts and settled legal principles, the conviction of the accused appellants under Sections 7 and 13 (1) (d) read with Section 13(2) of the Act of 1988 cannot be sustained. Consequently, the charge of Section 120-B also cannot be maintained, being solely dependent upon the above primary charges. To uphold the conviction under such circumstances would amount to manifest injustice.

84. Accordingly, the appeal deserves to succeed and the same is hereby allowed. The impugned judgment of conviction and order of sentence dated 29.05.2023 passed by the Special Judge, Prevention of Corruption Act Cases, No. 1, Jaipur Metropolitan-II in Criminal Regular Case No. 79/2008 (CIS Session Case No. 652/2014) is hereby quashed and set aside. The accused-appellants are acquitted of all the charges framed against them.





The appellants are on bail and need not surrender. Bail Bonds of the accused-appellants are hereby discharged.

85. The appellants are directed to furnish personal bond in the sum of Rs. 50,000/- and a surety bond in the like amount in accordance with the provisions of Section 437A of the Code of Criminal Procedure, 1973 (Cr.P.C.)/Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) before the Registrar (Judicial) of this Court within two months from today to the effect that in the event of filing of special leave petition against this judgment or on grant of leave, the appellants, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court. The bail bonds will be effective for a period of six months.

86. All pending applications, if any, also stand disposed of.

87. Record of the Trial Court be sent back immediately.

(ANAND SHARMA),J

MANOJ NARWANI /

