

Reserved on : 07.04.2025
Pronounced on : 02.06.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No. 20793 OF 2024 (GM-RES)

BETWEEN:

SRI YATHISHA NHP
S/O PRANESH N.H.,
AGED ABOUT 38 YEARS
OCCUPATION: ASSISTANT ENGINEER
RESIDING AT FLAT NO.D-230
BRIGADE MEADOWS PLUMERIA LIFESTYLE
OPP. ANJANEYA SWAMY TEMPLE
SALUHUNSE KANAKAPURA MAIN ROAD
UTTARAHALLI HOBLI
BENGALURU – 560 082.

SHOWN IN THE FIR AS
SRI YATHISH PALEGAR
ASSISTANT ENGINEER
BESCOM, FIELD OPERATIONS
AND MAINTENANCE
KAGGALIPURA SUB-DIVISION
BENGALURU – 560 082.

... PETITIONER

(BY SRI SANDESH J. CHOUTA, SR. ADVOCATE A/W.,
SMT. SANYA MALLI, ADVOCATE)

AND:

- 1 . STATE BY LOKAYUKTA POLICE
BANGALORE CITY POLICE STATION
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU – 560 001.

- 2 . SRI CHANDAN KUMAR N.,
S/O SRIRAM D.,
AGED ABOUT 28 YEARS
WORK INSPECTOR
SRI CHAKRA ELECTRICALS
NO.29, 4TH MAIN, 3RD CROSS
NAGENAHALLI, K.R.PURAM
BENGALURU – 560 077.

... RESPONDENTS

(BY SRI B.B.PATIL AND SRI VENKATESH S.ARBATTI, SPL. PP FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 (BNSS) PRAYING TO SET ASIDE THE FIR IN CRIME NO. 03/2024 DTD 08.04.2024 REGISTERED BY THE R-1 HERETO PRODUCED AS ANNEX-A COMPLAINT DTD 06.04.2024 PRODUCED AS ANNEX-B PENDING ON THE FILE OF IX ADDL. DISTRICT AND ALL SESSIONS JUDGE BENGALURU RURAL DISTRICT AT BENGALURU AS AGAINST THE PETITIONER FOR OFFENCES PUNISHABLE UNDER SECTION 7(A) OF THE PREVENTION OF CORRUPTION ACT 1988.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.04.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

The petitioner/accused No.1 is before this Court calling in question registration of crime in Crime No.3 of 2024 for offences punishable under Section 7 (a) of the Prevention of Corruption Act, 1988 ('hereinafter referred to as 'the Act' for short).

2. Facts in brief, borne out from the pleadings, are as follows:-

The petitioner is a public servant working as an Assistant Engineer, Field Operations and Maintenance, BESCO, Bangalore. A Work Inspector at Sri Chakra Electricals registers a complaint against the petitioner and several others alleging that two applications on 09-02-2024 had been submitted for the purpose of getting supply of power to the buildings of one Venkatesh and one Ajay Kumar in Sy.Nos. 61 and 61/4 of Annapoorneshwari Nagar, Kengeri Hobli. No action was taken in respect of the applications. The averment in the petition is that on 22-02-2024, the complainant calls up the petitioner/accused No.1 to enquire about

the applications regarding supply of power. The complainant is said to have met the petitioner also. The petitioner is said to have informed the complainant that one Sri Satish, accused No.2 who is a contractor would help the complainant in getting the work done and asks him to speak to accused No.2 directly. Accused No.2 is said to have been contacted by the complainant on 26-02-2024 who assures that the work would be done with regard to the supply of power, if an amount of ₹5,00,000/- is paid towards all the works till the supply of power to the buildings. The complainant then is said to have called up the petitioner for reduction of the amount which the petitioner is said to have informed the complainant to speak to accused No.2 itself. It is then the complainant allegedly meets the petitioner at Vaishnavi Palace Hotel and the petitioner informs that work would be done if ₹3,80,000/- is paid. This is said to have been recorded in the phone of the complainant. On 03-04-2024 the complainant was asked to meet the petitioner who then directs him to come on 08-04-2024.

3. On 08-04-2024 the complainant registers a complaint which becomes a crime in Crime No.3 of 2024 for offences

punishable under Section 7(a) of the Act. An entrustment mahazar is drawn and the respondent/Police then along with a shadow witness laid a trap upon the petitioner. The trap is conducted by the Lokayukta Police who accompanied the shadow witness. The alleged demanded amount was kept in a plastic cover with the name on it 'Venkatesh Sweet Meat Stall'. The petitioner had asked the complainant to meet him outside Brigade Meadows besides the KPTCL office at about 2.00 p.m. As per the trap mahazar, the complainant and the shadow witness sit in the back seat of the petitioner's car and the driver and the petitioner in the front seat. After some time, it is alleged, that the Driver gets out of the car and stood behind the Car. The Police at that point in time surrounded the car and the complainant gets out of the car and signals Lokayukta police team which led to arrest of the petitioner.

4. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner and Sri B.B. Patil along with Sri Venkatesh S. Arbatti, learned Special Public Prosecutor appearing for respondent No.1.

