



2025:CGHC:29642

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 52 of 2018

Lavan Singh Churendra S/o Late Shri Indrajeet Singh Aged About 53 Years Mandal Sanyozak, Adim Jati Kalyan Vibhag, Office Of Block Education Officer Gariyaband Chhattisgarh Permanent Address Khamhartola P. S. Dalli Rajhara Distt. Balod Chhattisgarh

... Appellant(s)

versus

State Of Chhattisgarh Through Police Station A. C. B. Raipur District Raipur Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. Anurag Dayal Shrivastava, Advocate.
For Respondent(s) : Ms. Ankita Shukla, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice
Judgment on Board

01/07/2025

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 20.12.2017 passed by the Special Judge (Anti-Corruption) Raipur, District Raipur (C.G.) in Special Case No.43/2015, whereby the appellant has been convicted and sentenced in following manner :-

| CONVICTION | SENTENCE |
|--|---|
| Under Section 7 of Prevention of Corruption Act, 1988. | RI for 2 years and fine of Rs.20,000/-, in default of payment |

| | |
|--|---|
| | of fine to further undergo RI for 3 months. |
| Under Section 13 (1)(D) read with Section 13(2) of Prevention of Corruption Act, 1988. | RI for 2 years and fine of Rs.20,000/-, in default of payment of fine to further undergo RI for 3 months. |
| (Both the sentences were directed to be run concurrently) | |

2. Conviction is impugned on the ground that without there being any iota of evidence of demanding and accepting illegal gratification other than legal remuneration by the public servant by abusing his office, the Special Judge has convicted & sentenced the appellant as aforementioned and thereby committed illegality.
3. Case of the prosecution, in brief, is that Baijnath Netam (hereinafter referred to as "complainant") was working as a Shiksha Karmi Grade-II at Government Upper Primary School, Madanpur and was also the In-charge of the Pre-Matric Tribal Hostel. The hostel had 44 students residing in it, and their monthly stipend of Rs.28,600/- was sanctioned by the Mandal Coordinator, Gariaband. The accused / appellant demanded a bribe of Rs.10,000/- for sanctioning the stipend for January, 2013 and threatened that if the amount was not paid, he would not sanction the stipend for February, 2013. The complainant paid Rs.2,000/- immediately and promised to pay the remaining Rs.8,000/- later, to which the accused agreed. However, the complainant did not want to pay the bribe and wanted to catch the accused red-

handed. Therefore, he filed a written complaint before the Superintendent of Police, Anti-Corruption Bureau, Raipur, on 22.01.2013. To verify the complaint, the complainant was instructed to record his conversation with the accused regarding the bribe demand. The complainant informed Deputy Superintendent of Police B.S. Paikra about the recorded conversation *via* phone. Due to the complainant's village being far from Raipur, he could not come to Raipur and instead asked DSP Paikra to meet him at Loya Poultry Farm, Bhilai Road, Gariaband, on 01.02.2013. Two gazetted officers, Shri B.R. Sahu, Sub-Divisional Officer, Janpad Panchayat, Arang, and Shri Rajendra Prasad Dubey, Assistant Engineer, Project Director, Chhattisgarh Irrigation Development Project, were appointed as panchnama witnesses after sending a letter to the Collector, Raipur. Based on the complaint submitted by the complainant, a case was registered under Section 7 of the Prevention of Corruption Act, 1988. On 01.02.2013, a trap team was formed, consisting of DSP B.S. Paikra, Inspector B.S. Rathore, Constable Pawan Pathak, Constable Shivsharan Sahu, Havaldar Chaman Lal Sahu, and drivers Naveen Sahu and Satyanarayan Sahu. They proceeded towards office of the accused in a government vehicle.

