

IN THE COURT OF THE XXIII ADDL.CITY CIVIL & SESSIONS  
JUDGE & SPECIAL JUDGE ( P.C. Act) BENGALURU  
(C.C.H.No.24)

Dated: This the 04<sup>th</sup> day of February, 2022

:PRESENT:

LAKSHMINARAYANA BHAT K.  
XXIII Additional City Civil and Sessions Judge  
and Special Judge ( P.C. Act),  
Bengaluru Urban District, Bengaluru City.

**Special C.C.No.76/2017**

Complainant: The State of Karnataka  
represented by the Police  
Inspector,  
The Karnataka Lokayukta,  
Bengaluru Urban Division,  
Bengaluru.

(By the Special Public Prosecutor)

V/s

Accused : R.Srinivasa Raju,  
S/o.Late V.Rangaraju,  
aged 49 years,  
Senior Assistant Public Prosecutor,  
ACMM Court Complex, 3<sup>rd</sup> Floor,  
Nrupatunga Road,  
Bengaluru.  
Resident of Vapasandra village,  
Manchinabele Road,  
Chikkaballapura District.

(By Sri.C.G. Sundar, Advocate)

## **JUDGMENT**

The Police Inspector, the Karnataka Lokayukta, Bengaluru Urban has filed the charge sheet against the accused for the offences punishable under sections 7, 13(1)(d) read with section 13(2) of The Prevention of Corruption Act, 1988 (in short the "PC Act").

2(a). The short facts leading to the present case are that, CW7 - Sri. Y. Shankar had lodged an information before the Varthuru police station and in pursuance, the said police have registered the case in Crime No.274/2014 against one Muniyallappa and his son Krishnappa for the offences punishable under Sections 468, 471, 419, 420, 511 and Section 120B of the IPC. CW-7 has entrusted his relative CW-1 Sri. Subramani to ascertain the status of the said case and accordingly when CW-1 went to the Varthuru police station, he came to know that the concerned police have already sent the charge sheet to the court.

2(b). After ascertaining filing of the charge sheet, CW1 went to the Court, he came to know that the accused was working as the Senior Assistant Public Prosecutor and the charge sheet filed by the Varthuru police in Crime No.274/2014 was with him. Therefore he has approached the accused and requested him for immediate process of the said charge sheet. At that time, the accused alleged to have demanded the bribe of

Rs.50,000/- from CW-1 to submit the charge sheet before the Court. It is alleged that on 23.1.2015, the accused has demanded Rs.25,000/- and received Rs.5,000/- from CW1. Since the informant CW1 was not interested to make payment of the bribe amount as demanded by the accused, he approached the Karnataka Lokayukta police and lodged the report on 24.1.2015. In pursuance of the said information, the police have registered the case in Crime No.4/2015 against the accused for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act.

2(c). The Lokayuktha police, after completing the pre-trap formalities, on 24.1.2015 arranged the trap against the accused. The trap team went to the place along with the informant and pancha witnesses. When CW1 approached the accused and asked his official work, the accused alleged to have demanded and accepted Rs.10,000/- from the informant. The trap team after receiving the pre-arranged signal, went to the place, arrested the accused and recovered the tainted currency notes of Rs.10,000/- from his shirt pocket. The accused was subjected to chemical hand wash test and after his arrest, he was produced before the court and subsequently he was enlarged on bail. After completion of the investigation, the concerned police have laid the charge sheet before the Court.

3. After taking cognizance of the offences, the presence of the accused was secured. After complying Section 207 Cr.P.C. and after hearing both the sides, the charges were framed. The accused pleaded not guilty and claimed to be tried.

4. To bring home the guilt of the accused, the prosecution has examined PW.1 to 14 witnesses and also produced Ex.P1 to P29 documents and M.O.1 to 13 articles were identified. After conclusion of the prosecution side evidence, the accused was examined under Section 313 of the Cr.P.C. The accused entered his defence and he was examined as DW.1 and has produced Ex.D1 to D8 documents.

5. Heard the arguments of both sides. The accused in person has addressed argument of his defence. He has also filed a detail memorandum of written arguments.

5(a) The learned Public Prosecutor has relied upon the following reported judgments.

- 1) Criminal Appeal No.232 of 2006 of Supreme Court of India - C.M.Sharma Vs. State of A.P.
- 2) Criminal Appeal No.47/2008 of Delhi High Court - S.C.Goel vs. The State (through CBI)
- 3) Criminal Appeal No.1864 of 2011 of Supreme Court of India - Somabhai Gopalbhai Patel Vs. State of Gujarat

- 4) Criminal Appeal No.402 of 2001 of Supreme Court of India - Krishna Ram Vs. State of Rajasthan
- 5) Appeal (Crl.) No.1122 of 2006 of Supreme Court of India - B.Noha Vs. State of Kerala and Anr.

5(b). The accused has relied upon the following reported judgments in support of his defence.

- 1) AIR 2016 Supreme Court 1063 - Central Bureau of Investigation Vs. Ramesh Gelli
- 2) (2006) 7 Supreme Court Cases 172 State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram Karri
- 3) 2000 SCC Online Kar 340 172 J.S.Sathyanarayana Vs. State by Inspector of Police, Karnataka Lokayukta, Madikeri.
- 4) 1980 CRI.L.J. 227 Supreme Court - Satya Narain Musadi and others Vs. State of Bihar
- 5) AIR 2000 Supreme Court 1731 - R.Sarala Vs. T.S.Velu and others
- 6) AIR 2007 Supreme Court 1087 - C.Mehta Vs. Union of India and Ors
- 7) (2019) 5 Supreme Court Cases 178 State of Maharashtra Vs. Surendra Pundlik Gadling and others
- 8) 2009 CRI.L.J. 3142 Madras High Court - Vanniraj Vs. State

- 9) AIR 2008 SC (Supp) 666 – Commissioner of Central Excise, Bolpur Vs. M/s.Ratan Melting and Wire Industries
- 10) ILR 2000 KAR 3501 – Anjinappa and Others Vs. State of Karnataka
- 11) (2017) 8 Supreme Court Cases 570 Sonu alias Amar Vs. State of Haryana
- 12) AIR 1973 Supreme Court 2773 – Kali Ram Vs. State of H.P.
- 13) (1984) 2 Supreme Court Cases 350 Vinod Chaturvedi and others Vs. State of Madhya Pradesh
- 14) (1996) 10 Supreme Court Cases 193 C.Chenga Reddy and others Vs. State of A.P.
- 15) (2006) 07 Supreme Court Cases 172 State Inspector of Police, Vishakapatnam Vs. Surya Sankaram Karri
- 16) ILR 2010 KAR 938 – The State of Karnataka by Nanjangud Rural Police Station Vs. Lingappa and Others
- 17) 1985 (Supp) Supreme Court Cases 611 – Ram Singh and others Vs. Col. Ram Singh
- 18) AIR 1962 Supreme Court 399 – Tori Singh and another Vs. State of H.P.
- 19) (1996) 8 Supreme Court Cases 199 Jagdish Narain and another Vs. State of U.P.

- 20) (1962) 3 SCR 580 Tori Singh and another Vs. State of Uttar Pradesh
- 21) AIR 1956 Supreme Court 526 – Santa Singh Vs. State of Punjab
- 22) (2014) 10 Supreme Court Cases 473 – Anvar P.V. Vs. P.K.Basheer and others
- 22) (2020) 7 Supreme Court Cases 1 – Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others
- 23) 1994 CRI.L.J. 1020 Bombay High Court – Mohd.Hussain Badamiyan Ramzan Vs. State of Maharashtra
- 24) AIR 1980 Supreme Court 1314 – State of Rajasthan Vs. Daulat Ram
- 25) 2017 CRI.L.J. 1911 Gujarat High Court – Natvarlal Amarshibhai Devani Vs. State of Gujarat and Anr.
- 26) AIR 2016 Supreme Court 3772 – Sudhir Chaudhary Etc. Etc. Vs. State (NCT of Delhi).
- 27) AIR 1974 Punjab and Haryana 302 – Molar Singh Vs. Din Dayal and others
- 28) (1999) 7 Supreme Court Cases 280 State of H.P. Vs. Jai Lal and others
- 29) 2015 SCC OnLine Ori 550 Baishnab Charan Das Vs. State of Orissa
- 30) (1996) 11 Supreme Court Cases 720 M.K.Harshan Vs. State of Kerala

- 31) AIR 1964 Supreme Court 1563 - Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat
- 32) (2014) 3 Supreme Court Cases 412 Vijay Kumar Vs. State of Rajasthan
- 33) (2018) 2 Supreme Court Cases 342 State of Himachal Pradesh Vs. Trilok Chand and another
- 34) 1987 (Supp) Supreme Court Cases 266 - G.V.Nanjundiah Vs. State (Delhi Administration)
- 35) (2012) 2 KCCR 1157 Hanumanthappa Vs. State of Karnataka Lokayuktha Police, Mysore
- 36) (1974) 3 Supreme Court Cases 595 Darshan Lal Vs. The Delhi Administration
- 37) (1974) 1 SLR 644 Sushil Kumar Vs. The State of Punjab
- 38) 2015 (2) Crimes 347 (Ori) Baishnab Charan Das Vs. State of Orissa
- 35) 2016 CRI.L.J. 2526 Bombay High Court - Jawansingh Ramsingh Gaud Vs. State of Maharashtra
- 39) (2010) 3 KCCR 1851 State of Karnataka Vs. M.Gopalakrishnaiah and others
- 40) (2012) 1 KCCR 414 R.Malini Vs. State of Karnataka
- 41) (2013) 14 Supreme Court Cases 153 State of Punjab Vs. Madan Mohan Lal Verma
- 42) (2014) 13 Supreme Court Cases 55 B.Jayaraj Vs. State of Andhra Pradesh

- 43) (2013) 6 Kant LJ 501 Basavantappa Mallappa Sali Vs. State by Lokayukta Police, Gadag
- 44) (2015) 15 Supreme Court Cases 629 T.K.Ramesh Kumar Vs. State through Police Inspector, Bengaluru.
- 45) (2016) 4 AIR Kant R 411 State of Karnataka Vs. Anneappa
- 46) 2016 CRI.L.J. 3066 Karnataka High Court - R.Srinivasan Vs. State by Police Inspector, Lokayuktha, Bengaluru.
- 47) AIR 1959 Supreme Court 488 - Haji Mohammad Ekramul Haq Vs. The State of W.B.
- 48) (2004) 3 Supreme Court Cases 753 T.Shankar Prasad Vs. State of A.P.
- 49) (2006) 13 Supreme Court Cases 305 V.Venkata Subbarao Vs. State represented by Inspector of Police, A.P.
- 50) (2016) 12 Supreme Court Cases 150 V.Sejappa Vs. State by Police Inspector, Lokayuktha, Chitradurga.
- 51) (2012) 11 Supreme Court Cases 642 Mukut Bihari and another Vs. State of Rajasthan
- 52) 2008 CRI.L.J. 347 Supreme Court - State of Karnataka Vs. Ameer Jan
- 53) 2014 CRI.L.J. 930 Supreme Court - C.B.I. Vs. Ashok Kumar Aggarwal

- 54) ILR 2015 KAR 5567 - Sri B.S.Yeddyurappa Vs. The Principal Secretary to His Excellency the Governor of Karnataka and Others.
- 55) (2010) 2 Kant LJ 1 Babappa Vs. State by Lokayukta Police, Gulbarga
- 56) (2015) 15 Supreme Court Cases 629 T.K.Ramesh Kumar Vs. State through Police Inspector, Bengaluru.
- 57) (1979) 4 Supreme Court Cases 172 Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh
- 58) ILR 2013 KAR 3803 of High Court of Karnataka - M.Manjunath Vs. State by Lokayuktha Police, Mysore.
- 59) (1972) 3 Supreme Court Cases 652 Ram Prakash Arora Vs. State of Punjab
- 60) 1997 Supreme Court Cases (Cri) 750 State of Gujarat Vs. Kumudchandra Pranjivan Shah
- 61) 2009 (3) MWN (Cr.) 356 State by Inspector of Police Vigilance & Anti Corruption, Tiruchirapalli Vs. Magalingam
- 62) 2018 (4) Kar. L.J. 554 - B.S.Anand Kumar Vs. State of Karnataka
- 63) (2006) 13 Supreme Court Cases 305 V.Venkata Subbbarao Vs. State represented by Inspector of Police, A.P.
- 64) ILR 2005 KAR 4780 of High Court of Karnataka - K.V.Shiva Reddy Vs. State of Karnataka.