5. The learned senior counsel appearing for the petitioner would vehemently contend that there is no proof of demand and acceptance as is necessary for an offence under Section 7(a) of the Act. The work had to be done by accused No.2 and the petitioner had given the contact of accused No.2 to the complainant. There was nothing pending before the petitioner. There is no pre-verification by the trap laying officer and the trap laid against the petitioner is a failed trap for the reason that there is no demand on the date of trap. There is no proof of acceptance by the petitioner and the trap mahazar indicates that the cover containing alleged illegal gratification was kept in the back seat of the car. The recordings in the entrustment mahazar or trap mahazar do not indicate any demand and acceptance. The Phenolphthalein test was conducted from swab taken from the back seat and no hand wash is done with sodium bicarbonate. The complainant is a habitual complainant and has filed several complaints against employees of BESCO. Based upon all these, the learned senior counsel would submit that this also falls within the category of failed trap.

6. Per contra, the learned Special Public Prosecutor Sri B.B. Patil appearing for the Lokayukta would vehemently contend that all the ingredients that are necessary for demand and acceptance are present in the case at hand. Demand is proved. The car in which the complainant and the petitioner were travelling did contain the cash. The cash was in the back seat. The trap was laid when all of them were in the car. Whether hand wash was done with sodium bicarbonate or without sodium bicarbonate is a matter of trial. *Prima facie* there is both demand and acceptance in the case at hand. The learned counsel would further contend that merely because the complainant is a habitual complainant or has registered several complaints does not mean that the proceedings at the stage of investigation should be quashed. Both, the learned senior counsel for the petitioner and the learned Special Public Prosecutor Sri B.B. Patil place reliance upon several judgments of the Apex Court and that of this Court, all of them would bear consideration *qua* their relevance in the course of the order.

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

8. The afore-narrated facts are borne out from the pleadings, the complaint or the trap mahazar. Therefore, they would not be necessary to be reiterated again. Since the entire issue has triggered from registration of the complaint, I deem it appropriate to notice the complaint so registered by the 2nd respondent. It reads as follows:

“ರವರಿಗೆ,
06/04/2024

ದಿನಾಂಕ:

ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು,
ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ,
ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ ಜಿಲ್ಲೆ,
ಬೆಂಗಳೂರು.

ಇಂದ,

ಚಂದನ್‌ಕುಮಾರ್ ಎಸ್. ಬಿನ್ ಶ್ರೀರಾಮ್ ಡಿ., 28 ವರ್ಷ, ಒಕ್ಕಲಿಗರು, ವರ್ಕ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್,
ಶ್ರೀ ಚಕ್ರ ಎಲೆಕ್ಟ್ರಿಕಲ್ಸ್, ವಾಸ : # 29, 4ನೇ ಮುಖ್ಯ ರಸ್ತೆ, 3ನೇ ಕ್ರಾಸ್, ನಾಗನಹಳ್ಳಿ,
ಕೆ.ಆರ್. ಪುರಂ ಅಂಚೆ, ಬೆಂಗಳೂರು-77. ಮೊಬೈಲ್ ನಂ. 8892535418.