4. The complainant met the team at Loya Poultry Farm, Bhilai Road, Gariaband. The team members, complainant, and panchnama witnesses were introduced to each other. The complainant presented a tape recorder and a written complaint, which was

given to the panchnama witnesses to read. They questioned the complainant and made a note on the complaint letter, signing it thereafter. The recording of the conversation regarding the bribe was dubbed, and a CD was prepared. A panchnama was drawn in the presence of the panchnama witnesses, and a zero FIR was registered against the accused. The complainant presented Rs.8,000/- (16 notes of Rs.500/- each) to be given as a bribe, and the numbers of the notes were recorded in the initial panchnama. The constable applied a thin layer of phenolphthalein powder to the bribe notes. A demonstration solution was conducted to illustrate the chemical reaction between sodium carbonate and phenolphthalein, which was explained to all present. The pink-colored solution resulting from this reaction was then sealed and seized as part of the evidence. Meanwhile, the Panch witness thoroughly searched the complainant, preparing a searched Panchnama of the search to ensure the complainant had no other items on him. The powdered bribe note was carefully placed in the back right pocket of the complainant's pants by the Panch witness. The complainant was given specific instructions to hand over the bribe amount only when the accused demanded it, to avoid shaking hands with the accused before and after the giving the bribe amount, not to touch the bribe note beforehand, and to observe where the accused kept the bribe amount after receiving it. These steps were meticulously followed to ensure the integrity of the sting operation and to gather conclusive evidence. The

complainant was also informed that after giving the bribe, he should signal by passing his hand over his head. When the fingers of the Head Constable, who had applied the powder to the notes, were dipped into a colorless aqueous solution of sodium carbonate, the solution turned pink. This was demonstrated to the complainant and the panch witnesses to illustrate that when the accused received the bribe notes from the complainant, phenolphthalein powder particles would stick to his hands, and when his hands were dipped into the solution, the color of the solution would change. A micro tape recorder was provided to the complainant to record the conversation during the bribe transaction, and a panchnama was prepared. The demonstration solution, powder, and constable were left at the office. The preliminary panchnama of the above-mentioned proceedings was prepared at Loya Poultry Farm, Bhilai Road, Gariaband. According to the trap team's plan, the complainant and shadow witness, Naveen Sahu, were sent ahead on a motorcycle, while the other members of the trap team followed in a government vehicle. They reached Gandhi Maidan, Gariaband, in front of the accused's office and dispersed around the office, keeping a watchful eye on the complainant while concealing their presence.

5. The accused / appellant was in his office at the time. The complainant went to the accused's office and handed over the bribe amount, which the accused accepted and put into the back left pocket of his jeans. After some time, the complainant came

out and gave a signal. Upon receiving the signal, the trap team members entered the accused's office, introduced themselves, and apprehended the accused, who became nervous. At the scene, a colorless aqueous solution of sodium carbonate was prepared. The fingers of all team members, except the accused and the complainant, were dipped into the solution one by one, and the solution remained colorless. The solution was then filled into a clean glass vial, sealed with a label bearing the signatures of the panch witnesses. According to the prosecution's case, when the accused's hands were dipped into another aqueous solution of sodium carbonate, the solution turned light pink. This solution was filled into a clean glass vial and preserved as evidence. During questioning by Investigating Officer Paikra about the bribe amount, the accused / appellant stated that he had kept the bribe money in the left pocket of his jeans. In the presence of panch witness B.R. Sahu, a search was conducted, and Rs.8,000/- was recovered. The numbers of the recovered notes matched the numbers of the bribe notes recorded earlier. When the bribe notes were dipped into a solution, the solution turned pink and the solution was then filled into a clean glass vial, sealed with a label bearing the signatures of the panch witnesses. Further, six solutions were prepared, and the portion of the accused's jeans where the bribe amount was kept was dipped into one of the solutions. The solution turned light pink. The solution was then sealed in a clean glass vial with a label bearing

the signatures of the panch witnesses. When the fingers of the complainant's hands were dipped into another colorless aqueous solution of sodium carbonate, the solution turned pink. This solution was also preserved in a clean glass vial. The recovered bribe amount was dried, seized in the presence of witnesses, and sealed in separate envelopes.