- 65) 2015 SCC OnLine Bom 5057 - Shridhar Chavan Vs. The State of Maharashtra
- 66) (1999) 7 Supreme Court Cases 467 Shiv Kumar Vs. Hukam Chand and another
- 67) (1996) 8 Supreme Court Cases 205 Betal Singh Vs. State of M.P.
- 68) (2004) 1 Supreme Court Cases 184 Chaudhari Ramjibhai Narasangbhai Vs. State of Gujarat and others
- 69) (1975) 4 Supreme Court Cases 122 Mrs.Shakila Khader and others Vs. Nausheer Cama and others
- 70) 1959 Supp. (2) SCR 875 - Tahsildar Singh Vs. State of U.P.
- 71) 1997 CRI.L.J. 398 Karnataka High Court - Manohar Vs. State of Karnataka
- 72) 1992 (1) Crimes 488 Gujarat High Court - Ajitkumar Somnath Pandya Vs. The State of Gujarat
- 73) (2014) 15 Supreme Court Cases 666 Sudershan Kumar Vs. State of Himachal Pradesh
- 74) (2003) 12 Supreme Court Cases 606 Ramanand Yadav Vs. Prabhu Nath Jha and others
- 75) (1977) 3 Supreme Court Cases 352 Hari Dev Sharma Vs. State (Delhi Administration)
- 76) AIR 2017 Supreme Court 3382 - Mukhtiar Singh (since deceased) through his L.R. Vs. State of Punjab

- 77) (2017) 8 Supreme Court Cases 136 Mukhtiar Singh (since deceased) through his L.R. Vs. State of Punjab
- 78) (2001) 10 Supreme Court Cases 215 State of U.P. Vs. Jagdish Singh Malhotra
- 79) (2019) 4 Supreme Court Cases 771 Pattu Rajan Vs. State of Tamil Nadu
- 80) (1978) 4 Supreme Court Cases 435 Modan Singh Vs. State of Rajasthan
- 81) (2019) 3 Supreme Court Cases 303 State of Uttar Pradesh Vs. Wasif Haider and others

6. After carefully scrutinizing the documentary and oral evidence placed on record and the other materials, on hearing the arguments and on application of the ratio laid down in the judgments relied by both the parties to the facts of this case to the extent relevant, at this stage, the points that would arise for the determination of this court are:

1. Whether the prosecution proves that it has secured a valid sanction order to prosecute the accused in compliance to section 19 of the P.C. Act?
2. Whether the prosecution beyond reasonable doubt proves that the accused being the public servant

working as the Senior Assistant Public prosecutor on 21.1.2015 has demanded bribe of Rs.50,000/- and accepted Rs.15,000/- from PW2 Subramani and on 23.1.2015 demanded Rs.25,000/- and accepted Rs.5,000/- and on 24.1.2015 demanded and accepted Rs.10,000/- from PW2 as illegal gratification at about 14.10 hours in his office in the third floor, Magistrate Court complex, Nrupathunga road, Bengaluru for doing an official act for scrutinizing and to affix his signature on the charge sheet and thereby he is guilty of the offence punishable under Section 7 of the P.C. Act?

3. Whether the prosecution beyond reasonable doubt proves that the accused being the public servant, by abusing his official position as such public servant on 24-01-2015 at 14.10 hours demanded and accepted Rs.10,000/- pecuniary advantage from PW.2 and thereby committed an offence of criminal

misconduct defined under Section 13(1)(d) punishable under Section 13(2) of the P.C. Act?

4. What order?

7. My findings on the aforesaid points are:

Point No.1	:	in the affirmative
Point No.2	:	in the affirmative
Point No.3	:	In the affirmative
Point No.4	:	As per final order, for the following

### **REASONS**

#### **Point No.1** :

8.(a) In order to prove the factum of valid sanction, the prosecution has examined PW1 Sri. T. Krishnaiah, working as the Under Secretary, Internal Administration, Police Service-B and through him produced and got marked Ex.P1 the sanction order dated 15.11.2016. It is undisputed fact that the accused as on the date of incident i.e. 24.1.2015, was working as the Senior Assistant Public Prosecutor in the court of Addl. Chief Judicial Magistrate, Court complex, Nrupathunga road, Bengaluru. Therefore, the accused was a public servant as defined under Section 2(c) (i) of the PC Act. As per section 58 of Indian Evidence Act, the facts admitted need not be proved. The allegation made by the

prosecution against the accused is that he has demanded an undue advantage from PW-2 the informant for performing his official duty for scrutiny and for affixing his signature on the charge sheet. Hence, it is incumbent for the prosecution to establish that it has obtained the previous sanction from the competent authority to prosecute the accused for the offences punishable under Sections 7, 13(1)(d) read with section 13(2) of the PC Act.

8(b). It is the evidence of PW1 that while he was working as the Under Secretary, on 30.7.2015, the ADGP, the Karnataka Lokayukta, Bengaluru had sent a requisition with documents i.e. FIR, Panchanama, statement of witnesses etc. He has verified those documents, made an entry in the note sheets and submitted the file along with the documents before the Deputy Secretary of the department. It is his further evidence that the Deputy Secretary, after verification of the documents found the necessity to obtain the legal opinion from the Senior Law Officer. After obtaining the legal opinion, the said file was verified by the Additional Chief Secretary and he had entered his opinion in the note sheets and finally the file was placed before the Hon'ble Home Minister, Government of Karnataka, Bengaluru. According to the evidence of PW1, after verifying the documents and file, the Hon'ble Home

Minister has approved the requisition by according the sanction to prosecute the accused.

8(c). It is the further evidence of PW1 that, after the Home Minister according the sanction, through the proper channel, the said file was received in his branch. Thereafter he got prepared the draft sanction order, sent it for approval before the Deputy Secretary and after obtaining the approval, he has communicated Ex.P-1 order in the name of His Excellency, the Governor of Karnataka. According to the evidence of PW1, the accused is a grade-A officer and the Government is the competent authority to appoint and remove him from his office.

8(d). The accused in his defence has contended that the State Government is his appointing and the removing authority and however the sanction file was not placed before the cabinet. Secondly, after recommendation of the cabinet, the Hon'ble Governor is the competent authority to dismiss him from the service. In view of the above facts and evidence, since the State Government is the appointing and removing authority, the Home Minister is not the competent authority to accord the sanction. Hence the sanction accorded and ExP-1 order are defective and not valid in the eye of law.

8(e). In support of the aforesaid contention, the accused has relied upon the order of the Hon'ble High Court in writ petition No.736/2018 in the case between Lakshman Rao Peshve Vs. The Karnataka Lokayuktha Police. In the said order, the Hon'ble Court held that the sanction accorded by the departmental minister is not valid.

8(f). In order to ascertain whether the Departmental Minister is competent to accord sanction, this court has referred the order of Hon'ble High Court of Karnataka reported in ILR 2017 KAR 3531 in the case between Dr.H.C.Sathyan vs The State of Karnataka and ILR 2018 KAR 4459 in the case between Theerthira N.Appachu Vs. The State of Karnataka. In both these orders the accused were working as group-A officers and the sanction to prosecute them was accorded by the Departmental Minister under the provisions of the PC Act to prosecute them and after according the sanction, the under Secretary to the Government had signed the sanction order after examining the Business Rules. In Dr. Sathyan case, the Transport minister had approved the sanction and in the said case also the accused had disputed the competency of the Hon'ble Minister to accord the sanction. In Theerthira N.Appachu case, our Hon'ble High Court held that whether the sanction should be accorded by the concerned Department Minister or the Cabinet or the Government is

the internal arrangement within the Government and it is nothing to do with the prosecution agency.

8(g). The decision relied upon by the accused referred supra in Lakshman Rao Peshve case is not the binding precedent even though it is a subsequent judgment of co-ordinate bench. In this connection in order to ascertain which of the aforesaid judgments has to be followed, this court being guided by the judgment reported in 2012 SCC OnLine Karnataka 8776 in the case between Digambar Warty and others Vs. District Registrar, Bengaluru Urban District. In para 55, the Hon'ble Karnataka High Court held that if a Bench of co-ordinate jurisdiction disagrees with another Bench of co-ordinate jurisdiction on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. The Apex Court in the decision reported in (2000) 4 SCC 262 Government of A.P. and another Vs B. Satyanarayana Rao held that the rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue. In a constitution Bench decision of the Apex court reported in (2005) 2 SCC 673 in the case of Central Board Dawoodi Bohra Community vs State of Maharashtra has observed that the law laid down by the Supreme Court in a decision delivered by the Bench of larger strength is binding on

any subsequent Bench of lesser or coequal strength. Therefore the aforesaid analogy can be made applicable to the order of Lakshman Rao Peshve case. As per the ratio laid down in the above referred judgments of the Hon'ble Supreme Court, this court can refer the previous judgments in Dr.Sathyan and Theerthira N.Appachu case as they are the binding upon this court and also applicable to the facts of the case on hand. In the result the judgment and ratio laid down in Lakshman Rao Peshve case is not applicable as a binding precedent.

8(h). This court referred the judgment reported in (2001) 9 SCC 303 in the case of Shivendra Kumar vs State of Maharashtra. As per the facts of the said judgment, on behalf of State Government, the Secretary, Medical Education Department has accorded the sanction. The Hon'ble Apex court held that the provisions of the PC Act does not specify any particular officer is the competent authority to grant the sanction and it only states that the State Government is the competent authority to remove the delinquent public servant from the service. The Government functions through its officers and the Secretary as the head of the department and the principal officer representing the State Government in the said department. Hence the sanction accorded with the authority of Governor of the State Government was held valid. Therefore on applying the

above ratio of the decision to the facts of the case on hand, the sanction order accorded by the Departmental Minister is found to be valid.

8(i). The accused during cross-examination of the witness has also disputed the authority of PW1 to issue Ex.P-1 order. In this connection it is apposite to refer the decision reported in 2011 8 SCC 670 in the case of State of Uttaranchal vs Sunil Kumar Vaish and others, wherein the Apex Court in para 23 held that all executive actions of the Government are required to be taken in the name of Governor and it should be authenticated in the manner satisfied in the Business Rules. In the case on hand it is not the claim of the accused that PW1 was not working as the Under Secretary in the said department. In view of the above ratio of the Hon'ble Supreme court and the High court and on its application to the facts of the case, the sanction accorded by the departmental minister and subsequent communication as per Ex.P-1 order by PW-1 are found to be valid.

8(j). In the decisions relied upon by the accused ;

(i) In the case of state of Karnataka vs Ameer Jan, the sanction order was issued based only on the letter of the Inspector General of Police without considering the relevant records which were not made available to him. But, the ratio of the decision is not applicable to the facts of the case because in the case, the

prosecution has produced all the relevant documents before the sanctioning authority.

- (ii) In B.S.Yediyurappa's case the Hon'ble High court of Karnataka held that the sanction for prosecution can be challenged at any stage however it is desirable to determine the question of sanction at an early stage. In merits of the said case, His Excellency the Governor has not given any reasons why he had accorded the sanction and for not accepting the opinion of the council of ministers. The ratio of the decision is not applicable to the facts of the case.
- (iii) In Babappa vs State case, the sanctioning authority has not stated as regard to the perusal of the records and the sanction order does not refer to any records. The IO had calculated the value of the assets, income and liabilities after receipt of the sanction order. In the present case, evidence of PW-1 and Ex.P-1 order reflects the concerned authority verified all the documents before granting the sanction and hence the ratio of the judgment is not applicable to the facts of the case.
- (iv) In T.K. Ramesh Kumar case the Apex court found that the demand and acceptance of illegal gratification in the sanction order for issuance of katha certificate whereas in evidence for change of katha and hence held there was non-application of mind by the sanctioning authority. In the case on hand there is

no contradiction regarding the alleged purpose of demand and acceptance of bribe by the accused and evidence of PW-1 with Ex.P-1 document. Hence the judgment is not applicable to the facts of the case.

- (v) In M Manjunath case, the Hon'ble High court observed that as per the Government order the police inspector was upgraded as class II gazetted post and hence the Director General of police would have no power to pass the sanction order to prosecute the accused. The facts and circumstances of the above decision and the ratio is not applicable to the facts of the case on hand.
- (vi) In Police Inspector Kar. Lokayuktha vs M.Nanjunda case the Hon'ble High court observed that the sanction order was prepared by the office staff of the Deputy commissioner and the officer has signed it without application of mind. The said facts and the facts of the case on hand are totally different. The accused has failed to show that the Hon'ble Minister without application of mind has accorded the sanction.

In the case on hand, the accused has not made out any circumstances to show the ratio laid down in the above referred decisions are applicable to the facts of the case.

8(k) The other limb of the argument of the accused is that the investigating agency has not placed

all the materials collected during the investigation before the competent authority. The accused has pointed out as to the non-production of CD containing the conversation by the IO before the sanctioning authority. In this regard, it is necessary to refer the decision of the Apex court reported in (2013) 8 SCC 119 in the case between State of Maharashtra Vs. Mahesh G. Jain, wherein the Hon'ble Court held that the adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanctioning order and prima-facie satisfaction of the sanctioning authority is sufficient. It is further held that the court should not adopt hyper technical approach to determine the validity of the sanction order. But in the case on hand the IO has placed Ex.P-19 the transcript of conversation before the sanctioning authority. Moreover, Ex.P-4 pre-trap panchanama also contains the audio recorded conversation between the accused and PW-2. Therefore the contention of the accused regarding non-production of MO-4 CD before the sanctioning authority has to be discarded.

8(l). The accused in his defence has further contended that the sanctioning authority has mechanically accorded the sanction without application of mind and therefore Ex.P-1 order is not valid. As per the evidence of PW1, the ADGP Karnataka Lokayuktha had sent the documents i.e. FIR, pre-trap and trap panchanama, statement of

witnesses, transcript of conversation, property form etc. After the investigating agency had placed the records seeking for the sanction, the sanctioning authority has obtained legal opinion from the Senior Legal Officer and thereafter placed the file before the Hon'ble Minister. The aforesaid evidence of PW1 makes it very clear that the competent authority, after application of mind thought it proper to obtain the legal opinion before according the sanction. In the above circumstances, the contention of the accused that the sanctioning authority without application of mind has mechanically accorded the sanction is not correct and said contention also falls to ground. Moreover, the sanctioning authority is not expected to do the exercise of ascertaining the truthfulness or otherwise of the allegations made against the accused in the prosecution papers. The requirement of law is prima-facie satisfaction of the sanctioning authority. In this regard it is necessary to refer the judgment of Hon'ble Supreme Court in Subrmanian Swamy vs Manmohan Singh and another reported in (2012) 3SCC 64 wherein it is held that the decision to grant or refuse sanction is not a quasi judicial function but an administrative function.