ಮಾನ್ಯರೆ,

ವಿಷಯ:- ಯತೀಶ್ ಪಾಳೇಗಾರ್, ಸಹಾಯಕ ಅಭಿಯಂತರರು ರವರ ವಿರುದ್ಧ ದೂರು
ಸಲ್ಲಿಸುತ್ತಿರುವ ಬಗ್ಗೆ.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ಕೋರುವುದೇನೆಂದರೆ, ನಾನು ಈಗ್ಗೆ 2 ವರ್ಷಗಳಿಂದ ಶ್ರೀ ಚಕ್ರ ಎಲೆಕ್ಟ್ರಿಕಲ್ಸ್ ನಲ್ಲಿ ವರ್ಕ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುತ್ತೇನೆ. ನಮ್ಮ ಎಲೆಕ್ಟ್ರಿಕಲ್ಸ್ ನಲ್ಲಿ ಬೆಂಗಳೂರು ವಿಧ್ಯುತ್ ಶಕ್ತಿ ಸರಬರಾಜು ಕಂಪನಿ ರವರಿಂದ ಗ್ರಾಹಕರಿಗೆ ವಿಧ್ಯುತ್ ಸಂಪರ್ಕ ಕಲ್ಪಿಸುವ ಗುತ್ತಿಗೆ ತೆಗೆದುಕೊಂಡು ಕೆಲಸ ಮಾಡಿಸಿಕೊಡುತ್ತೇವೆ. ನಮ್ಮ ಮಾಲೀಕರಾದ ಶ್ರೀ. ಪ್ರತಾಪ್ ಬಿ. ಎನ್. ರವರು ತಮ್ಮ ಕೆಲಸದ ಒತ್ತಡದಿಂದ ನನಗೆ ಕ್ಲಿಪ್ಪುರ ಬೆಸ್ಕಾಂ ಉಪ ವಿಭಾಗದ ವ್ಯಾಪ್ತಿಯ, ಅಗರ ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ (ಓ & ಎಂ) ವ್ಯಾಪ್ತಿಗೆ ಬರುವ ಇಬ್ಬರು ಗ್ರಾಹಕರಿಗೆ ವಿಧ್ಯುತ್ ಸಂಪರ್ಕವನ್ನು ಬೆಸ್ಕಾಂನಿಂದ ಕಲ್ಪಿಸಿಕೊಡಲು ನನಗೆ ಅಧಿಕಾರ ಪತ್ರವನ್ನು ನೀಡಿರುತ್ತಾರೆ. ಅದರಂತೆ ನಾನು ಕ್ಲಿಪ್ಪುರ ಉಪ ವಿಭಾಗಕ್ಕೆ ತೆರಳಿ ನನಗೆ ಅಧಿಕಾರ ಪತ್ರದಲ್ಲಿ ನೀಡಿದ್ದ 1] ವೆಂಕಟೇಶ್ ಎಸ್. ಸೈಟ್ ನಂ. 1, ಖಾತಾ ನಂ. 61/4, ಹೊಸ ನಂ. 61, 4ನೇ ಬ್ಲಾಕ್, ಅಗರ ವಿಲೇಜ್, ಕೆಂಗೇರಿ ಹೋಬಳಿ, ಬೆಂಗಳೂರು-61. 2] ಅಜಯ್ ಕುಮಾರ್, ನಂ. 61/4, ಶ್ರೀ ಅನ್ನಪೂರ್ಣೇಶ್ವರಿ ನಗರ, ಅಗರ ವಿಲೇಜ್, ಕೆಂಗೇರಿ ಹೋಬಳಿ, ಬೆಂಗಳೂರು-61 ರವರಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಎರಡೂ ಅರ್ಜಿಗಳನ್ನು ದಿನಾಂಕ: 09/02/2024 ರಿಜಿಸ್ಟರ್ ಮಾಡಿಸಿ ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಸಂಬಂಧಪಟ್ಟ ಕಂದಾಯ ದಾಖಲಾತಿಗಳೊಂದಿಗೆ ಉಪ ವಿಭಾಗ ಕಛೇರಿಗೆ ನೀಡಿರುತ್ತೇನೆ.

ಅರ್ಜಿಯನ್ನು ರಿಜಿಸ್ಟರ್ ಮಾಡಿಸಿದ ಒಂದು ವಾರದಲ್ಲಿ ಕಡತವನ್ನು ಓ & ಎಂ ಕಛೇರಿಯಿಂದ ಉಪ ವಿಭಾಗ ಕಛೇರಿಗೆ ಕಳುಹಿಸಬೇಕಾಗಿರುತ್ತದೆ ಆದರೆ ಒಂದು ವಾರ ಕಳೆದೂ ನನ್ನ ಕಡತವನ್ನು ಉಪ-ವಿಭಾಗ ಕಛೇರಿಗೆ ಕಳುಹಿಸದೇ ಬಾಕಿ ಇಟ್ಟ ಕಾರಣ ನಾನು ದಿನಾಂಕ: 22/02/2024 ರಂದು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 2:30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಸಮಯದಲ್ಲಿ ನನ್ನ ಮೊಬೈಲ್ ನಂ. 8892535418 ರಿಂದ ಯತೀಶ್ ಪಾಳೇಗಾರ್, ಸಹಾಯಕ ಅಭಿಯಂತರರು, ಬೆಸ್ಕಾಂ, ಅಗರ ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ (ಓ' & ಎಂ) ಕಛೇರಿ ರವರ ಮೊಬೈಲ್ ನಂಬರ್ 9449600819 ಗೆ ಕರೆ ಮಾಡಿ ನಾನು ಸಲ್ಲಿಸಿರುವ ಅರ್ಜಿಗಳ ಪ್ರಗತಿಯ ಬಗ್ಗೆ ವಿಚಾರ ಮಾಡಲಾಗಿ ನನಗೆ ಮೀಟಿಂಗ್ ಇದೆ 4:00 ಗಂಟೆಯ ನಂತರ ನಾನು ಓ & ಎಂ ಕಛೇರಿಯಲ್ಲಿರುತ್ತೇನೆ ಬಂದು ಭೇಟಿ ಮಾಡಿ ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ನಂತರ ನಾನು ಸಂಜೆ ಸುಮಾರು 5:00 ಗಂಟೆಗೆ ಯತೀಶ್ ಪಾಳೇಗಾರ್ ರವರನ್ನು ಭೇಟಿಮಾಡಿದಾಗ ಅವರು ಪೂರ್ತಿ ಕೆಲಸವನ್ನು ನನ್ನ ಕಡೆಯ ಗುತ್ತಿಗೆದಾರರಾದ ಸತೀಶ್ ರವರಿಗೆ ಕೊಡಿ. ಅವರು ನಿಮ್ಮನ್ನು ಸಂಪರ್ಕಿಸುತ್ತಾರೆ ಎಂದು ಹೇಳಿ ಕಳುಹಿಸಿದರು.