6. Documents related to the complainant were seized from the accused's office in the presence of witnesses. The bribe amount, sealed vials of solution, cassette, etc. were also seized. The complainant was asked to hand over the tape recorder, but he reported that it was not working and had not recorded the conversation. The accused was arrested, and his family was informed. A site map of the location was prepared with the help of a patwari. A detailed panchnama of all the proceedings at the site was prepared. Upon submission of the complaint to the ACB Police Station in Raipur, an FIR was registered against the accused under Section 7 of the Prevention of Corruption Act, and further investigation was conducted. The sealed vials of solution were sent to the State Forensic Science Laboratory, Raipur, for chemical analysis, and a positive report was received, confirming the presence of phenolphthalein in the washings of the accused's hands and the bribe notes. During the investigation, statements of witnesses were recorded, and the accused's service book and other documents were seized. Proper sanction for prosecution was obtained against the accused. After completing the

investigation, the charge-sheet was filed before the Court.

7. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. and after completion of investigation, charge sheet was filed before the Special Judge (Anti-Corruption), Raipur.
8. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as eleven witnesses and exhibited the documents (Exs.P-1 to P-46).
9. After consideration, in his statement recorded under Section 313 of the Code of Criminal Procedure, the accused claimed to be innocent and alleged that he had been falsely implicated by the complainant due to a previous animosity. The accused stated that the complainant had submitted a bank scroll for scholarship amount on 08.01.2013, which was approved by the Block Education Officer on the same day. The complainant had withdrawn the amount from the District Cooperative Central Bank on 11.08.2013. The accused further stated that the complainant had made allegations regarding February, 2013, but had not produced any evidence. The accused claimed that since there was no pending work with the complainant, there was no question of demanding a bribe from him. On 28.11.2013, the hostel was inspected by Shri Churendra, Additional Collector, Gariaband, who found very few children present. The accused was directed to investigate the matter and found that the complainant had fraudulently withdrawn Rs.50,700/- by showing absent children as

present. The accused submitted his investigation report to the Additional Collector, who instructed the Assistant Commissioner to take action based on the report. The Assistant Commissioner issued a notice to the complainant, and later, another notice was issued on 25.07.2012, for depositing the amount. Although the complainant did not deposit the amount, no action was taken against him. The accused alleged that due to his investigation, the complainant had falsely implicated him of demanding a bribe. After providing opportunity of hearing to the parties, learned Special Judge (Anti-Corruption), Raipur (C.G.) convicted & sentenced the appellant as aforementioned.

10. The accused also took the defence that the complainant was on strike in December, 2012, called by the union, and due to continuous strike, he was terminated from service by the Chief Executive Officer of the Zilla Panchayat, Raipur. When the accused came to know about the termination, he sent a proposal to the Assistant Commissioner, Tribal Development, to appoint another Superintendent, Tarasingh Sondhi. On that day, the Block Education Officer was in a meeting, so he sent the proposal to the Block Education Officer, who later marked it as "seen". When the complainant came to know about this, he started harboring a grudge against the accused and lodged a complaint with the ACB alleging that the accused had demanded a bribe. The accused claimed that he did not have the authority to grant financial and administrative approval, and he had not demanded a bribe from

the complainant. Instead, the complainant had forcibly put the bribe amount in his pocket. The accused stated that the complainant had no pending work with him. The accused further stated that when he sought guidance from Additional Collector Shri Churendra on how to recover the embezzled amount, he was verbally instructed to deposit the amount in cash. The accused claimed to have sent two reports to the IG, ACB, and SP, ACB, regarding the complainant's termination, but no action was taken. In support of his defence, the accused examined Additional Collector Govind Ram Churendra (DW-1), Dhananjay Prasad Sarthy (DW-2), and Shrikant Dubey (DW-3) as witnesses. The accused also proved 8 documents in evidence.