8(m).In order to substantiate the defence PW-1 was cross-examined at length regarding whether the accused was working in the 1<sup>st</sup> Additional Chief Judicial Magistrate or 2<sup>nd</sup> Additional Chief Judicial Magistrate. But it is totally

irrelevant for the sanctioning authority to ascertain at the time of considering grant or otherwise of the sanction. The charge sheet allegations made against the accused is that he had demanded an undue advantage from PW1 and on 24.1.2015 at about 2.15 pm. he was caught red handed when he alleged to have demanded and accepted the undue advantage of Rs.10,000/-. Whether the accused was working or he was deputed in pursuance of passing an order as Senior assistant public prosecutor of II ACJM court is a matter of defence of the accused. It is not disputed that he was working as Senior assistant public prosecutor of I ACJM court Bengaluru. After considering all the aspects, the authority has accorded the sanction and hence this court finds the said approach cannot be found fault in any aspect.

8(n). The accused has relied upon the decision in Ashok Kumar Aggarwal case referred supra wherein the Apex Court held that the sanctioning authority has to do complete and conscious scrutiny of whole record placed before it and sanction order should show that the authority has considered all the relevant facts and applied its mind before according the sanction. In the case in hand the evidence of PW.1 and Ex.P-1 order would satisfy the above dictum laid down by the Apex court. The accused has also relied upon the other decision in Mohd. Iqbal Ahmed case wherein the Apex Court that held it is incumbent on the prosecution to prove that a

valid sanction has been granted by the sanctioning authority and satisfaction of the said authority before according the sanction. The sanction can be proved by producing the original sanction order or by adducing evidence to show that the facts were placed before the sanctioning authority. In the case on hand the prosecution has successfully proved these aspects from the oral evidence of PW1 and Ex.P1 documentary evidence.

8(o). The accused has cross-examined PW1 at length regarding the letter sent by ADGP was confidential but it was handled by all the officers of the department at the time of according the sanction. The said contention is not sustainable because the accused has failed to make out thereby it resulted in failure of justice. After considering the documentary and oral evidence of PW1 and upon hearing the arguments and on application of the ratio laid down in the above referred various judgments, this court arrived to the definite conclusion that the prosecution has successfully proved that the investigating agency has placed all the relevant documents before the sanctioning authority. It is further proved that the Hon'ble Home Minister being the head of the department and as a sanctioning authority has accorded the sanction to prosecute the accused. In pursuance of the above said order, PW1 being the Under Secretary to the Government in the said department has

issued Ex.P-1 order in the name of the Governor. From the aforesaid evidence, the prosecution has proved that it has obtained valid sanction to prosecute the accused and in the result my findings on point No.1 is in the 'affirmative'.

### **Point No.2 and 3**

9. In order to avoid the repetition of the reasons and for brevity, both these points are taken up together for determination.

### **The gist of prosecution side evidence**

- PW2 is the informant and he has given Ex.P2 first information statement to the police on 24.1.2015 and at the same time has produced a CD containing the recorded conversation between himself with the accused.
- PW3 and 4 are the witnesses to Ex.P4 pre-trap and Ex.P-5 post trap mahazar
- PW-5 is a typist and office assistant working under the accused in the office of Sr. Assistant Public Prosecutor, ACJM Court, Bengaluru and she has handed over the original of Ex.P-22 charge sheet to PW-11 IO during the trap.
- PW6 is the police constable working in the Varthuru police station and he has brought Ex.P-22 the original charge sheet in Crime No.274/2014 from

the police station to the court and as per the instruction he has handed over the said charge sheet to the accused on 21.1.2015.

- PW7 is the Head constable working in the Varthur police station has made a request with the accused on behalf of PW2 for assistance in reference to his work.
- PW-8 is the retired Director of prosecution who had issued Ex.P-12 service particulars of the accused to the IO.
- PW9 is an expert and she has issued speech authentication report as Ex.P14 of the disputed and sample audio recording.
- PW10 is the maternal uncle of the PW2 and he has entrusted PW2 to ascertain the progress of the criminal case and charge sheet filed by the Varthur police in Crime No.274/2014.
- PW11 is the Police Inspector and IO, deposed regarding the entire investigation of the case.
- PW12 is the Assistant Executive Engineer who prepared Ex.P25 spot sketch.
- PW13 is the chemical examiner who issued Ex.P-29 chemical analysis report.
- PW14 is the Public Prosecutor examined to identify the voice of the accused.

10(a). PW-2 Subramanya is the first informant and he deposed as to the lodging of Ex.P2 first information statement before the Karnataka Lokayukta Police on 24.1.2015 to PW-11 the Investigating Officer (in short the 'IO'). PW-11 M.N.Ravishankar, the Police Inspector, Karnataka Lokayukta in his evidence has deposed that on 24.1.2015, the informant PW2 appeared before the Karnataka Lokayukta police station and has lodged Ex.P2 first information statement and on receipt of the said information, he has registered Ex.P17 FIR against the accused.

10(b). It is the further evidence of PW2 that PW-10 Y.Shankar is his maternal uncle and holds landed property situated at Thoobarahally village, Varthuru Hobli. In 2007, one Krishnappa had created false documents for the purpose of changing the mutation of the said property in his name. After coming to know about this fact, PW10 had lodged a report before the Varthuru Police and in this regard, the said police registered the case in Crime No.274/2014 against Muniyallappa and his son Krishnappa. The witness has further stated that after completion of the investigation, the concerned police have filed the charge sheet against the above said Muniyallappa and his son Krishnappa.

10(c). It is the further evidence of PW-2 that the accused was working as the Senior Assistant Public Prosecutor in the Court of Additional Chief Judicial

Magistrate, Bengaluru and on 21.1.2015, he approached the accused and requested him for immediate processing of the file/charge-sheet filed in Crime No.274/2014 against Muniyallappa and another. It is the evidence of PW2 that at that time, the accused has demanded bribe of Rs.50,000/-. The witness has stated that on the same day he had paid a sum of Rs.15,000/- to the accused and the accused has further informed him that in the event the balance bribe is not paid, the file will be retained with him till his demand is met.

10(d). It is the further evidence of PW2 that on 23.1.2015 again he approached the accused and on that day also he has demanded the bribe. The witness has stated that on that day he had recorded the audio conversation made with the accused in his mobile phone. As per his evidence, on that day he has paid Rs.5,000/- to the accused. As per the evidence of PW2, he had no inclination to pay the bribe amount as demanded by the accused and hence on 24.1.2015 he has approached the Karnataka Lokayukta police and lodged Ex.P-2 first information statement. He further deposed that at the time of giving the information to the police, he has also produced M.O. No.4 CD, containing the recorded conversation dated 23-01-2015 between himself and the accused.

11. PW.11 Sri. M.N.Ravishankar is the Police Inspector/investigation officer of this case. As per his

evidence, after registering Ex.P17 FIR, he had sent a requisition as per Ex.P18 to the Deputy Commissioner, BBMP, Bengaluru to depute two officials as witnesses. In pursuance of the said requisition, PW.3 Vinay Kumar and PW.4 Mahadevaswamy have appeared before him in the Karnataka Lokayukta Police Station. PW-11 said to have informed the witnesses regarding the details of Ex.P-2 first information statement, Ex.P17 FIR and also introduced PW2 and the witnesses with each other. He further deposed that PW-3 and 4 the witnesses have consented to accompany with him to the trap proceedings.

12(a). PW.2 to PW.4 and PW.11 - IO in their evidence have deposed that as directed by PW.11, PW.2 has produced 10 currency notes each having face value of Rs.1,000/- and total amount of Rs.10,000/-. PW-11 got prepared Ex.P-3 list containing the serial number and details of those currency notes. As directed by PW-11, his investigating assistant officials have smeared the phenolphthalein powder to those currency notes. PW-4 Mahadeva Swamy as directed by PW-11 after ascertaining the description and total amount is in consonance with Ex.P3 list, had kept those currency notes in the left side shirt pocket of PW2.

12(b). According to the evidence of PW2 to 4 and 11, the investigating assistants have prepared sodium carbonate solution and PW-4 Mahadevaswamy was asked

to dip his both hand fingers in the chemical solution and in the process, the solution turned to pink colour. PW-11 has separately collected the sample from the sodium carbonate and colour changed hand wash solution for the purpose of chemical examination. He is stated to have explained to the informant PW2 and pancha witnesses PW3 and PW4 regarding the significance of the smearing the phenolphthalein powder and chemical reaction with the sodium carbonate.

12(c). The aforesaid witnesses PW2 to PW4 have deposed that as directed by PW-11 IO, PW2 has produced a CD containing the recorded conversation between himself and the accused. The IO got prepared Ex.P19 transcript of conversation contained in the said CD. The CD was played in the presence of witnesses, they have heard the conversation as to the existence and confirmed the demand of illegal gratification by the accused. PW-11, the IO has seized the CD as per M.O.4 in the presence of witnesses. As per evidence of PW11, at the time of conducting pre-trap proceedings, he has video-graphed the entire proceeding as per M.O.7.

12(d). It is the evidence of PW2 to PW4 that after completion of the aforesaid proceedings in the Lokayukta police station, PW-11 had given instruction to them and also directed PW2 to approach the accused in connection with his official work. It was instructed to PW2 that if the accused demands and accepts the bribe amount, he was

informed to give pre-determined signal to the trap raiding team. The IO has further stated that he had given instruction to PW2 to record the conversation with the accused in his mobile phone when he proceeds to meet the accused and also provided a digital voice recorder. The IO has nominated PW3 Vinay Kumar as shadow witness to the proceeding during the trap and directed him to accompany with PW2, the informant. As per their evidence, PW11 IO has prepared Ex.P4 pre-trap mahazar in the police station in between 12 noon and 1.10 p.m.

12(e). It is the evidence of PW2 to 4 and 11 that after completing the Ex.P4 trap mahazar on 24.1.2015 at 1.30 p.m., the entire trap team with the witnesses went to Nrupathunga road, ACMM court Complex, Bengaluru. PW11 and his trap team followed PW2 and the shadow witness PW3. It is their evidence that at about 2.10 p.m. PW2 came out of the office of the accused, Senior Assistant Public Prosecutor, in the 3<sup>rd</sup> floor of the building and has given the pre-determined signal to the IO, witnesses and the trap team. After receiving the said signal from PW2, PW-11 and other witnesses and his trap team went near the informant. At that time, PW2 has disclosed that the accused has demanded and accepted Rs.10,000/- bribe amount in his right hand and after counting the currency notes, kept it in his shirt left pocket. PW-11 has deposed that he has disclosed his

identity and informed the accused that he has been trapped.

12(f). The witnesses PW2 to 4 and 11 have deposed that PW11 got prepared sodium carbonate solution and after drawing the sample he has asked the accused to dip his left and right hand fingers in 2 separate bowls containing the sodium carbonate solution. As per the evidence of these witnesses, when the accused has dipped his both hand fingers separately the solution in the bowl turned to pink colour. PW-11 has claimed that he has collected the sample solution and both hand wash solutions of the accused separately in a bottle, identified as M.O. 8 to 10 for the purpose of scientific examination. The witnesses during their examination have identified the aforesaid samples drawn during the trap proceedings.

12(g). It is the evidence of PW11 that after completing the chemical hand wash procedure, he has questioned the accused regarding the tainted cash received from PW2. It is stated that the accused has disclosed that the said amount is in his shirt left pocket. Thereafter PW11 has directed PW3 pancha witness to take out those currency notes from the shirt pocket of the accused and on verification found Rs.10,000/- currency notes. According to the prosecution witnesses, those notes were in consonance with the description in Ex.P3 list and Ex.P-4 panchanama. PW2 to 4 have deposed that

PW-11 IO has seized those notes and during the trial it was identified as M.O.13.

12(h). PW-11 in his evidence further deposed that he has arranged an alternative shirt to the accused and seized the shirt worn by the accused in which he was keeping the recovered M.O.13 tainted cash of Rs.10,000/- received from PW2 and the shirt was identified during the evidence as M.O.11. PW-11 further stated that he has prepared Ex.P20 rough sketch of the place of incident. He has also seized M.O.5 CD containing the recorded conversation between the accused and PW2 during the trap proceedings.

12(i). It is the further evidence of PW-11 that during the trap, the accused has admitted that the charge sheet in Crime No.274/2014 of the Varthuru Police station related to PW-10 was with his typist/assistant PW-5 Smt.N.Lakshmi. PW-11 the IO further deposed that he has secured the original charge sheet from the custody of PW-5 obtained the certified copy of the said document as per Ex.P22 from PW14 Smt.D.M.Sobha and also secured Ex.P23 extract of the attendance register. PW2 to 4 and 11 have deposed that PW-11 has prepared Ex.P5 trap mahazar in the place of trap from 2.30 p.m. to 6.00 p.m.

12(j). As per the evidence of PW11, on 16.2.2015 PW2, 5 and 7 appeared before the Court and have given their statement under Section 164 of Cr.P.C. as per Ex.P7,

8 and 10. He further deposed that during the investigation he has collected the records as per Ex.P12 and 13, Ex.P14 to 16 - expert report from Truth Labs, Bengaluru and Ex.P29 Scientific examination report dated 15.5.2015.

13. PW5 Smt.N.Lakshmi deposed that she has been working as typist and the assistant in the office of the Senior Asst. Public Prosecutor Bengaluru for the past 12 years. As per her evidence, on 24.1.2015 when she came to the office found that the accused was in the custody of the police. She further deposed that PW11 M.N.Ravishankar, has questioned her regarding the charge-sheet in Crime No.274/2014 of the Varthur police station. It is the evidence of PW5 that on 23.1.2015 the accused had handed over the said charge-sheet to her possession and directed her to keep the file with her till his further instruction. According to the evidence of PW5, PW-11 IO during the trap has seized the said original charge sheet from their office and subsequently during investigation the police have also obtained the copy of charge sheet scrutiny register marked as Ex.P-9. The witness has admitted that she had given the statement before the police and also under Section 164 of Cr.P.C. before the court.