ದಿನಾಂಕ: 26/02/2024 ರಂದು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 2:00 ಗಂಟೆಗೆ ಸತೀಶ್ ರವರು ಮೊಬೈಲ್ ನಂ. 6363600478 ರಿಂದ ನನ್ನ ಮೊಬೈಲ್ ನಂಬರ್‌ಗೆ ಕರೆ ಮಾಡಿ ವೆಂಕಟೇಶ್ ರವರ ವಿಧ್ಯುತ್ ಸಂಪರ್ಕಕ್ಕೆ ಮೂರು ಲಕ್ಷ ಆಗುವುದು, ಅಜಯ್ ಕುಮಾರ್ ರವರ ವಿಧ್ಯುತ್ ಸಂಪರ್ಕಕ್ಕೆ ಎರಡು ಲಕ್ಷ ಆಗುವುದು ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ. ಆಗ ನಾನು ಐದು ಲಕ್ಷ ಜಾಸ್ತಿ ಆಗುತ್ತದೆ ನಾನು ಎ.ಇ ರವರ ಹತ್ತಿರವೇ ಮಾತನಾಡುತ್ತೇನೆ ಎಂದು ತಿಳಿಸಿದೆನು. ನಂತರ ಅದೇ ದಿನ ಸಂಜೆ ಸುಮಾರು 4:00 ಗಂಟೆಗೆ ನಾನು ಯತೀಶ್ ಪಾಳೇಗಾರ್ ರವರಿಗೆ ಕರೆ ಮಾಡಿದಾಗ ಅವರು ನಾನೇ ಕರೆ ಮಾಡುತ್ತೇನೆಂದು ಕರೆಯನ್ನು ಸ್ವೀಕರಿಸಿ, ನಂತರ ಸುಮಾರು 4:30 ಗಂಟೆಗೆ ಯತೀಶ್ ಪಾಳೇಗಾರ್ ರವರು ನನಗೆ

ಕರೆಮಾಡಿದ್ದು. ಆಗ ನಾನು ಸತೀಶ್ ರವರು ನನ್ನ ಕೆಲಸಕ್ಕೆ ಐದು ಲಕ್ಷ ಕೇಳುತ್ತಿರುತ್ತಾರೆ. ಅದು ಜಾಸ್ತಿ ಆಯಿತು ಸ್ವಲ್ಪ ಕಡಿಮೆ ಮಾಡಿಕೊಳ್ಳಿ ಎಂದು ಕೇಳಿದನು, 'ಆಗ ಅವರು ಸತೀಶ್ ರವರನ್ನು ಮತ್ತೊಮ್ಮೆ ಕೇಳಿ ಎಂದು ಹೇಳಿದರು. ನಾನು ಸತೀಶ್ ರವರನ್ನು ಸಂಪರ್ಕಿಸಿರುವುದಿಲ್ಲ..

ನಂತರ ದಿನಾಂಕ: 05/03/2024 ರಂದು ನಾನು ಅಗರ ಓ & ಎಂ ಕಛೇರಿ ಬಳಿ ಹೋಗಿ ಸಂಜೆ ಸುಮಾರು 5:00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಎ.ಇ ಯತೀಶ್ ಪಾಳೇಗಾರ್ ರವರಿಗೆ ಕರೆ ಮಾಡಿದಾಗ ನಾನು ಇಲ್ಲೇ ಸಮೀಪದಲ್ಲಿ ಯು.ಜಿ ಕೇಬಲ್ ಅನ್ನು ಅಳವಡಿಸುವ ಕೆಲಸ ಮಾಡಿಸುತ್ತಿದ್ದೇನೆ ಬಂದು ಭೇಟಿ ಮಾಡಿ ಎಂದು ತಿಳಿಸಿದರು. ಅದರಂತೆ ನಾನು ಅವರನ್ನು ಭೇಟಿ ಮಾಡಿದಾಗ ನನ್ನನ್ನು ಅಲ್ಲೇ ಸಮೀಪದಲ್ಲಿದ್ದ ವೈಷ್ಣವಿ ಪ್ಯಾಲೇಸ್ ಹೋಟೆಲ್‌ಗೆ ಕರೆದುಕೊಂಡು ಹೋದರು, ಅಲ್ಲಿ ನಾನು ನನ್ನ ಕೆಲಸದ ಬಗ್ಗೆ ಮಾತನಾಡುತ್ತಾ ಐದು ಲಕ್ಷ ಜಾಸ್ತಿ ಆಗುತ್ತದೆ ಎಂದು ಹೇಳಿದಾಗ ಅವರು ಆಯ್ಕೆ ಅಂತಿಮವಾಗಿ 3 ಲಕ್ಷದ 80 ಸಾವಿರ ತೆಗೆದುಕೊಂಡು ಬನ್ನಿ ನಿಮ್ಮ ಕೆಲಸ ಮಾಡಿಕೊಡುತ್ತೇನೆ ಎಂದು ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟರು. ನನಗೆ ನ್ಯಾಯಯುತವಾಗಿ ಆಗಬೇಕಾದ ಸರ್ಕಾರಿ ಕೆಲಸಕ್ಕೆ ಲಂಚ ನೀಡಲು ಇಷ್ಟ ಇಲ್ಲದಿದ್ದರೂ ಹಣ ಹೊಂದಿಸಿಕೊಂಡು ಬರುತ್ತೇನೆ ಎಂದು ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇನೆ, ಈ ಸಮಯದಲ್ಲಿ ನಡೆದ ಸಂಭಾಷಣೆಯನ್ನು ನಾನು ನನ್ನ ಬಳಿ ಇದ್ದ ವಾಯ್ಸ್ ರೆಕಾರ್ಡ್‌ನಲ್ಲಿ ರೆಕಾರ್ಡ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ.