11. Learned counsel for the appellant submits that the prosecution's case is marred by several inconsistencies and doubts, which make it clear that they have failed to prove the demand of illegal gratification by the appellant. The demand of Rs.10,000/- for recommending a scholarship of Rs.28,600/- seems highly improbable. Furthermore, there are discrepancies in the complainant's statements regarding the purpose of the bribe demand. The complainant initially stated that the demand was for January, 2013 scholarship, but later claimed it was for the entire year 2013. However, evidence shows that the scholarship for January, 2013 had already been withdrawn on 11.01.2013, making it implausible that the demand was related to that month. Additionally, the complainant alleged that he gave Rs.2,000/- to

the appellant immediately after the demand, but this was not mentioned in the first complaint. The prosecution also relied on a transcript of a recorded conversation, but the authenticity of the recording is questionable. The tape recorder was given to the complainant on 22.01.2013, and the conversation was recorded on 23.01.2013, but it was only produced before the ACB on 01.02.2013. The voice samples of the complainant and the appellant were not collected, and the recording was not sent to the Forensic Science Lab to rule out tampering. Moreover, the prosecution failed to provide a certificate under Section 65(b) of the Indian Evidence Act, rendering the recorded conversation and transcript inadmissible as evidence. Given these lacunae, it is clear that the prosecution has failed to prove the demand of illegal gratification by the appellant beyond reasonable doubt.

- 12.** Learned counsel for the appellant further submits that the trial Court's presumption about the appellant's voluntary acceptance of the bribe is unfounded. It is a well-established principle of law that presumptions cannot replace legal proof. In this case, none of the trap party members witnessed or heard the transaction between the complainant and the appellant, making it impossible to presume that the appellant voluntarily accepted the bribe amount. Testimony of panch witness, P.W-3 Bisahu Ram, is significant. He categorically stated that when the appellant inquired about the bribe, he replied that the complainant had forcibly thrust the money into his pocket. This testimony is credible and should not

be discarded. Furthermore, P.W.-3 Bisahu Ram's testimony is corroborated by the statement of late Shri Pandey Babu, who was present in the office and allegedly witnessed the incident. Although Pandey Babu could not be examined due to his death, there is no reason to doubt P.W.-3 Bisahu Ram's testimony regarding Pandey Babu's statement. The appellant's explanation for not accepting the bribe money, which is corroborated by P.W.-3 Bisahu Ram's testimony, appears natural and probable. The appellant's immediate explanation after the incident lends credibility to his version of events. Therefore, the prosecution's case against the appellant is weakened by the lack of concrete evidence and the credibility of the appellant's explanation.

13. Learned counsel for the applicant also submits that the prosecution failed to examine a crucial witness, Naveen Sahu, which warrants an adverse inference under Section 114(g) of the Indian Evidence Act, 1872, against the prosecution in the interest of justice. Furthermore, the trial Court overlooked the significant aspect of false implication due to enmity between the appellant and the complainant. The appellant's statement under Section 313 CrPC clearly highlighted this enmity, which was corroborated by the complainant's own admission. This critical oversight undermines the fairness of the proceedings. Additionally, the prosecution sanction order is flawed, rendering the proceedings *void ab initio*. This is in line with established legal principles, which mandate strict adherence to procedural requirements. The

absence of a valid sanction order compromises the legitimacy of the case against the appellant. He relies upon the judgments of the Hon'ble Supreme Court in the matters of ***B.Jayaraj v. State of A.P. 2014 AIR SCW 2080*** (para 8), ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi), AIR 2023 SC 330*** (para 68) and ***State of Lokayuktha Police, Davanagere v. C.B. Nagaraj, (Criminal Appeal No.1157 of 2025)*** decided on 19.05.2025 (para 25).