14. PW6 - J.Ravichandra was working as the police constable in the Varthur police station. He has deposed that on 24.1.2015 as directed by the accused he

informed PW2 Subramani to come to the Court and to meet with the accused. It is his evidence that on that day at about 1.45 p.m. PW2 had come to the court premises to meet the accused, but at that time the accused was not present in his office. He further deposed that on the same day he has given his statement to PW-11 regarding the incident in connection with the charge sheet in Crime No.274/2015 of the Varthur Police station. As per the evidence of PW6, on 21.1.2015 he had handed over the original charge sheet in Cr. No. 274/14 of the Varthur police station to the accused for the purpose of scrutiny.

15. PW7 - H.T.Muniraju was working as head constable attached to the Varthur police station. He deposed that on 22.1.2015 PW2 was present in the ACMM Court premises and has requested with him to make recommendation to the accused to finish the pending work. According to the evidence of PW7, the accused had informed him to intimate PW2 to meet him on 23.1.2015 and accordingly PW7 has deposed that he has informed this fact to the informant PW2 to meet the accused.

16. PW8 - K.Ramanna, is the retired Director of the Prosecution department and as per his evidence, he had furnished Ex.P12 service details of the accused as required by the Karnataka Lokayukta police. He further deposed that one V.R.Hosur was working as the Deputy

Director of the prosecution who had furnished Ex.P13 details to the IO. PW8 has identified the signature of V.R.Hosur appearing in Ex.P13 document. PW8 has admitted that V.R.Hosur who had issued Ex.P13 document is dead and hence through the said witness, the prosecution got marked the document. The witness has deposed that he can identify the signature of the deceased V.R.Hosur.

17. PW9 is Ms. S.Neeru is the Dy. Director of Truth Lab, Bengaluru and she is the author of Ex.P14 speaker identification report. It is the evidence of the witness that she has received the requisition from S.P., Karnataka Lokayuta, Bengaluru for speaker identification and to submit the analysis report in Crime No.4/2015. She further deposed regarding the receipt of article 3, 10 and 12 CD containing audio recording and got marked those articles as item No.1 to 3. After examination by auditory and spectrographic analysis, she has given the opinion as per Ex.P14 and sent the report to the Investigating Officer.

18. PW10 - Y. Shankar deposed that he is the maternal uncle of PW2 and owns landed property at Thoobarahally village of Varthur Hobli. As per his evidence there was property dispute between himself and Muniyallappa and Krishnappa and they have created false documents regarding the said property. In this regard he deposed that he has lodged a report before

the Varthur police station in the year 2014. He further deposed that he had instructed PW2 to ascertain the progress of the case in Crime No.274/2014 of Varthur police station. As per his evidence, PW2 had informed him that the Government Advocate representing the above referred case is demanding the bribe amount and PW2 has paid Rs.5,000/- and when he was making payment of Rs.10,000/- he had informed the Karnataka Lokayukta police to initiate action against the accused.

19. PW12 - Ravindranath S.R. was working as the Assistant Executive Engineer deposed that as per the requisition of IO, he had visited the spot on 9.2.2015 and after measurement, he had prepared Ex.P25 sketch. PW-13 - Dr.Ravishankar Katkar is the retired chemical examiner and as per his evidence, on 31.1.2015 he had received 7 articles from the Dy.S.P. Karnataka Lokayukta for chemical examination. As per his evidence, after examination of all the 7 articles, he found the presence of the phenolphthalein in right and left hand wash solution of the accused. The witness stated that he has issued Ex.P29 certificate.

20. PW14 - Smt. D.M.Shobha deposed that she was working as the Public Prosecutor and on 24.1.2015 she was in charge of the Senior Law Officer. In her evidence she has admitted acquaintance with the accused and on 24.1.2015 she has received an information that the accused has been trapped by the

police. Thereafter she went to the Lokayukta office, heard the conversation contained in the recorder and has identified it as the voice of the accused. PW14 has admitted she has issued Ex.P22 certificate.

**The gist of the defence side argument;**

21(a). In defence, the accused has totally denied the prosecution case, drawing of pre-trap and post trap panchanama, recovery of tainted cash from his possession, seizure of the documents more particularly Ex.P-22 the charge sheet in Cr. NO. 272/14 of the Varthur police station.

21(b). He has admitted in his written statement and memorandum of written argument that he was working as the Senior Assistant Public Prosecutor attached to the Court of I Additional Chief Judicial Magistrate, Bengaluru. He has specifically disputed that he was discharging his duty as the Senior Asst. Public Prosecutor in the court of 2<sup>nd</sup> Addl. Chief Judicial Magistrate, Bengaluru. It is argued that Ex.P-22/Ex.D-5 charge sheet pertains to the Varthur police station in Crime No.274/2014 and the said case has to be tried before 2<sup>nd</sup> ACJM, Bengaluru. Hence the office of Senior Asst. Public prosecutor of 2<sup>nd</sup> ACJM was misused, and the accused never worked in the said office. It is submitted that there is no nexus between himself and the office abused and hence the charge under the PC Act is not sustainable.

21(c) The prosecution has not produced any order or document from the prosecution department to show that he has been directed to discharge his official duty as Senior Assistant Public Prosecutor in the court of the 2<sup>nd</sup> Additional Chief Judicial Magistrate, Bengaluru. In the absence of any official work entrusted to him pertaining to the 2<sup>nd</sup> Additional Chief judicial Magistrate, Bengaluru, the charge against him is groundless and not legally tenable.

21(d). It is not the part of his official work as a Senior Asst. Public Prosecutor to conduct the scrutiny of Ex.P-22 charge sheet in view of the judgment of Hon'ble Supreme Court in R. Sarala vs.T.S. Velu and others. As per Ex.D-1 circular, if the offence is punishable under sections 408,409,420,468,471, 477A of the IPC, the Asst. Prosecution Director was required to conduct the scrutiny of Ex.P-22/Ex.D-5 charge sheet.

21(e). Ex.P-22/Ex.D-5 the charge sheet was not received in the office of the Senior Assistant Public Prosecutor/accused and no entry is found in Ex.P-9 charge sheet scrutiny register regarding the receipt of the said charge sheet. The IO/PW11 has planted Ex.P-22 charge sheet in the office of the accused to implicate him in the false prosecution.

21(f). He has specifically denied the existence of demand of bribe or acceptance of the tainted cash of

Rs.10,000/- from PW2 on 24.1.2015. In the absence of demand and acceptance, the charge is not tenable.

21(g). The electronic record produced by the prosecution such as the CD containing the audio recording is not in strict compliance with the requirement of Section 65B of the Indian Evidence Act and therefore the said audio conversation said to have been recorded by PW-2 the informant during the pre-trap and the trap proceedings are not admissible in evidence and hence it has to be outrightly rejected.

21(h). The speech analysis report marked as Ex.P14 is not admissible and the witness examined on behalf of the prosecution PW9 is not an expert in the said field. Therefore, oral evidence of PW9 and Ex.P14 report is not an evidence in the eye of law.

21(i). There are material contradictions, inconsistency in between the evidence of PW-2 informant and PW3 and PW4 panch witnesses, and PW-11 Investigating Officer and the documentary evidence produced by the prosecution. PW3 and 4 are not the independent witnesses.

For the aforesaid reasons and the detail grounds urged in the 83 page memorandum of written argument, 25 page written statement filed under section 313 of the Cr.P.C., on the basis of more than 80 reported judgments, the accused has prayed for an order of

Hon'ble acquittal by imposing cost on PW-1, 2, 5, 6 and 11 for filing false case, by creating false documents and spoiling his reputation.

**The gist of the prosecution side argument:**

22(a). The learned Public Prosecutor has argued that the accused has not disputed that he was working as the Senior Assistant Public Prosecutor and hence he is a public servant falling within the definition of Section 2(c)(i) of the PC Act.

22(b). The original charge sheet in Crime No.274/2014 of the Varthur police station Ex.P-22 was found in the custody of the accused during the trap in the office of the Senior Assistant Public Prosecutor. The seizure of the said charge sheet is a circumstantial evidence to prove the link between the accused and the charge framed against him.

22(c). There is clear evidence to the effect that the accused himself had instructed PW-5 Typist/Assistant on 23.1.2015 to keep Ex.P-22 the original charge sheet in Crime No.274/2014 in her custody till his further instruction and the aforesaid conduct of the accused shows that with an intention to demand bribe from PW2, he was keeping the original charge sheet with him.

22(d). There is evidence of PW-6 the Police constable to the effect that as per the instruction of the accused, on 17-01-2015 he had brought Ex.P-22 charge sheet in Cr. NO. 274/14 from the Varthur police station and on 21-01-2015 he had handed it over to the possession of the accused.

22(e). There is clear and cogent evidence of PW2 to 4 and 11 - the informant, two panchas, the IO and circumstantial evidence of PW5 and 6 - Office Assistant and Police constable, and in addition, evidence of PW-9 speaker identification expert and PW-13 Chemical Analyst in order to prove the charge.

22(f). As per Explanation (d) to section 7 of the PC Act, a person 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. In the case on hand, the prosecution has proved that the accused had received the gratification as a motive for scrutiny of the charge sheet. Therefore whether the accused was intended to make the scrutiny of the charge sheet or whether he was in a position to do so is not relevant and the prosecution is also not required to prove those facts.

22(g). There is a presumption under Section 20 of the PC Act and since the prosecution has proved the demand and acceptance, it is for the accused to rebut the

presumption. In the case on hand, the accused has failed to place any probable defence and his defence during the trial is not plausible.

22(h). The accused is working as Senior Assistant Public Prosecutor and he is having the knowledge of the consequences of demanding and accepting the bribe. But he has consciously accepted the amount from PW2 and for the aforesaid reasons, the learned prosecutor has prayed for conviction of the accused.

23. The ratio of the decisions relied by the learned public prosecutor are.

(i) In C.M. Sharma case, the Hon'ble Supreme court held that the demand of illegal gratification is sine qua non to constitute the offence and mere recovery does not constitute the offence.

(ii) In SC Goel case The Hon'ble Supreme Court held that the evidence of a hostile witness can be accepted if it is otherwise trustworthy and the marked currency notes were recovered from the pocket jacket of accused and proved by panch witness who also proved the test conducted and as such demand and recovery is proved.

(iii) In Sombai Gopal Bai case The Hon'ble Supreme Court held that the testimony of complainant was fully corroborated by the shadow witness, that

recovery of tainted bribe currency was proved and the accused has not substantiated his plea under sec.313 of Cr.P.C. that the complainant was due Rs.100/- towards land revenue tax.

(iv) In Krishna Ram case the Apex court held that the accused in his explanation to the I.O. has stated that it was loan received through the complainant. The Court concluded that the explanation given by the accused was not probable and reasonable and as such presumption under sec.20 of PC Act gets attracted.

(v). In B. Noha case the Apex court observed the defence of the accused was that he never received any amount and the complainant forcibly put the money into his pocket.

24. Before appreciating the merits and proceeding further in the matter it is appropriate to mention here that the accused has not disputed that he was working as the Senior Assistant Public Prosecutor in the court of 1<sup>st</sup> Additional Chief Judicial Magistrate, Bengaluru as on the date of trap 24.1.2015. Even during the cross-examination of PW-8, he has not disputed the contents of Ex.P 12 documentary evidence produced by the prosecution. But he has specifically denied that he has been directed by the prosecution department to work in the court of 2<sup>nd</sup> Additional Chief Judicial Magistrate, Bengaluru as Senior Assistant Public Prosecutor. The

prosecution has also not produced any documentary evidence to show that the accused was discharging his duties as a Senior Assistant Public Prosecutor in the court of 2<sup>nd</sup> Additional Chief Judicial Magistrate, Bengaluru as on the date of trap 24.1.2015.

25(a). The accused is charged for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act. The prosecution, in order to bring home the guilt of the accused under section 7 of the P.C. Act is required to satisfy the following requirements:

- (i) The accused was a public servant or expected to be a public servant at the time when the offence was committed;
- (ii) The accused accepted, or obtained, or agreed to accept or attempted to obtain illegal gratification from some person,
- (iii) For himself or for some other person
- (iv) Such gratification was not a remuneration to which the accused was legally entitled.
- (iv) The accused accepted such gratification as a motive or reward for
  - (a) doing or forbearing to do an official act,
  - (b) doing or forbearing to show favour or disfavour to someone in the exercise of his official functions; or

- (c) rendering or attempting to render any service, disservice to someone, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, Corporation or with any public servant, whether named or otherwise.

25(b). The ingredients of Section 13(1)(d) of the PC Act are: public servant should obtain for himself or for any other person any valuable thing or pecuniary advantage,

- i) by corrupt or illegal means or
- ii) by abusing his position as public servant or
- iii) without any public interest.

26. During the cross-examination of PW2, the accused has made an effort to elicit existence of civil dispute relating to the property owned by PW10 Y. Shankar and his family members before the revenue court. But those aspects are not relevant to establish the innocence of the accused in regard to the charges framed against him. It is contended by the accused that PW10 has not given any authorization letter to PW2 to ascertain the progress of the case in Crime No.274/2014 of the Varthur police station. But in the present case, the prosecution has examined PW-10 and he has clearly deposed that the happenings of the case, Ex.P2 first information

statement and PW2 had informed him that he had approached the Karnataka Lokayuta Police and they have registered the case against the accused for the alleged demand and acceptance of the bribe by the accused was within his knowledge.

27. The accused during the cross-examination of PW2 has questioned how he has arranged the money on 23.1.2015 and 24.1.2015 for the payment of alleged bribe are of not much importance. But the witness has deposed that he had pledged a gold ring and borrowed the loan. It is the contention of the accused that as his office was installed with self closing door and hence during the trap, PW3 the shadow witness could not witness the alleged incident of demand and acceptance of the bribe inside the office room. The accused has questioned PW2 had failed to give the information regarding demand of the bribe to the Karnataka Lokayukta police on 23.1.2015 instead he had approached the police on 24.1.2015 and hence there is delay in reporting the matter to the police. But PW-2 during his cross-examination has specifically explained that on account of his personal work at Bengaluru, he could not approach the police on 23.1.2015 and therefore he had lodged the report on 24.1.2015. The explanation of PW2 regarding delay in giving information to the police is proper, satisfactory and acceptable.