ನಂತರ ದಿನಾಂಕ : 03/04/2024 ರಂದು ಸಂಜೆ ಸುಮಾರು 4:20 ಗಂಟೆಗೆ ಎ.ಇ ಯತೀಶ್ ಪಾಳೇಗಾರ್ ರವರಿಗೆ ಕರೆ ಮಾಡಿ ನನ್ನ ಕೆಲಸದ ಬಗ್ಗೆ ವಿಚಾರ ಮಾಡಿದಾಗ ಅವರು ನಾನು ಸೋಮವಾರ ಸಿಗುತ್ತೇನೆ ಎಂದು ತಿಳಿಸಿದರು. ಸದರಿ ಸಂಭಾಷಣೆಯನ್ನು ನಾನು ನನ್ನ ಮೊಬೈಲ್ ನಲ್ಲಿ ರೆಕಾರ್ಡ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ.

ಈ ದಿನ ಯತೀಶ್ ಪಾಳೇಗಾರ್ ರವರು ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ ರೂ. 3 ಲಕ್ಷದ 80 ಸಾವಿರ ಲಂಚದ ಹಣವನ್ನು ಹಣ ಹೊಂದಿಸಿಕೊಂಡು ಬಂದಿದ್ದು, ಸದರಿ ಹಣ ನನ್ನ ಬಳಿ ಇದ್ದು ನೀವು ಕೇಳಿದಾಗ ಹಾಜರುಪಡಿಸುತ್ತೇನೆ.

ದೂರಿನೊಂದಿಗೆ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ ಬಗ್ಗೆ ನನ್ನ ಮೊಬೈಲ್ ಫೋನ್ ನಲ್ಲಿ ರೆಕಾರ್ಡ್ ಮಾಡಿರುವ ರೆಕಾರ್ಡ್‌ಗಳು ಮತ್ತು ವಾಯ್ಸ್ ರೆಕಾರ್ಡ್ ಅನ್ನು ಮತ್ತು ನಮ್ಮ ಮಾಲೀಕರಾದ ಶ್ರೀ. ಪ್ರತಾಪ್ ಬಿ. ಎನ್. ರವರು ಕ್ಲಿಪ್‌ನಲ್ಲಿ ಬೆಸ್ಕಾಂ ಉಪ ವಿಭಾಗದ ವ್ಯಾಪ್ತಿಯ, ಅಗರ ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ (ಓ & ಎಂ) ವ್ಯಾಪ್ತಿಗೆ ಬರುವ ಇಬ್ಬರು ಗ್ರಾಹಕರಿಗೆ ವಿದ್ಯುತ್ ಸಂಪರ್ಕವನ್ನು ಬೆಸ್ಕಾಂನಿಂದ ಕಲ್ಪಿಸಿಕೊಡಲು ನನಗೆ ನೀಡಿರುವ ಅಧಿಕಾರ ಪತ್ರದ ಜೆರಾಕ್ಸ್ ಪ್ರತಿಯನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ.

ನ್ಯಾಯಯುತವಾಗಿ ಮಾಡಬೇಕಾದ ಸರ್ಕಾರಿ ಕೆಲಸಕ್ಕೆ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ ಶ್ರೀ. ಯತೀಶ್ ಪಾಳೇಗಾರ್, ಸಹಾಯಕ ಅಭಿಯಂತರರು, ಬೆಸ್ಕಾಂ, ಅಗರ ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ (ಓ & ಎಂ) ಕಛೇರಿ, ಬೆಂಗಳೂರು ರವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,
ಸಹಿ/-."

Based upon the said complaint a crime in Crime No.3 of 2024 comes to be registered for offences punishable under Section 7(a) of the Act. Pursuant to registration of crime, a pre-trap mahazar is drawn. The pre-trap mahazar contains the conversation between the petitioner and the complainant. **After the conversation, it appears that the petitioner directed the complainant to come to Venkateshwara Sweetmeat Stall and all of them get into the car in which the complainant and another were at the rear seat and the petitioner gets into the front seat along with the driver. It is at that time the trap is laid. The trap results in recovery of ₹3,80,000/- kept in a cover and the denominations are also indicated in the trap mahazar. Therefore, the recovery of amount, in the case at hand, is from a vehicle in which the petitioner and the driver and two others were travelling.** Whether this would meet the ingredients of the proof of demand and acceptance *albeit, prima facie*, is what is required to be considered.