14. On the other hand, learned State counsel supported the judgment impugned and argued that in the present case, evidences of complainant Baijnath Netam (PW-7) and panch witness Shri B.R. Sahu, Sub-Divisional Officer, Janpad Panchayat, Arang (PW-3) and other witnesses Shri B.S. Rathore, Inspector (PW-4), Shri Shivsharan Sahu, Constable (PW-10) and Shri Chamanlal Sahu, Havaladar (PW-6) are sufficient for proving the offence against the appellant and the trial Court has rightly convicted & sentenced him as aforementioned.
15. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
16. In order to appreciate the arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the parties.
17. In the present case, it is not disputed that the appellant is public servant. In order to take cognizance for the offence punishable under Section 7 of Prevention of Corruption Act and Section 13 (1)

(D) read with Section 13(2) of Prevention of Corruption Act, sanction for prosecution is *sine qua non*. In the present case, in order to prove such sanction, the prosecution has examined A.K. Singhel (PW-5), who has deposed in his evidence that sanction Ex.P/24 has been accorded by the State Government. Nothing has been asked by the defence to this witness relating to according of sanction. Ex.P/24 sanction order itself is speaking order which reveals that after application of mind, sanctioning authority has accorded sanction.

18. As regards the complicity of the appellant in the crime in question, the case of the prosecution is substantially based on evidences of complainant Baijnath Netam (PW-7) and panch witness Shri B.R. Sahu, Sub-Divisional Officer, Janpad Panchayat, Arang (PW-3) and other witnesses Shri B.S. Rathore, Inspector (PW-4), Shri Shivsharan Sahu, Constable (PW-10) and Shri Chamanlal Sahu, Havaladar (PW-6). Baijnath Netam (PW-7) has deposed in his evidence that he has been working as a Shiksha Karmi Grade-II at Government Primary School, Piparchhedi since 2011, and he was also given the additional charge of Superintendent of Pre-Matric Tribal Boys' Hostel, Madanpur. he recognize the accused, who was working as Mandal Coordinator in Gariaband. There were 44 students residing in the Pre-Matric Tribal Boys' Hostel, Madanpur, and their scholarship amount was Rs.28,600/-, calculated at the rate of Rs.650/- per month. However, the scholarship amount for January 2013 had not been sanctioned,

which required approval from the Mandal Coordinator, Gariaband, and the Block Education Officer. He went to Lavankumar Churendra, the Mandal Coordinator, to get the amount withdrawn, and he demanded a bribe of Rs.10,000/- from him, stating that if he did not pay, the next month's approval would be withheld. He gave him Rs.2,000/- at that time, and the scholarship amount for January was sanctioned. Since he did not want to pay the bribe, he lodged a written complaint with the ACB office on 22.01.2013. The ACB officials gave him a voice recorder and explained how to operate it. He recorded his conversation with the accused regarding the bribe demand. Due to holidays and the distance between Gariaband and Raipur, he kept the recorder with him. On 31.01.2013, he informed the ACB officials that he had recorded the conversation, and they asked him to come on the next day. The accused told him to meet him at 9 A.M. at Loya Poultry Farm, Gariaband. On 01.02.2013, the ACB officials were present at Loya Poultry Farm, and he handed over the second complaint letter and the tape recorder to them. The tape recorder was played, and the conversation was heard by the ACB officials, the accompanying persons, and the panch witness. He gave the ACB officials Rs.8,000.- in 16 notes of Rs.500/- each, which were treated with powder. The officials then searched him and took possession of his belongings. The bribe amount was kept in his pocket, and he was instructed to give a signal by touching his head after handing over the bribe. The ACB officials then gave

him the tape recorder again, and he went to the Block Education Officer's office, Gariaband, along with some officials. He met the accused, handed over the bribe amount, and gave a signal by touching his head. The ACB officials then caught the accused red-handed. The ACB team proceeded with the hand-washing procedure, though he is not entirely sure whose hands were washed. After completing the formalities, they asked him to step aside. The witness confirmed his signature on the site map (Exhibit P-2) and transcript (Exhibit P-20) when shown to him. He also acknowledged his signature on the seizure memo (Exhibit P-28). As part of the investigation, the ACB officials recorded his statement about the incident.