28. The argument of the accused is that the prosecution has deliberately withheld the recorded audio during the trap proceeding. But during cross-examination para-30, PW-2 has specifically deposed that he could not switch on the voice recorder and the explanation forwarded by the witness is satisfactory and acceptable. PW-2 has recorded the conversation in his mobile phone and it was produced before the IO and transcript of conversation is part of the contents of Ex.P-5 trap mahazar. Therefore the prosecution has not deliberately suppressed any material evidence collected during the investigation. In this regard it is proper to rely on the decision of the Hon'ble Supreme Court reported in (2017) 3 SCC 608 in case of Umesh Manan Vs. State of Madhya Pradesh. As per the facts of the said decision, the complainant was given a tape recorder by the raiding party to record the conversation that would go on between himself and the accused. But the explanation of the witness was that he forgot to turn on the tape recorder due to nervousness because of which no conversation was recorded. The Apex Court held it is plausible when seen along with other witness and from this no adverse inference could be drawn. Similarly in the case on hand as per the explanation, PW-2 has deposed that he could not switch on the voice recorder provided by the IO and hence the aforesaid judgment is aptly applicable to the facts of the case on hand.

29. As on the date of trap, when PW2 went to the office of the accused at 1.45 p.m., he was absent. In this connection, the argument of the accused is that there was the possibility of PW-2 planting the tainted cash in the shirt hanging on the wall of the office. The accused during cross-examination of the prosecution witnesses more particularly PW- 2, 3 or PW-11 did not make any effort to put forward the aforesaid defence. Therefore the argument of the accused that the possibility of planting the tainted cash in his office in the aforesaid circumstance is only hypothetical and highly improbable. Moreover as per the prosecution case, during the trap, the tainted cash was found in the pocket of the shirt worn by the accused and it was not found in the shirt hanging on the wall in his office. Hence the above said contention of the accused is not acceptable.

30. As per the evidence of PW-2 during his cross-examination, he has specifically deposed that he was not a witness in any other case registered by the Karnataka Lokayukta Police. But PW2 in para-36 of his evidence has deposed one sentence that on the date of trap himself and the witness together went to the Lokayukta Police station. But this may be due to rigor of cross-examination the witness might have mis-spelt the fact. If we consider the evidence of PW-2 to 4 in its entirety, PW2 was not having previous acquaintance with PW3 and 4. Moreover, it is the IO who secured the presence of PW3

and 4 after sending requisition to the concerned office as per Ex.P18. Nowhere in the evidence of PW2 to 4, it is elicited by the defence that PW-2 has secured the presence of the trap witnesses. Therefore, the argument of the accused that even before PW-2 has lodged Ex.P2 first information report to the IO, PW3 and 4 panch witnesses were present in the Lokayukta police station is highly improbable and unbelievable. From the entire cross-examination of PW2, the accused has failed to elicit any material admission to discredit the testimony of the witness.

31. During the cross-examination of PW3 and 4, both the witnesses have deposed that on 24.1.2015 in between 10.30 and 11.00 a.m. they have received the requisition from Karnataka Lokayukta police and in pursuance in between 11.00 and 11.30 a.m. they left their office and went to the Karnataka Lokayukta police station. As per Ex.P-2 the first information statement, it was recorded on 24.1.2015 at 11.15 a.m. and at 11.40 a.m. Ex.P17 FIR was dispatched to the Court from Lokayukta police station and it was received through a sealed cover before this court at 11.55 a.m. PW3 and 4 have been examined before the court in the month of July-2017 after lapse 30 months from the date of trap and therefore it is not expected from the witnesses that they are required to depose the evidence in rigid mathematical demonstration. PW3 has specifically

deposed that on the date of incident they came to the Lokayukta police station in between 11.15 and 11.30 a.m.

32. PW-3 in his evidence has specifically deposed that he was not having previous acquaintance with the accused and hence his statement that he was not aware of the accused before the trap is probable. It is much argued by the accused that PW3 is the witness in two other Lokayuta cases however on this fact itself his evidence cannot be disbelieved as a professional witness. PW-11 the IO has denied PW3 and 4 were the witnesses in more than eight trap cases. In support of the aforesaid contention the accused has not placed any acceptable materials. During cross-examination of PW3, in para 17 it is elicited from his mouth that the IO has first recovered the cash from the accused and subsequently he was directed to undergo the chemical hand wash test. It is proper to mention here that the accused could not explain how the tainted cash found in his shirt pocket. In the above circumstances a stray sentence during the cross-examination of PW3 would not go to the root of the prosecution case to discredit his entire testimony and the procedure followed during the recovery and chemical hand wash. It is recognized principle of law that the evidence of witness has to be appreciated in its entirety and not by picking any stray sentence from the cross-examination.

33. After the matter posted for argument on merits, the accused has filed an application under Section 311 Cr.P.C. for recall of PW3 for further cross-examination. During cross-examination of PW3, the accused has produced Ex.D8 and D9 statement of the said witness recorded in enquiry proceedings initiated against the accused before the concerned disciplinary authority. By referring Ex.D8 and 9 documents, it is vehemently argued by the accused that the witness before the disciplinary authority has deposed inconsistent and contradicting evidence from his earlier testimony before this Court regarding the colour of chemical hand wash solution of the accused as pink and purple. In the case on hand the prosecution has secured Ex.P29 chemical analysis report from the scientific examiner and also examined PW-13 as a witness. Therefore, the oral evidence of PW3 regarding the colour of the hand wash liquid and the aforesaid discrepancy will not cause any harm to the prosecution case. In the event even if PW-3 inadvertently has stated a different colour of the chemical solution, it is not going to cause any damage to the prosecution case. The evidence of PW-13 and Ex.P-29 documentary evidence prevails over testimony of PW-3. Hence the contention of the accused in this regard is not sustainable.

34. It is the further contention of the accused during cross-examination of PW3 that in Ex.D-9 proceeding, it is suggested to the witness that when IO

had left the Lokayukta office, he was having custody of the charge sheet in Crime No.274/2014. This contention has not been taken during cross-examination of PW-11. Moreover, how PW-11 could secure the original charge sheet of Ex.P-22 from the Varthur police station has to be explained by the accused. In the statement of PW-3 in Ex.D-9 he admitted that "ರವಿಶಂಕರ್ ಬಳಿ ನಾವು ಕಛೇರಿ ಬಿಟ್ಟಾಗ ಕ್ರಿಂ ನಂ. 274/14 ಚಾರ್ಜ್ ಶೀಟ್ ಇತ್ತು". PW3 in Ex.D-9 enquiry proceedings has given his statement on 20.11.2021 after 82 months from the date of trap. The possibility of the witness has forgotten the sequence of the incident and facts of the case is also cannot be ruled out. Secondly the chances of the witness has been won over by the accused and acted according to his tune also cannot be totally ruled out. The accused successfully eliciting a sentence during cross-examination in Ex.D-9 proceeding that Ex.P22 charge sheet was with PW11 IO is not sufficient to create any doubt in the prosecution case. The accused is also required to show the probable possibility how the said document/original charge sheet came to the custody of PW-11 from the Varthur police station. PW-3 being a pancha witness how he could ascertain what are all the documents with PW-11 is a question of fact and said admission is having no evidentiary value. By taking aforesaid defence, the accused has impliedly admitted that Ex.P-22 charge sheet was seized from his office during the trap. Hence if he fails to explain how PW-11 could secure it from the

Varthur police station, his defence has to be ignored and the prosecution case has to be accepted. In this regard this court referred the judgment reported in (1982) 1 SCC 254 in the case of State of UP Vs O. K. Gosh and it will come to the aid of the prosecution. In the said decision the Hon'ble Court in para 10 observed that a police officer, himself being a Government servant, would rarely resort to perjury and concoct evidence in order to rope an accused. Therefore the imaginary theory of the accused that PW-11 has brought the charge sheet when he has left Lokayukta police station for trap is highly improbable and unbelievable.

35. During the cross-examination of PW4, the accused has tried to contend that his office was installed with automatic closing doors and therefore the presence and possibility of PW4 witnessing the demand and acceptance of illegal gratification is highly improbable. It is the evidence of PW-3 that during the trap, along with PW-2 he went inside the office of the accused and was present at the time the accused has demanded and accepted the tainted bribe amount. The accused has not questioned existence of auto closing doors to the office during the cross-examination of PW11. Therefore the argument of the accused that PW-3 was not a witness to the trap cannot be accepted. In the case on hand even if the physical presence of the shadow witness PW-3

inside the office of the accused is disputed, his presence outside the office in the immediate vicinity remains unchallenged. Therefore the witness standing near the door could hear the conversation in between the accused and PW-2.

36. It is the further case of the accused during the cross-examination of PW-5 by way of suggestion it is put to the witness that she was not properly maintaining all the registers in the office, and coming to the office regularly late in time and hence the accused had several times warned her but the witness has specifically denied all the suggestions. During the cross-examination of the witness Ex.D1 office circular came to be marked. The witness has admitted that she has not made any entry in charge sheet scrutiny register after receiving Ex.P-22 the charge sheet in Crime No.274/2014 of the Varthur police station. But it is very relevant to make note of the explanation of the witness that the accused himself had collected the charge sheet and has delivered it to her custody with direction to keep the charge sheet with her till his further instruction. In the above circumstances, the evidence of PW5 that the accused has not instructed her to make entry in the scrutiny register and why she has not made such entry in the register after receiving Ex.P22 charge sheet is apparently acceptable.

37. It is vehemently argued by the accused regarding a stray sentence appearing in para-13 of the

cross-examination of PW-5. The evidence shows before conclusion of the cross-examination it is suggested to the witness that she was not having the charge sheet and handed it over to the Lokayukta police and she is deposing false evidence as per the instruction of the Lokayukta police. The evidence of the witness has to be appreciated in its entirety and the sequence in which the witness was questioned shows that she has denied all the three suggestions tendered to her. The accused has failed to make out in his defence that the charge sheet was not with PW-5 as on the date of trap or it was seized from his office. Therefore, the stray sentence in the cross-examination is not going to help the defence of the accused when the evidence clearly shows Ex.P22 original charge sheet was found in the office of the accused with PW5 and she has clearly deposed that the accused had collected the charge sheet and she has handed over the said charge sheet to PW-11IO after the accused came to be arrested by the police. The evidence of PW-5 and other attending circumstances show that Ex.P-22 charge was found with the possession of the accused during the trap and PW-5 has delivered it to PW-11. In the result the argument of the accused touching the alleged admission of PW-5 is rejected. PW-5 has successfully withstood the test of cross-examination and the accused has miserably failed to elicit any admission from the mouth of the witness and she is a truthful witness. There

was no enmity for PW-5 to depose false evidence to implicate the accused in criminal prosecution.

38. The accused during the cross-examination of PW6 got marked Ex.D-2 contradiction but the said contradiction is not a material contradiction in the prosecution case. PW6 in his evidence has admitted that when he had brought Ex.P22 the charge sheet, he has not made any entry in the register maintained in the police station. But the witness has specifically deposed that he has handed over the charge sheet in Crime No.274/2014 to the accused and at that time also has not obtained any endorsement from him. As per the evidence of PW-6, the Police Inspector by name Kumar was the Investigating Officer in Cr. No. 274/14. The defence argument is that without following the due procedure of law, PW-11 is said to have smuggled the charge sheet from the office of the accused at the time of trap. In this connection, the accused has referred the judgment of Karnataka High Court in Anjinppa case. But the evidence on record shows from the testimony of PW5 and 6 that the accused himself illegally secured the custody of Ex.P-22 the original charge sheet through PW6 from the Varthur police station for the reasons best known to him. The judgment relied upon by the accused in this regard and his contention is not sustainable. The accused in his defence has gone to the extent of denying PW6 is not a police constable working

in the Varthur Police station. In the entire cross-examination of PW-6, the accused has failed to elicit any material admission in support of his case. The testimony of PW-6 reveal that he is a truthful witness and this court can safely rely on his evidence.

39. It is the further case of the accused during the cross-examination of PW-11, that before registering Ex.P17 FIR, he has not made any preliminary enquiry. It appears, by referring the ratio of the judgment of the Hon'ble Supreme Court in Lalitha kumari case, the accused has taken this contention. In the judgment of the Hon'ble Supreme court reported in 2021 SCC OnLine 923 in the case of CBI vs T.H. Vijaya Lakshmi held that a preliminary enquiry is not mandatory when the information received discloses prima-facie the commission of an offence. A preliminary enquiry is conducted only when the information received is not sufficient to register a case. In the case on hand, as per the contents of Ex.P-2 statement and the evidence show that PW-2 at the time of lodging Ex.P-2 first information statement, he has also placed before PW-11 MO-4 a CD containing the alleged recorded conversation containing the demand of bribe by the accused. Hence the contention of the accused that the IO has not made preliminary enquiry before registering the FIR is not sustainable.

40. It is further canvassed on behalf of the accused that as per the details shown in the title sheet of Ex.P-22, the said charge sheet was ready before the Varthur police station on 30.12.2014. PW11 during his cross-examination has deposed that he is not aware who was the custodian of the said charge sheet from 30-12-2014 up to 17.1.2015. But the evidence of PW-6 show that he had brought the charge sheet to the court from the police station on 17.1.2015. It is the evidence of PW-6 that on 19.1.2015 and 20-01-2015 the accused was on leave and therefore on 21.1.2015 he had handed over the said charge sheet to the custody of the accused. PW-11 has admitted that there is no documentary evidence collected during the investigation to show that Ex.P22 original charge sheet was in the custody of the accused and proof regarding the accused had received the said charge sheet for the purpose of scrutiny.

41. It is the further defence of the accused during cross-examination of PW-11, that when the informant, IO and pancha witnesses have left the Lokayukta office for the purpose of trap after completing Ex.P4 pre-trap mahazar, PW-11 has not mentioned in any of the documents that the original charge sheet in Crime No.274/2014 was not with them. It is pertinent to mention here that it is the defence of the accused that PW-11, the IO has brought Ex.P-22 charge sheet to his office during the trap. Hence, when Ex.P22 charge sheet

was not in the possession of PW11, there is no question of his making any note in any of the prosecution documents stating that the charge sheet is not in their custody. It is the definite contention of the accused that PW-11 has brought the charge sheet and hence it is for him to prove his defence as required under law. The other contention regarding there is delay in collecting Ex.P29 Scientific examination report is immaterial. Therefore the above contention of the accused is also not tenable under law.

42. PW11 during his evidence has admitted that there is discrepancy in the time mentioned in Ex.P-14 report relating CD-R of Moserbaer Pro make and the entries shows the serial number in item No.1 and 2 has been shown as one and the same. It appears apparently it is a typographical error. In the event the accused had questioned this fact during the cross-examination of PW9, the witness could have explained the discrepancy. Similarly there is typographical error in page No.396 Annexure containing the details of serial number of article No.3 an 10 issued at the time of receiving Ex.P14 report. In para-49, the IO in his evidence has forwarded a specific explanation that the time displayed in Ex.P14 report page No.404, 405 as the date and time of modification, there is possibility that the time displayed in the office laptop or computer in which CD was copied is reflected in the report. He has further deposed that he

cannot say whether the correct time and date was displayed in the office computer or laptop. The explanation of the witness is prima-facie satisfactory and acceptable. Therefore the discrepancy in showing the serial number of the CD or timings of date of modification are not major aspects. During cross examination in para 14, PW-9 has specifically deposed that the modification referred by the accused need not be the modification of the contents of the file, however even an access to the file is counted as modification.

43. It is defence of the accused during cross-examination of PW11 that the date of trap was a working day and so why the IO has not seized the white shirt belongs to the accused. It is not the duty of PW11 to explain why the accused was wearing the colour shirt at the time of trap because such facts are exclusively within the personal knowledge of the accused. However the cross-examination of PW-11 in para 55 show that the accused is in the habit of keeping an extra shirt in his office for his use after the office hours. Hence there was possibility that the accused was wearing MO-11 shirt during the lunch break on the date and at the time of trap. From the cross-examination confronted to PW2 to 6 and 11, the evidence in its entirety shows that the accused could not elicit any material contradiction and damaging admission in support of his defence and to disbelieve the testimony of the prosecution witnesses.

44. The accused has relied on the following reported judgments in support of his case and the ratio of the decisions and its application to the facts of the case are discussed as hereunder.

(I) In Muktiar Singh v/s. State of Punjab the Apex Court held that mere recovery of amount by itself said to have been accepted by way of illegal gratification would not prove charge against the accused in absence of evidence to prove payment of bribe or the accused had voluntarily accepted the money knowing it to be bribe. In the case the accused has voluntarily demanded and accepted the tainted cash from PW-2 and hence the principles of the above decision are not applicable to the facts of the case.

(ii) In the decision State of UP v/s. Jagadeesh Singh Malhotra case the Hon'ble Supreme Court on facts of the said case observed that the the story of paying the bribe for signing the fitness certificate was falsified and the exploration of the accused that crystals of phenolphthalein on his hand when he shook hands with the Officers appeared plausible. In the case on hand the accused has not made out any such circumstances in his defence and hence the judgment is not applicable to the facts of the case.

(iii) In M.K. Harshan v/s. State of Kerala as per the facts of the judgment, the tainted money was recovered

from the drawer of the accused and trap witnesses stated that the accused has said to put them in the drawer. The plea of the accused was that same was planted in his absence and without his knowledge was found probable. But in the facts of the case on hand, the accused was personally present in his office, voluntarily accepted the amount from PW-2 and hence the ratio is not applicable to the case.

(iv) In G.V.Nanjundaiah vs Delhi Admn case the Hon'ble Supreme Court held that there was absence of demand and the prosecution case was found the recovery was suspicious. Among two trap witnesses, one of them joined 3-4 such raids and the other was well known to the police. The accused in this case on hand has not made out any such circumstance in his defence hence the judgment is not applicable to facts of the case. On the other hand the evidence of PW-3 and 4 is trustworthy.

(v) In Hanumanthappa v/s. State of Karnataka the Hon'ble High Court held that the material on record gives raise to doubt with regard to the demanding and accepting the bribe. By giving benefit of doubt held mere recovery of the amount from the accused will not be sufficient. In the case on hand there is positive evidence let in by the prosecution to prove the demand and acceptance and for recovery. Hence the judgment is not applicable to facts of the case.

(vi) In Darshan Lal case the Hon'ble Supreme Court held that according to the prosecution the accused threw away the currency note on the ground after taking it out from his pocket, but there were discrepancies in the evidence of the witness. In the present case facts there are no such circumstances and hence the ratio is not applicable.

(vii) In State of Karnataka v/s. Gopalakrishnaiah, the Hon'ble High Court held that accused No.2 and 3 had not shown any official favour and demand is not proved and place of payment of amount in public found unusual. In the case on hand, the accused being a public servant had received the bribe amount in his office for scrutiny of the charge sheet related to PW-2 and 10 and hence the ratio of the judgment is not applicable to facts of the case.

(viii) In R.Malini case the Hon'ble High Court of Karnataka held that the evidence is not strong enough to hold accused No.1 and 2 had demanded the bribe amount. But on the contrary in the case on hand, there is sufficient evidence of PW-2 and 3 to prove the demand and acceptance of bribe amount by the accused and hence the ratio of the judgment is not applicable to facts of the case.

(ix) In State of Punjab v/s. Madan Mohan Lal Verma the Hon'ble Supreme Court held that PW.2 is a witness

only to recovery and not of accepting bribe money. The prosecution has not disclosed the genesis of the case correctly and dismissed the State appeal. But in the case on hand there are sufficient evidence of PW 2 to 4 placed by the prosecution and there are no allegations against the prosecution has suppressed the real facts.

(x) In B.Jayaraj v/s. State of AP the Hon'ble Supreme Court held that the complainant turned hostile and did not support the demand made by the accused and hence held mere possession and recovery of currency notes is not sufficient in the absence of proof of demand. But in the present case, PW-2 has supported the prosecution case and there are sufficient evidence to prove the demand and acceptance and hence the above referred ratio is not applicable to the facts of the case.

(xi) In T.K.Ramesh Kumar Case the Hon'ble Supreme Court held that the demand was not proved since the version of the complainant was not corroborated by the evidence of his father and there were material contradictions in the evidence of PW.1 and his complaint. However in the present case in the evidence of PW-2 to 6 there is no contradictions and hence the facts and circumstances of the case and the facts of the above referred judgment are totally different.

(xii) In Ram Prakash Arora v/s. The State of Punjab the Hon'ble Supreme Court held that evidence of

interested and partisan witnesses who are concerned in the success of the trap must be tested as any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused. However in the case in hand the accused has failed to make out PW-3 and 4 panchas are the interested or the partisan witnesses. In the absence of any such circumstances, their evidence can be accepted.

(xiii) In B.S.Ananda Kumar v/s. State of Karnataka, the Hon'ble High Court held that the shadow witness has not accompanied the complainant. There was inconsistent evidence regarding amount of the bribe agreed to be paid and the accused had not handled the tainted currency notes. In the case on hand PW-3 the shadow witness has accompanied with PW-2, the complainant and secondly the accused has handled the tainted currency notes. Hence the ratio of the decision is not applicable to the facts of the case.

(xiv) In V.Venkata Subba Rao v/s. State of A.P case the Hon'ble Supreme Court held that there was delay of 15 days in lodging complaint, purpose for the alleged demand of bribe was not achieved, the IO has interpolated the documents, in absence of proof of demand, question of raising presumption would not arise. In the case on hand there are no such facts and circumstances and hence the ratio is not applicable.

45. The prosecution evidence show that the accused had received Ex.P22 , charge sheet as part of his official duty to scrutinize the document. It is true that the accused as Senior Assistant Public Prosecutor has to conduct case before the concerned court. Ex.P22 charge sheet was filed before the court on 25.2.2015 after one month from the date of trap can be made out from Ex.D4 order sheet produced by the accused. As per the said order sheet, on 25.2.2015, the learned 2<sup>nd</sup> ACJM, Bengaluru took cognizance of the offence and issued the summons to the accused of the said case. It appears, the accused has produced Ex.D-4 order sheet of the case in order to prove that the said charge sheet in Crime No.274/2014 was filed and it is pending before the 2<sup>nd</sup> ACJM, Bengaluru.

46. As per Section 315 of the Cr.P.C. and section 21 of the P.C. Act, accused is the competent witness for the defence and therefore he may give evidence on oath in disproof of the charges made against him, but he shall not be called as a witness except on his own request in writing. During the course of trial,from the beginning the accused has put forward his defence by total denial of the prosecution case. It is to be considered at this stage that the accused entered his defence in pursuance of his own request in writing. It is true that he is having the right against self incrimination as provided under Article 20(3) of the Constitution. During his cross-examination

the accused has shown his ignorance to the question relating to seizure of Ex.P22 charge sheet from his office at the time of drawing the post trap mahazar. During examination-in-chief he has deposed evidence only regarding the production of Ex.D4 to D7 documents. The accused has not made any effort to discharge his onus of proof and to explain the circumstances appearing against him in the prosecution evidence to rebut the presumption under section 20 of the PC Act. It is the duty of the accused to forward plausible explanation to show how MO 13 the tainted cash of Rs.10,000/- was found in his possession. The accused once enters as a witness, it is his onus to prove the defence. But in his oral evidence, he has not whispered his contentions taken during the trial when he has cross-examined the prosecution witnesses.

46(a). The other limb of the argument of the accused is that as per Section 17 of the PC Act, there are restrictions to conduct investigation and PW-11 who is the IO in the present case is a police inspector and hence he is not authorized to conduct the investigation or to file the charge sheet. The accused has relied upon the judgment referred supra in the case between The State, Inspector of Police Vishakapatnam vs Surya Sankaram Karri. In the said decision the Hon'ble Supreme Court held that the authorization by Superintendent of Police in favour of an officer to enable him to carryout

investigation is statutory in terms of Section 17 of the PC Act.

46(b). In order to ascertain the above raised question of law by the accused, this Court referred the judgment reported in 2009 SC Online Karnataka 223 in the case between L.C.Hussain Vs. State of Karnataka. In the said decision the Hon'ble High Court held that the first proviso to Section 17 of the PC Act specifies that the State Government by general or special order authorise an Inspector of Police to investigate the offence under the PC Act. The Government of Karnataka vide notification dated 6.2.1991 bearing HD 286 PEG 90 generally authorised the Inspector of police of the Lokayukta to investigate the matters. Therefore the investigation conducted by PW-11 is authorized by the Government and hence the same is in compliance with Section 17 of the PC Act. In view of the above referred decision the point raised by the accused is no more res-integra before this court. In the decision reported in (2011) 4 SCC 402 in the case of Ashok Tshering Bhutia v s State of Sikkim, the Hon'ble Supreme Court held that a defect or irregularity in investigation has no direct bearing on the trial and does not vitiate the result. Hence the contention of the accused that PW-11 is not competent to conduct the investigation is rejected.

47. It is the argument of the accused that in view of the ratio laid down in the judgment referred supra in

Kaliram vs. State of H.P. decision, Ex.P 11 to 13 documents are not admissible in the evidence since it is hit by Section 162 of the Cr.P.C. Among those documents, Ex.P-11 is the requisition letter dated 03-02-2015 sent by the IO addressed to the Director of Prosecution and Govt. Litigation Department. It is true, the contents of Ex.P13 is in the form of a letter and therefore the contents of the said document are inadmissible in evidence. The author of Ex.P-13 V.R.Hosur, the Director of Prosecution Department is dead and therefore the prosecution could not examine him. The contents of Ex.P- 12 includes the service particulars of the accused and hence those contents are in no way hit by Section 162 of the Cr.P.C. The contents of Ex.P-13 is in the form of a letter and it is stated that the accused was conducting the case relating to Varthur and Rajanukunte police station jurisdictions before the learned II Addl. CJM Bengaluru. The prosecution in this connection has not placed on record any documents issued by the concerned department authorizing the accused to conduct the cases relating to the above referred police stations before the said court. In view of the above referred decision, as rightly pointed out by the accused, the argument is sustainable. Accordingly this court is of the definite opinion that Ex.P-13 document cannot be used as evidence except for the purpose of contradiction. Hence even if the document was marked

without any objection, it is inadmissible in evidence and cannot be looked into for any purpose.

48. The prosecution has produced Ex.P19 transcript of conversation said to have been recorded by PW2 on 23.1.2015 in his mobile phone when he went to meet the accused. He has burnt the recorded conversation into a CD marked as M.O.4. The IO during the investigation has collected Ex.P27 Certificate of PW2 under Section 65-B of the Indian Evidence Act. But in Ex.P27 there is a specific mention that PW2 got burnt the recorded conversation in M.O.4 CD in a cyber cafe but the Certificate was signed by PW2. Therefore, the certificate is not in compliance with Section 65B of the Indian Evidence Act. In this regard, the decision relied by the accused in *Anvar P.V. Vs. P.K.Basheer and others* and *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others* decisions are applicable to the facts. Hence, Ex.P19 transcript of audio conversation and M.O.4 CD containing the recorded conversation relating to Ex.P-19 are not admissible in the evidence. Hence the prosecution can not refer M.O.5 and Ex.P19 documents to prove the charge against the accused and accordingly the above referred documentary evidence is excluded for non-compliance of section 65B the mandatory provisions of the Indian Evidence Act.

49(a). The prosecution has relied upon the transcript of the conversation of PW2 with the accused during the

trap recorded in his mobile phone. The IO during the trap has seized the mobile, got collected the conversation in a CD identified as MO.5 before the court. PW-11 has issued Ex.P-28 certificate under Section 65B of the Indian Evidence Act. The said Certificate is in accordance with the law and therefore the conversation contained in Ex.P-5 trap mahazar during the trap is admissible. In this regard, it is proper to refer the contents of ExP-5 mahazar and the entire transcript of conversation between the accused and PW-2 reads as under:

ಅರೋಪಿ	ಏನಪ್ಪ
ಫಿರ್ಯಾದಿ	ರವಿಗೆ ಫೋನ್ ಮಾಡ್ಲೆ ಇವಾಗ... ಯಾವ ಫೈಲು ಎತ್ತೊಂಡು ಬಾ ಸಾರ್ ಹತ್ತಿರ ಅಂತ.
ಅರೋಪಿ	ಹಾ ಹಾ
ಫಿರ್ಯಾದಿ	ಇರೋ ಎತ್ತೊಂಡು ಬರ್ತಿನಿ ಅಂದ.
ಅರೋಪಿ	ಮಿಕ್ಕಿದ್ದು ಕೊತ್ತೆ ಸೈನ್ ಮಾಡಿ ಮನೆಗೆ ಹೋಗಬಿಡುತ್ತದೆ. ಅಷ್ಟೆ, ಎಷ್ಟು ಇದೆ, ಎಷ್ಟು ಇದೆ.
ಫಿರ್ಯಾದಿ	ಎಣಿಸಿ ಕೊಳ್ಳಿ ಸಾರ್
ಅರೋಪಿ	ಹತ್ತು ಇದೆ
ಫಿರ್ಯಾದಿ	ನಮ್ಮನ್ನು ಅರ್ಥ ಮಾಡಿಕೊಳ್ಳಿ
ಅರೋಪಿ	ಹಾ ಹಾ ಬಾಗಿಲು ತೆಗೆದು ನೋಡು
ಫಿರ್ಯಾದಿ	ಮೇಡಂ ಇಲ್ಲ
ಅರೋಪಿ	ಬಾಗಿಲು ತೆಗೆ
ಫಿರ್ಯಾದಿ	ಇಲ್ಲಾ ಸಾರ್ ಮೇಡಂ ಬಂದಿಲ್ಲ.

49(b). In the above referred transcript of conversation, the name Ravi refers to PW6 J.Ravindra. In the above referred conversation the accused has

specifically stated that if the balance is paid, he will affix the signature. There after PW-2 has paid the tainted cash of Rs.10,000/- and asked the accused to count. Accused after counting it confirms that there is Rs.10,000/-. Thereafter the accused has asked PW-2 to open the door and on opening PW2 has confirmed madam is not there. The word madam refers to PW-5 Smt.N. Lakshmi. These conversations took place before IO entering the office of the accused.

49(c) From the above referred recorded conversation we can infer that the charge sheet was with PW-5. The aforesaid details are in consonance with the evidence of PW-2 and the prosecution case. After the trap PW-5 Lkashmi came to the office. The aforesaid conversation in Ex.P5 mahazar during the trap is a corroborative piece of evidence in support of testimony of PW-2 and 3. The prosecution can also prove the demand and acceptance of the bribe from the said evidence. After the accused making the demand, PW-2 has tendered the tainted cash. The accused has demanded and voluntarily accepted MO 13, cash can be inferred from the evidence. It is also not the defence of the accused that PW-2 had forcibly thrust the tainted cash in his shirt pocket. Even in the absence of the aforesaid conversation, the primary evidence of PW-2 is available to establish the demand and acceptance.

50(a). At this stage in order to ascertain whether the act of the accused demanding and accepting the bribe falls under Explanation (d) of Section 7 of the PC Act this court referred the order of Hon'ble High Court of Karnataka reported in 2015 SCC Online Kar 9181 in the case of Ranganath Vs. State of Karnataka. As per the facts, the petitioner was working as surveyor and it was his contention that there was no work was pending with him as on the date of lodging of the complaint and therefore there was no opportunity for him to demand or accept any bribe from the complainant.

50(b) In the aforesaid order the Hon'ble High Court held that the existence of any official work for demand of bribe is not a sine-quo-non to attract the provisions of Sections 7 and 13(1)(d) of the PC Act. If section 7 is read with explanation, it gives an indication that even a public servant accepts or agrees to accept any gratification 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, is said to commit such an offence. The Explanation (d) to section 7 reads 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. Therefore, even the public servant has no existing work with him pertaining to the complainant and he was not in a

position to do any work but if he demands and accepts any gratification, the provision is attracted.

50(c) In the said order, the Hon'ble Court further observed that Section 13(d) also does not speak any official work to be pending, if it is shown that public servant, while holding office abusing his position obtains for himself or for anybody any valuable thing or pecuniary advantage without any public interest to attract the provision. The petitioner has to show that he never obtained any advantage by abusing his position corruptly or by any illegal means. Therefore, in the case on hand, even if the argument of the accused is totally accepted, that he was not the Senior assistant public prosecutor of the court of II ACJM, Bengaluru or he was not in a position to do any official favour or he did not intend to do comes within the expression. The ratio laid down in the aforesaid order is applicable to the facts and circumstances of the case. The accused by relying on the judgment of Hon'ble Supreme Court in R.Sarala vs. T.S.Vela, argued that the Public Prosecutor has no role to play in scrutiny of the charge sheet. But the evidence placed on record shows the accused had secured the original charge sheet in Crime No.274/2014 and therefore even if he did not intend or was not in a position to do any official favour, the act of the accused demanding and accepting the bribe falls within the ambit of Section 7 of the PC Act.

51. This Court on the above point of law also referred another judgment of Hon'ble Supreme Court reported in (2012) 8 SCC 527 in case of Syed Ahmed Vs. State of Karnataka. As per the facts of the said judgment, the accused was working as a police officer and allegedly demanded illegal gratification from the complainant. He has been arrested and tainted currency notes were recovered from his possession. The trial court acquitted the accused, but the Hon'ble High Court convicted him. Before the Hon'ble Supreme Court it is contended on behalf of the accused that he had no role to play and there was no occasion for him to demand gratification from the complainant since he was not investigating the complaint of the complainant and therefore, there was no occasion for him to demand any gratification from the complainant. In para-15 and 21 of the said judgment, it is observed that in view of Section 7(d) of the PC Act, a public servant who is not in a position to do any favour to a person could also be deemed to commit an offence under the PC Act if he demands and accepts illegal gratification. The Apex Court further observed that the person demanding and accepting gratification is a public servant, there was demand for gratification and the gratification has been given to the accused. If these basic points are proved, the accused may be found guilty of an offence under the provisions of law. The Apex Court agreed with the findings of the Hon'ble Court in view of explanation (d) to

Section 7 of the Act whether public servant could or could not deliver results becomes irrelevant. The facts of the above referred judgment and the facts of the case stands on same footing and the ratio laid down by the Hon'ble Supreme Court is aptly applicable to the case.

52. In the judgment referred by the accused supra in Kali Ram case, the Apex Court observed that the rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex-facie trustworthy, on grounds which are fanciful or in the nature of conjectures. The guilt of the accused has to be adjudged by the evidence brought on record. The wrongful acquittals are undesirable and shake the confidence of the people in the judicial system. In the case on hand the evidence of PWs.2 to 6 and PW-11 the IO is consistent with the guilt of the accused and inconsistent with his innocence. The minor discrepancy and contradictions as pointed out by the accused did not affect the substratum of the prosecution case or impact on the core issue and for the aforesaid reasons the minor discrepancy could be ignored.

53(a). In the judgment reported in (2013) 15 SCC 298 in Gangabhavani vs Rayapati Venkat Reddy & Ors case in para-13 the Hon'ble Supreme Court held that

in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, errors of memory due to lapse of time. However, minor contradictions, inconsistencies, embellishments or improvements which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. In the case on hand merely because the accused did not offer any explanation for possessing tainted amount before the IO and could offer an explanation only during trial on that count alone his explanation need not be discarded if explanation appears to the conscious of the court as genuine. However the defence of the accused that PW11 had planted the original charge sheet in his office or that he has been implicated in the case is not acceptable. The evidence of PW.5 and 6 is the basic foundation from which the prosecution has proved the charge sheet in Crime No.274/2014 was found in the office of the accused. In pursuance of voluntary statement of the accused to the IO, the said charge sheet was recovered under Section 27 of the Evidence Act. Therefore, the recovery of Ex.P22 charge sheet from the office of the accused at the time of drawing Ex.P5 trap mahazar is admissible in evidence and it is proved beyond any reasonable doubt.

53(b) In the judgment reported in (2020)2 SCC 88 in Vinod Kumar Grag vs State, the Apex court held

that when demand and acceptance is proved with recovery of bribe money, minor discrepancy and inability of the witnesses to remember exact details are bound to occur and are natural. The witnesses are not required to recollect and narrate entire version with photographic memory notwithstanding passage of time. Therefore on applying the above referred ratio the minor discrepancy and contradictions appearing in the evidence of PW-2 to 6 can be ignored as it will not resulting in causing any damage to the foundation of the prosecution case.

54. The accused has relied the following reported decisions.

(i) In T.Shankara Prasad v/s. State of AP case the Hon'ble Supreme Court has observed that the presumption to be drawn under section 20 of the PC Act is presumption of law and it has to be rebutted by proof and not by explanation which may seem to be plausible. The Apex court confirmed the conviction and it is not known why the accused has placed the copy of the judgment on record. The ratio is applicable in support of the prosecution case

(ii) In V.Venkata Subba Rao and State of AP case the Hon'ble Supreme Court held that in the absence of proof of demand, the question of raising the presumption would not arise.

(iii) In *Mukesh Bihari v/s. State of Rajasthan* the Hon'ble Supreme Court held that the accused were unable to substantiate the plea that they were roped in because of enmity and presence of shadow witness in trap is desirable but not must and mere absence would not vitiate the proceedings. The foundational facts must be established by the prosecution before the accused is called upon to explain as to how the amount in question was found in his possession. This judgment rather is helpful to the case of the prosecution.

55. The prosecution is obliged to prove previous demand of bribe, its acceptance and recovery of tainted money. The demand can be proved by the testimony of the informant as well as from the contents of Ex.P2 first information statement. The presumption as to the demand of bribe can also be drawn if the tainted money tendered as bribe is recovered from the possession of the accused. It is true the said presumption is rebuttable. If the explanation given by the accused about recovery of the money is false, it may be taken as adverse circumstance against the accused. If the accused gives explanation, that can be scrutinized by the test of preponderance of probability while the prosecution must prove its case beyond reasonable doubt.

56. The fundamental cardinal principle of criminal jurisprudence is, innocence of the accused shall be presumed till the charges are proved beyond reasonable

doubt on the basis of clear, cogent, and credible evidence. It is also well settled principle of law that the burden of proof required to be discharged by the prosecution is; “proof beyond reasonable doubt” as held in 2015 (16) SCC 350 - Khaleel Ahmed vs. State of Karnataka.

57(a) In regard to the drawing of the presumption under section 20 of the PC Act, it is proper to refer the judgment reported in (2000) 8 SCC 571 in Madhukar Bhaskar Rao Joshi vs State of Maharashtra. In the said case the Hon’ble Supreme Court held that the premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted “as motive or reward” for doing or forbearing to do any official act.

57(b) In another decision reported in (2001) 1 SCC 691 in the case of M. Narasinga Rao vs State of A.P. the Hon’ble Supreme Court held that section 20(1) of the PC Act deals with the legal presumption, it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act. The only condition for drawing such legal presumption is that it should be proved that the accused had accepted or agreed to accept gratification. It is a rebuttable presumption but if the accused fails to

disprove the presumption, then it can be held that the prosecution had proved that the accused received the amount.

57(c). In this case the learned Public Prosecutor has argued that as the prosecution proved the demand and acceptance of illegal gratification, and hence the presumption as contemplated under section 20 of the PC Act is to be drawn. But the benefit of the presumption can be extended when the prosecution discharges its initial burden of proof that the accused has demanded and accepted illegal gratification and thereafter the onus shifts to the accused to prove his defence by placing plausible explanation by way of cross-examination of the witnesses or by any other evidence. This court on appreciation of entire evidence, arrived to the definite conclusion that the accused deliberately secured Ex.P-22 the charge sheet in Cr.No. 274/14 from the Varthur Police station through PW-6. After securing the charge sheet he had kept the document with PW-5 in order to demand bribe from PW-2. The oral evidence PW-2 and contents of Ex.P-2 regarding the previous payment of the bribe to the accused Rs.15,000/- on 21-01-2015 and Rs.5,000/- on 23-01-2015 are not sufficient to hold demand and acceptance as proved. Moreover the said amount is also not recovered during investigation. However the prosecution has proved the accused has demanded and accepted Rs.10,000/- from PW-2 on 24-01-2015.

Therefore the presumption under 20 of the PC Act is deserves to be drawn and accordingly drawn. The accused has failed to rebut the presumption from the cross-examination of the prosecution witnesses and from his oral and documentary evidence.