9. Since both the learned senior counsel for the petitioner and the learned Special Public Prosecutor for the 1st respondent have relied on several judgments of the Apex Court and that of this Court, I deem it appropriate to notice the law with regard to interpretation of Sections 7, and 7(a) of the Act as elucidated by the Apex Court, both in the pre-amendment and post-amendment. The provisions of the Act that are alleged are as follows:

"7. Offence relating to public servant being bribed.—Any public servant who,—

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or**
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

- (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.]

7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

... ..
12. Punishment for abetment of offences.—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a

term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.

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

- (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
- (b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression “known sources of income” means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.”

(Emphasis supplied)

Section 7 directs that any public servant who accepts or attempts to obtain from any person undue advantage with an intention to perform or cause performance of public duty or to forbear such performance either by himself or by another public servant is said to have committed the offence of bribe. Therefore the soul of

Section 7(a) is demand and acceptance for the performance of public duty or forbearance of such performance. Section 7A deals with taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence. The section mandates that whoever accepts or obtains or attempts to obtain from another person for himself or for any other person undue advantage for performance of a public duty or its forbearance is amenable for punishment. Here again it should be demand and acceptance by himself or through some other person. Section 12 deals with abatement of offence which cannot be applicable to the petitioner. Section 13(2) deals with punishment for criminal misconduct. Criminal misconduct is defined in Section 13(1)(a) that whoever dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or enriches himself illicitly during the period of his office. These are the offences alleged against the petitioner. Since the soul is Section 7 either under the un-amended Act or under the amended Act, the interpretation of Section 7(a) or Section 7A by the Apex Court qua un-amended Act or the amended Act is germane to be noticed.

INTERPRETATION UNDER THE UN-AMENDED ACT:

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

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

(Emphasis supplied)

In the case of **N.VIJAYAKUMAR v. STATE OF TAMILNADU**² the Apex Court holds as follows:

“26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the

¹ (2014) 13 SCC 55

² (2021) 3 SCC 687

case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

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

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

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had

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

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

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is

not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

(Emphasis supplied)

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

"10. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. **The proof of demand of bribe by a public servant and its acceptance by him is sine qua non for establishing the offence under Section 7 of the PC Act.**

11. In P. Satyanarayana Murthy v. State of A.P. [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] , this Court has summarised the well-settled law on the subject in para 23 which reads thus : (SCC p. 159)

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence

³ (2022) 4 SCC 574

thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

(emphasis supplied)

....

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

"I did not state to ACB Inspector in Section 161 CrPC statement that on the evening of 24-2-2000 I met the AO and that she demanded the bribe. I did not mention in Ext. P-3 complaint that continuously for 3 days after 24-2-2000 I met the AO and the AO reiterated her demand. I did not mention in Ext. P-3 complaint that on 29-2-2000 I approached the AO and the AO demanded bribe of Rs 3000 and that unless I pay the said bribe amount she will not issue final assessment orders. I did not state in my Section 164 statement before the Magistrate that 13-3-2000 to 16-3-2000 I was on leave and from 1-3-2000 to 12-3-2000, I was engaged in recovering the dues of the society. It is not true to suggest that I did not meet the AO continuously 3 days i.e. on 25-2-2000, 26-2-2000 and 27-2-2000 and that 27-2-2000 is Sunday. It is not true to suggest that I did not meet the AO in the evening of 24-2-2000 and that AO

did not demand any money from me. I did not state in my Section 161 CrPC statement to Inspector of ACB that before I left the office of DSP on the date of trap I made a phone call enquiring about the availability of AO and the AO was in the office and informed me that she should be available in the office from 6.00 to 7.00 p.m. on that day so also in my Section 164 CrPC. I made such a phone call from the office of the DSP, ACB. I do not remember as to from which phone number I made phone call on that day. I cannot describe office telephone number of the AO. It is not true to suggest that I did not make any such phone call to AO and that she did not give any such reply to me. I did not state to ACB Inspector in my Section 161 CrPC statement or to the Magistrate in my Section 164 CrPC statement that I went inside the office of AO and I wished AO and at that time apart from AO some other person was found in the office room of AO and that he was talking to the AO and that the AO offered me a chair and that after discussion with the AO the said person left the room of AO and then I informed the AO that I brought the bribe amount. I did not state that said aspects to DSP during the post trap proceedings also.”

(emphasis supplied)

(Emphasis supplied)

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

JUDGMENTS POST AMENDMENT:

11. The Apex Court has further interpreted Section 7(a) post amendment in the case of **NEERAJ DUTTA v. STATE (GOVT. OF N.C.T. OF DELHI**⁴ and holds as follows:

"... .."

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

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

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

⁴ 2023 SCC OnLine SC 280

but which may extend to seven years and shall also be liable to fine.

Explanations.-

- (a) "Expecting to be a public servant"- If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.
- (b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
- (c) "Legal remuneration"- The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
- (d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
- (e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

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

"13. Criminal misconduct by a public servant.—

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

- (a)
- (b)
- (c)
- (d) if he,-

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

- (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

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

- (e)"

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

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

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

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

- (b) **In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.**
- (c) **Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.**
- (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:
 - (i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.
 - (ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a **case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.
 - (iii) **In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more**

would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. **Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.**

- (e) **The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof.** On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.
- (f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.
- (g) **In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.** The said presumption has to

be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.