- 19.** At this stage, the Special Public Prosecutor requested permission to cross-examine the witness, citing discrepancies between the witness's current statement and their previous police statement and documents. After reviewing the witness's police statement and documents, permission for cross-examination was granted.
- 20.** However, in the cross-examination of the complainant, it was found that the hostel had a total of 50 seats, and at the time of the incident, 44 children were residing there. He has admitted that on November 28, 2011, the Additional Collector visited the hostel for an inspection, and the accused accompanied him. During the inspection, it was found that the hostel had fewer children than its capacity, with only 18 children present, as some had gone home

for the festival. He has denied that the remaining children were absent since July 2011 and that he was misappropriating their scholarship funds. He has admitted that the Additional Collector constituted an inquiry committee, with the accused as its head. The accused's report concluded that many children were absent since July 2011 and that he had misappropriated Rs.50,700/- by drawing excess scholarship funds. He has admitted that the Assistant Commissioner, Tribal Welfare Department, issued a notice demanding payment of the said amount. However, it is clarified that the notice was issued after a re-inquiry, and the matter was subsequently closed.

- 21.** Further he denied that the inquiry is still pending and that he got it stalled by exerting pressure. He denied that he is making up stories after the notice proceedings were closed. When he questioned does he has any documents showing that the case was closed? He answered he had applied for documents related to the case closure, but he was told that such documents cannot be provided. He is not sure if a copy of the public document can be obtained. He denied that he had a grudge against the accused due to the aforementioned proceedings. He admitted that on 26.11.2012, the Chhattisgarh Government, through the District Panchayat Raipur office, dismissed him from his position as Shiksha Karmi Grade-II in Gariaband district. He admitted that he was dismissed at the time of the incident, but he had not received any official letter regarding his removal as Hostel Superintendent.

- 22.** When he was questioned does "cumulative effect" mean termination from all positions? He answered the hostel was functioning, and no one else had been appointed, so he was carrying out his responsibilities as Superintendent. He is not aware that the accused had sent a proposal for a new Hostel Superintendent on 23.01.2013. He denied that he knew about it and is pretending otherwise. He is also not aware that Mr. Sauri and four others were appointed as Hostel Superintendents in his place. When he was questioned about whether he withdrew the scholarship amount for January 2013 on 11.01.2013, even though he was not in the position? He answered he had withdrawn the amount with permission. During his complaint to the ACB, he had attached a photocopy of the permission letter. He is uncertain whether the ACB officials produced this letter as part of the proceedings. He denied that he is not truthfully stating that he submitted the letter along with his complaint. He has also denied that he falsely implicated the accused due to him being responsible for the loss of his job. He has admitted that in his initial complaint (Exhibit P-26), he had specifically mentioned that the accused demanded a bribe for sanctioning the scholarship funds in January 2013.
- 23.** When the complainant was questioned that had he received the January 2013 scholarship amount when he filed his initial complaint (Exhibit P-26)? He answered the amount had been sanctioned, but he had not yet received it. When questioned

about withdrawing the scholarship amount on 11.01.2013, the witness stated that they would need to verify the date. He has denied that he submitted the approval letter on January 8, 2013. he has admitted that he filled out and submitted the list (Exhibit D-1), which comprises two pages, bearing his signature from "A" to "A". He has denied that he falsely stated the date of submitting the approval letter. It is admitted that he filled out and submitted the list (Exhibit D-1), which consists of two pages, bearing his signature from "A" to "A". It is admitted that he had received the scholarship amount before filing the first complaint, but he is unable to provide a reason for not mentioning it in the complaint. It is admitted that at the time of filing the first complaint, there was no pending work with the accused, but he added that he demands money after getting it. He has denied that he is lying about demanding money after getting it to save himself. He has denied that he deliberately did not mention in his first complaint that he had been dismissed from service, but he mentioned it verbally.

24. In the matter of ***B.Jayaraj v. State of A.P. (Supra)***, the Supreme Court Court has observed in para 8 as under:

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

When the complainant himself had disowned what he had stated in the initial complaint (Exbt. 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 Exhibit 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 Section 13(1)(d)(i)(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.”

25. In the matter of ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)*** (*Supra*), the Supreme Court has observed in para 68 as under:

“68. 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) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

(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.”