58. After considering the entire oral evidence of the prosecution and documentary evidence, this court arrived to the definite conclusion that the prosecution has proved from the evidence of PW2 and Ex.P2 statement that the accused has demanded and accepted a sum of Rs.10,000/- undue advantage from PW-2 on 24.1.2015 at about 2.10 p.m. in his office situated at 3<sup>rd</sup> floor, ACJM Court complex, Nrupathunga road, Bengaluru. The prosecution has further proved from the evidence of PW3 and 4 - pancha witnesses, PW-2 informant and PW-11 - IO that accused was found in possession of MO.13 tainted cash of Rs.10,000/- in his M.O.11 shirt. The prosecution has proved by cogent evidence that in the presence of PW2 to 4, the I.O. has recovered the said amount from the shirt pocket of the accused. The prosecution by producing Ex.P29 chemical analysis report and from the evidence of PW2 to 4, 11 and 13, has proved that the accused was subjected to chemical hand wash and during the said process the sodium carbonate liquid turned to pink colour and thereby beyond doubt it is established that the accused has handled M.O.13 tainted currency notes. As per Section

114 of Indian Evidence Act, court can draw inference that the accused has received the tainted currency notes, counted the notes with his both hands and thereafter had kept those notes in his shirt pocket and on account of the aforesaid acts, the chemical hand wash turned into pink colour and shown the positive result. The evidence of PW.5 and 6 typist/office assistant and police constable is inconsonance with the entire prosecution case. The accused has failed to create any doubt during the cross-examination of PW.5 and 6 in order to substantiate his defence. Therefore the evidence of PW.2 to 4 and 11 supported by the evidence of PW.5 and 6 further proves the prosecution case and removes all the efforts made by the accused to create doubt in the mind of the court is only futile attempt. From the aforesaid evidence, this Court has arrived to the definite conclusion that for the purpose of scrutinizing Ex.P22 charge sheet, the accused has demanded and accepted bribe of Rs.10,000/- and thereby he is guilty of demand and acceptance of the gratification and also criminal misconduct as per Section 7, 13(1) (d) of the PC Act. In the result my findings on the point Nos.2 and 3 is in the affirmative. Accordingly I proceed to pass the following:

**ORDER**

Acting under Section 248(2) of the Code of Criminal Procedure 1973 the accused is convicted of the offences punishable under

Sections 7 and 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988.

The bail bond and surety bond executed by the offender and his surety are hereby stand discharged.

M.O. No.13 cash of Rs. 10,000/- ( ten thousand) is confiscated to the State after expiry of the appeal period.

Office is directed to return M.O. No.3. metal seal to the Karnataka Lokayukta Police.

Office is directed to keep M.O. No. 4, 5, 6, 7, 12, CDs, along with file.

Office is directed to destroy M.O. No. 1, 2, 8, to 10, chemical liquid and MO 11 shirt after the appeal period as the same are worthless.

(Dictated to the judgment-writer, transcribed by him, corrected, signed and then pronounced by me in the open Court on this the 04<sup>th</sup> day of February, 2022.)

sd/- 04-02-2022  
(LAKSHMINARAYANA BHAT K)  
XXIII Addl.City Civil & Sessions Judge  
& Special Judge Bengaluru.

### ORDERS

Judgment is pronounced finding the offender is guilty of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of The Prevention of Corruption Act, 1988.

2. On the quantum of sentence to be imposed, heard the offender in person. He has submitted that lenient view may be taken. He has relied upon the judgment of Hon'ble Supreme Court reported in 2006 AIR SCW 5267 in the case of the State V/s A Parthiban and submitted that the offence under Sec.7 and 13(1) (d) of PC Act, being single transaction falling under 2 different sections, the offender cannot be liable for double penalty.

3. It is well settled law that as held in the decisions reported in AIR 2004 SC 2317 in the case between N Bhargavan Pillai vs State of Kerala and the aforesaid judgment relied by the accused in Parthiban case rules out the application of the provisions of The Probation of Offenders Act to the cases covered under the PC Act.

4. In the case on hand, the incident had occurred on 24-01-2015. Thus, as per Amended Act No.1 of 2014, which came into effect from 16-01-2014, the offence under section 7 of the PC Act as on the date of offence was punishable with imprisonment which may extend to seven years and with fine and minimum punishment shall be not less than three years. The offence under section 13 (2) of the PC Act was punishable with imprisonment which may extend to ten years and with fine and minimum punishment shall be not less than four years.

5. The offender was working as the Senior Assistant Public Prosecutor. In the light of the facts and circumstances of the case, with particular reference to the nature and conduct of the offender in committing the offence, the quantum of sentence to be imposed has to be determined. The offender by committing the offence has invited the risk to himself, and now he cannot plead for leniency in the sentence to be imposed. On the other hand, the facts and circumstances of the case, the conduct of offender in demanding Rs.50,000/- illegal gratification for scrutiny of the charge sheet do demand that he be punished by apposite sentence of imprisonment, of course after taking into consideration the submission of the accused to scale down the quantum of sentence to the permissible extent by taking a lenient view. In this regard the aforesaid decision of the Apex court relied by the accused is also taken into consideration.

6. As per section 31 of the Cr.P.C. when a person is convicted at one trial of two or more offences, the punishment of imprisonment to commence one after the expiration of the other is the rule and unless the Court directs such punishments shall run concurrently is an exception.

7. In AIR 2013 SC 1682 Niranjana Hemchandra Sashittal case the Apex court held the gravity of the offence under the PC Act is not to be judged on the quantum of bribe, as corruption is not to be justified in degree.

8. In the decision reported in AIR 2015 SC 2678 in the case of Shanthilal Meena vs State of NCT Delhi, the Hon'ble

Supreme Court exhaustively dealt with penological philosophy behind sentencing under the PC Act. It is held that the punishment for the offences under the PC Act there is any scope for reforming the convicted public servant. Unless the courts awards appropriately deterrent punishment taking note of the nature of the offence and the status of the offender, people lose faith in justice delivery system and very object of the legislation will be defeated. The court has thus a duty to protect and promote public interest and build up public confidence. Misplaced sympathy or unwarranted leniency will send a wrong signal to the public giving room to suspect the institutional integrity affecting the credibility of its verdict. That on applying the above referred ratio to the facts of the case on hand, the offender was working as Senior Assistant Public Prosecutor and he was entrusted with the duty as an officer of the court in the dispensation of criminal justice system. Therefore while awarding sentence, this court should bear in mind the expectation of the people to prevent corruption in the courts by providing prompt conviction and stern sentence.

9. The above referred law laid down by the Apex court are aptly applicable to the facts of the case in hand. On considering the age of the accused and he is already retired from the service on 31/01/2022, it is necessary at this stage to impose minimum punishment as prescribed under the enactment. As per the decision in above referred Parthiban case that when the offence proved are under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the

court could award to the person for any one of the two offences.

10. As per section 16 of the P C Act where a sentence of fine is to be imposed under section 7 or 13(2) of the PC Act, the court shall take into consideration the amount or value of the property the accused person has obtained by committing the offence. In the case on hand, the offender has demanded illegal gratification of Rs.50,000/- and received an amount of Rs.10,000/- from PW-2. Having regard to the amount of demand of bribe this court finds imposing fine of Rs. 30,000/- and in default to pay it, to suffer simple imprisonment for four months is just, proper and reasonable. After considering the facts and circumstances of the case and for the reasons stated herein above, it is just and proper to sentence the offender to undergo simple imprisonment for a period of three years and fine of Rs.15,000/- for the offence under section 7 and four years simple imprisonment and fine of Rs.15,000/- for the offence under section 13(1)(d) read with 13(2) of the PC Act would meet the ends of justice. Accordingly this court proceed to pass the following:

#### **ORDER**

The offender Srinivasaraju is sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.15,000/- (fifteen thousand only ) for the offence punishable under section 7 of The Prevention of Corruption Act 1988 and in default of payment fine, he shall undergo simple imprisonment for a further period of two months.

Further the offender is sentenced to undergo simple imprisonment for a period of four years and to pay a fine of

Rs.15,000/- (fifteen thousand only ) for the offence punishable under section 13(2) of The Prevention of Corruption Act 1988 and in default of payment fine, he shall undergo simple imprisonment for a further period of two months.

Both the substantive sentence of imprisonment shall run concurrently.

Acting under section 428 of the Code of Criminal Procedure, the period of detention undergone by the accused during investigation from 24-01-2015 to 29-01-2015 shall be given set off against the sentence of imprisonment.

Free copy of the judgment be furnished to the accused forthwith.

(Dictated to the Stenographer directly on computer, typed by her, corrected, signed and pronounced by me in the open Court on this the 04<sup>th</sup> day of February, 2022.)

sd/- 04-02-2022  
(LAKSHMINARAYANA BHAT K.),  
XXIII Addl.City Civil & Sessions Judge  
& Special Judge (PCA), Bengaluru.

#### ANNEXURE

#### List of witnesses examined on behalf of the prosecution:

- PW 1 : T.Krishnaiah  
PW 2 : Subramani  
PW 3 : Vinay Kumar  
PW 4 : Mahadevaswamy  
PW 5 : Smt.N.Lakshmi  
PW 6 : J.Ravichandra  
PW 7 : H.T.Muniraju

PW 8 : K.Ramanna  
PW 9 : S.Neeru  
PW 10 : Y.Shankar  
PW 11 : M.N.Ravishankar  
PW 12 : Ravindranatha S.R.  
PW 13 : Dr.Ravishankar Katkar  
PW 14 : D.M.Shoha

List of documents marked on behalf of prosecution:

Ex P1 : Sanction order  
Ex P1(a) : Signature of PW 1

Ex P2 : Complaint  
Ex P2(a) : Signature of PW 2  
Ex P2(b) : Signature of PW 11

Ex P3 : Currency details sheet  
Ex P3(a) : Signature of PW 3  
Ex P3(b) : Signature of PW 4  
Ex P3(c) : Signature of PW 2  
Ex P3(d) : Signature of PW 11

Ex P4 : Pre-trap mahazar  
Ex P4(a) : Signature of PW 3  
Ex P4(b) : Signature of PW 4  
Ex P4(c) : Signature of PW 2  
Ex P4(d) : Signature of PW 11

Ex P5 : Trap mahazar  
Ex P5(a) : Signature of PW 4  
Ex P5(b) : Signature of PW 2  
Ex P5(c) : Signature of PW 3  
Ex P5(d) : Signature of PW 11

Ex P6 : Specimen voice mahazar  
Ex P6(a) : Signature of PW 4  
Ex P6(b) : Signature of PW 3

Ex P6(c) : Signature of PW 11

Ex P7 : 164 Cr.P.C. Statement of P.w.2

Ex P7(a) : Signature of PW 2

Ex P8 : 164 Cr.P.C. Statement of P.w.2

Ex P8(a) : Signature of PW 5

Ex P9 : Attested copy of charge sheet scrutiny register

Ex P10 : 164 Cr.P.C. Statement of P.w.7

Ex P10(a) : Signature of PW 7

Ex P11 : Request letter of IO dt.3.2.2015

Ex P12 : Service particulars of accused

Ex P12(a) : Signature of PW 8

Ex P13 : Work distribution report dt.6.7.2015

Ex P13(a) : Signature of Hosur

Ex P14 : FSL report of Audio and video

Ex P14(a) : Signature of PW 9

Ex P15 : Covering letter of Chairman

Ex P16 : Sample seal of laboratory

Ex P17 : FIR

Ex P17(a) : Signature of PW 11

Ex P18 : IO requisition for witness securing

Ex P18(a) : Signature of PW 11

Ex P19 : Demand transcription sheet

Ex P19(a) : Signature of PW 11

Ex P20 : Sketch

Ex P21 : Certificate u/S.65(B) of the Indian Evidence Act

Ex P21(a) : Signature of PW 11

Ex P22 : Case papers in Crime No.274/14

Ex P22(a) : Signature of PW 14

Ex P23 : Attendance register extract

- Ex P24 : Seal acknowledgment letter
- Ex P25 : Engineer sketch  
Ex P25(a) : Signature of PW 12
- Ex P26 : Voice sample transcription sheet
- Ex P27 : Certificate u/S.65(B) of the Indian Evidence Act of complainant
- Ex P28 : Certificate u/S.65(B) of the Indian Evidence Act in respect of voice recording CD
- Ex P29 : Chemical examiner report  
Ex P29(a): Signature of PW 13

List of material objects marked on behalf of the prosecution:

- MO 1: Sample solution bottle
- MO 2: Hand wash of PW-4 Mahadevaswamy
- MO 3 : Metal seal 'N'
- MO 4 : Demand audio CD  
MO 4 (a) Cover
- MO 5 : CD T.M. Audio's  
MO 5 (a) Cover
- MO 6 : CD voice sample (specimen)  
MO 6 (a) Cover
- MO 7 : CD pre-trap video recording  
MO 7 (a) Signature of PW11
- MO 8: Sample solution bottle (trap)
- MO 9: Right Hand wash of accused/solution  
MO 9 (a) Addl.solution of right hand wash of accused
- MO 10: Left Hand wash of accused/solution  
MO 10 (a) Addl.solution of left hand wash of accused

MO 11 : Shirt  
MO 11 (a) Cover

MO 12 : CD Trap video recording  
MO 12 (a) Cover

MO 13 : Cash of Rs.10,000/- (1000 x 10)  
MO 13 (a) Cover

List of witnesses examined on behalf of defence side:

D.W.1 - R.Srinivasa Raju

List of document marked on behalf of defence side

- Ex.D1 - Copy of circular dated 27.7.2011  
Ex.D2 - Portion of the statement of PW6  
Ex.D3 - Letter addressed to Director of Prosecution  
Ex.D4 - Copy of order sheet in CC No.1413/2015  
(Crime No.274/2014)  
Ex.D5 - Copy of charge sheet, panchanama and  
statement of witnesses  
Ex.D6 - Form-A of Right to Information Act  
Ex.D7 - Reply given by Law officer, Bengaluru region

sd/- 04-02-2022  
(LAKSHMINARAYANA BHAT K.),  
XXIII Addl.City Civil & Sessions Judge  
& Special Judge (PCA), Bengaluru.