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

(emphasis added)

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

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

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

(emphasis added)

13. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj¹ and P. Satyanarayana Murthy². There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu⁵, which follows the view taken in the cases of B. Jayaraj¹ and P. Satyanarayana Murthy².

In paragraph 9 of the decision in the case of B. Jayaraj¹, this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:

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

(emphasis added)

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

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

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

(emphasis added)

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

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

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

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

consider whether there is any circumstantial evidence to prove the demand.”

(Emphasis supplied)

Subsequent to **NEERAJ DUTTA’S** case the Apex Court in the case of **SOUNDARAJAN v. STATE**⁵ has held as follows:

“FINDING ON PROOF OF DEMAND

9. We have considered the submissions. It is well settled that for establishing the commission of an offence punishable under Section 7 of the PC Act, proof of demand of gratification and acceptance of the gratification is a sine qua non. Moreover, the Constitution Bench in the case of Neeraj Dutta³ has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.

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

11. Now, we turn to the evidence of the shadow witness (PW-3). In the examination-in-chief, he stated that the

⁵ (2023) SCC OnLine SC 424

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

12. There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved.”

(Emphasis supplied)

The Apex Court in the case of **NEERAJ DUTTA** *supra* was clarifying and interpreting the judgment in the case of **NEERAJ DUTTA** which was rendered by a Constitution Bench and further holds that proof of demand and acceptance of gratification is sine qua non for any allegation under Section 7 of the Act, be it pre-amendment or post-amendment. This is reiterated in the case of **SOUNDARAJAN** *supra*.

12. The Apex Court, in its latest judgment, in the case of **AMAN BHATIA v. STATE (GNCT OF DELHI)**⁶, while considering the purport of Section 7 of the Act has held as follows:

“....”

51. In *C.K. Damodaran Nair v. Govt. of India*, (1997) 9 SCC 477, this Court, although interpreting the term “accept” in the context of the 1947 Act, observed that “accept” means to take or receive with a consenting mind. In contrast, “obtain” was understood to imply securing or gaining something as a result of a request or effort. In both instances, a demand or request by the receiver is a prerequisite for establishing an offence under Sections 7 and 13(1)(d) of the PC Act.

52. It is well-settled that mere recovery of tainted money, by itself, is insufficient to establish the charges against an accused under the PC Act. To sustain a conviction under Sections 7 and 13(1)(d) of the Act respectively, it must be proved beyond reasonable doubt that the public servant voluntarily accepted the money, knowing it to be a bribe. The courts have consistently reiterated that the demand for a bribe is sine qua non for establishing an offence under Section 7 of the PC Act.

53. A five-Judge Bench of this Court in *Neeraj Dutta v. State (Government of NCT of Delhi)*, (2023) 4 SCC 731, categorically held that an offer by bribe-giver and the demand by the public servant have to be proved by the prosecution as a fact in issue for conviction under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. Mere acceptance of illegal gratification without proof of offer by bribe-giver and demand by the public servant would not make an offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. The relevant observations are reproduced hereinbelow:

⁶ 2025 SCC OnLine SC 1013

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

- (i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.
- (ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.
- (iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act."

(Emphasis supplied)

54. It was further explained by this Court in P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152, as follows:

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof,

unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

(Emphasis supplied)

55. From the above exposition of law, it may be safely concluded that mere possession and recovery of tainted currency notes from a public servant, in the absence of proof of demand, is not sufficient to establish an offence under Sections 7 and 13(1)(d) of the PC Act respectively. Consequently, without evidence of demand for illegal gratification, it cannot be said that the public servant used corrupt or illegal means, or abused his position, to obtain any valuable thing or pecuniary advantage in terms of Section 13(1)(d) of the PC Act.

56. The present case is not one of an "offer to pay by the bribe-giver" where, in the absence of any demand from the public servant, the mere acceptance of illegal gratification would constitute an offence under Section 7 of the PC Act. The expression "offer" indicates that there is a conveyance of an intention to give, which must be communicated and understood by the recipient, leading to meeting of minds. Consequently, the offer is accepted. For such an acceptance to constitute an offence under Section 7, there must be clear and cogent evidence establishing that the public servant was aware of the offer and accepted it voluntarily, knowing it to be illegal gratification. In other words, even where there is no express demand, the bribe-giver and the bribe-taker must be shown to have been ad idem as regards the factum of offer of bribe.

57. By applying the abovementioned principles to the evidence on record, we are of the considered view that, having regard to material inconsistencies in the testimony of the complainant and the testimony of the panch witness, the allegation of demand by the appellant herein does not emerge clearly, let alone being proved beyond reasonable doubt.

58. Undoubtedly, when dealing with a wholly reliable witness, the court faces no difficulty in reaching a conclusion, it may convict or acquit solely on the basis of such testimony, provided it is free from any suspicion of interestedness, incompetence, or subordination. Similarly, in the case of a wholly unreliable witness, the court again faces no ambiguity in discarding the testimony. The real challenge arises when the witness is neither wholly reliable nor wholly unreliable. In such situations, the court must proceed with caution and seek corroboration in material particulars, whether through direct or circumstantial evidence. The court's duty to act on the testimony of a single witness arises when it is satisfied, upon a careful perusal of the testimony, that it is free from all taints and suspicions. [See: *VediveluThevar v. State of Madras*, 1957 SCC OnLine SC 13; *State of Madhya Pradesh v. Balveer Singh*, 2025 SCC OnLine SC 390]."

(Emphasis supplied)

The Apex Court also considers the presumption under Section 20 of the Act and holds on examination of evidence, the prosecution has failed to establish the guilt beyond reasonable doubt. The Apex Court has held as follows:

"...."

v. Presumption under Section 20 of the PC Act

64. Insofar as the presumption under Section 20 of the PC Act is concerned, such presumption is drawn only qua the offence under Sections 7 and 11 respectively and not qua the offence under Section 13(1)(d) of the PC Act. The presumption is contingent upon the proof of acceptance of illegal gratification to the effect that the gratification was demanded and accepted as a motive or reward as contemplated under Section 7 of the PC Act.

Such proof of acceptance can follow only when the demand is proved.

65. In that case, the prosecution evidence alone cannot be considered for the purpose of coming to the conclusion. The evidence led by the prosecution and, the suggestions made by the defence witnesses, if any, are also required to be considered. It is then to be seen as to whether the total effect of the entire evidence led before the court is of a nature by which the only conclusion possible was that the public servant accepted the amount. If the answer is in affirmative, then alone it can be held that the prosecution established the case beyond reasonable doubt.

66. Undoubtedly, the presumption under Section 20 arises once it is established that the public servant accepted the gratification. However, in determining whether such acceptance occurred, the totality of the evidence led at the trial must be appreciated. The evidence led by the prosecution, the suggestions made by the defence witnesses, if any, the entire record is required to be considered. Only if the cumulative effect of all the evidence is such that the sole possible conclusion is that the public servant accepted the gratification can it be said that the prosecution has established its case beyond reasonable doubt."

(Emphasis supplied)

On a coalesce of the judgments rendered by the Apex Court, as quoted supra, the soul of Section 7 is demand and acceptance. The unmistakable inference on the interpretation, in the considered view of the Court would be, if there is demand, but no acceptance it would not make an offence under Section 7. If there is acceptance but no

demand, it would then also make no offence under Section 7. An act alleged under Section 7 should have the ingredients of demand and acceptance and it is for the performance of a public duty or forbearance from performance. Therefore, demand and acceptance should be for the purpose of performance of some duty.

APPLICABILITY OF THE LAW TO THE FACTS OF THE CASE:

13. The complaint is quoted hereinabove. The complaint is vivid in minute details of what the petitioner had demanded and the reason for demand. It is the petitioner who had directed the complainant to come with the money of ₹3,80,000/- to Venkateshwara Sweetmeat Stall. **All the four sit in a car. Pre-trap mahazar had already been drawn and panch witnesses were secured. The trap was laid when the complainant and another, the driver and the petitioner were in the car. Money is recovered from the car. The trap panchanama is drawn. The trap panchanama indicates recovery of ₹3,80,000/- from the vehicle of the petitioner in which the complainant**

was seated in the rear seat. If the petitioner had not demanded money, it is understandable as to why the complainant would come to Venkateshwara Sweetmeat Stall with the money unless directed by the petitioner. Therefore, there is *prima facie* demand in the case at hand. Recovery is made from the car. The complainant was holding the cash. The recovery was made at the time when the petitioner was accepting the cash. Phenolphthalein test turned, the hands, of the petitioner to pink colour. The swab was taken at the spot from the hands. All these would *prima facie* lead to an inference that the petitioner has demanded and accepted the bribe. At the time of acceptance, he was caught. Work pending or otherwise is immaterial, as it is today no law that only if the work is pending inference can be drawn on demand and acceptance. As that has now been watered down by the Apex Court in the Seven Judge Bench judgment in the case of **SITA SOREN v. UNION OF INDIA** reported in **(2024) 5 SCC 629**. Therefore, whether work is pending or otherwise is immaterial for the allegation of proof of demand and acceptance.

14. The case at hand involves a maze of facts. *Prima facie* evidence is goaded against the petitioner. Applying the law as laid down by the Apex Court in the afore-quoted judgments to the facts of the case would lead to a solitary conclusion that there is *prima facie* proof of demand and acceptance. When *prima facie* proof exists of demand and acceptance, and there is recovery of money, the subject crime cannot be said to be emerging from a failed trap. It becomes a matter of investigation, in the least, by the 1st respondent/Police. There is no warrant to interfere in the case at hand at the stage of investigation.

15. In the light of the preceding analysis, this petition lacking in merit stands **rejected**. Interim order of any kind subsisting shall stand dissolved.

It is made clear that the observations made in the course of this order are only for the purpose of consideration of the case of the petitioner under Article 226 of the Constitution of India read

with Section 482 of the Cr.P.C., and would not influence the investigation against the petitioner.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ/SS