26. In the matter of ***State of Lokayuktha Police, Davanagere v. C.B. Nagaraj (Supra)***, decided on 19.05.2025, the Supreme Court Court has observed in para 25 as under:

“**25.** It is pertinent to note that till 05.02.2007, when the Respondent had conducted the physical/spot inspection, there is not even a whisper of there being any demand of bribe. Moreover, when the

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

Sudhakar v State of Telangana, 2025 SCC OnLine SC 1072, it was stated thus:

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

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

- 27.** While convicting the appellant, the trial Court has not considered the aforesaid evidence and deficiency in the prosecution witnesses, thereby committed illegality. Evidence adduced on behalf of the prosecution is not sufficient to prove the offence against the appellant.

- 28.** 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 for offence of bribery. In order to prove 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. 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.
- 29.** In order to prove demand and acceptance of illegal gratification by the public servant, it has to be borne in mind that:
- (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. In such a case, there need not be a prior demand by the public servant.
 - (ii) 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 constitutes offence under Section 13 (1)(d)(1) and (ii).

(iii) In both cases, 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.

- 30.** Admittedly, the complainant in the present case was a Shiksha Karmi Grade II holding the additional charge of Hostel Superintendent. It has been admitted by the complainant/PW7 that the complaint was made on 22.01.2013 (Exhibit P/26) and before the said date, the complainant was already terminated from service. The appellant was holding the post of Mandal Sanyojak at Adim Jati Kalyan Vibhag and posted in the office of Block Education Officer, Gariyaband. The allegation against the appellant is that he demanded bribe for releasing the stipend for the students of the hostel where the complainant was posted as Hostel Superintendent. Whereas, fact of the matter is that the appellant was not the sanctioning authority and it could have been done only by the Block Education Officer. The complainant himself had made application for sanctioning/withdrawal of the stipend/scholarship for operating the mess to the Block Education Officer on 07.01.2013 and the said application was recommended for sanction on 08.01.2013 and thereafter the amount was also disbursed on 11.01.2013 and the said fact has been admitted by J.N.Pathak, (PW-8) who is the retired Block Education Officer and posted at the relevant point of time.

31. The complainant (PW-7) himself has admitted in his cross examination that the appellant had conducted an enquiry against him on the order of the Additional Collector in which the complainant was found guilty and an order of recovery of Rs. 50,700/- was ordered. The complainant (PW-7) has further admitted in the cross examination that before making the complaint, he had already received the stipend/scholarship amount and as such, there could have been no occasion for the appellant to demand bribe and especially when he was not the competent authority either to recommend or to sanction such amount. From the conduct of the complainant (PW-7) itself it is apparent that he was having a grudge against the appellant who had conducted the enquiry against him and found him guilty. The complainant was found guilty of drawing excess scholarship amount which he was ordered to be refunded. Even the complainant has lodged the complaint showing himself to be the Hostel Superintendent whereas in fact, he was fully aware of the fact that he was terminated from service by that time. The conduct of the complainant (PW-7) himself is suspicious and casts grave doubt against his intentions. The complaint (PW-7) himself has admitted in the cross examination that before filing of the complaint, he was terminated from service. The fact of order of recovery has also been admitted by the Additional Collector (DW-1).
32. For the foregoing reasons, the appeal is **allowed**.

- 33.** The conviction and sentence of the appellant under Section 7 of Prevention of Corruption Act and Section 13(1)(D) read with Section 13(2) of Prevention of Corruption Act are hereby set-aside and he is acquitted of the charges.
- 34.** The appellant is reported to be on bail. However, his bail bonds are not discharged at this stage and shall remain operative for a further period of six months in view of Section 437-A of the Cr.P.C. {481 of Bharatiya Nagarik Suraksha Sanhita (BNSS)}.
- 35.** Registrar (Judicial) is directed to transmit the original record to the concerned trial Court within a week from today for necessary information and follow up action.

Sd/-

(Ramesh Sinha)
Chief Justice

Akhil

Headnote

Demand of illegal gratification is *sine qua non* to constitute the offence under the Prevention of Corruption Act, 1988. Mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe.