2025:CGHC:45932

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA no. 1086 of 2004

Jageshwar Prasad Awadhiya S/o Late Shri Kali ram Awadhiya, Aged About 60 years, Bill Assistant M.P.S.R.T.C. Raipur, At present: Awadhiya Para behind Kankali Talab Raipur, C.G.

... Appellant

versus

State of Chhattisgarh through the District Magistrate Raipur, District Raipur, C.G.

---- **Respondent**

(Cause-title taken from Case Information System)

For Appellant : Mr. Keshav Dewangan, Advocate
For Respondent/State : Mr. U.K.S. Chandel, Dy.A.G.

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

09.09.2025

Challenge in this appeal is to the judgment of conviction and order of sentence dated 09-12-2004 passed by the learned Special Judge & 1st Additional Sessions Judge, Raipur in Special Case No.01/2004, whereby the learned Court below convicted and sentenced the appellant as under:-

Conviction	Sentence
Section 7 & Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act	R.I. for one year and fine of Rs.1000/-, in default of fine, additional R.I. for three months; 1 year R.I. and fine of Rs.1000/-, in default, R.I. for three months.

1. Case of the prosecution, in brief, is that on 24.10.1986 the appellant was working as Bill Assistant in the Divisional workshop of M.P.S.R.T.C. at Raipur. At that time, the appellant being a public servant demanded illegal gratification of Rs. 100/- from the complainant Ashok Kumar Verma with regard to clear the bill of arrears of the appellant during his service period between the year 1981 to 1985. For which, the complainant made a complaint before the Lokayukt. Thereafter, a trap team was constituted and Phenolphthalein powder was sprinkled over two currency notes of Rs.50/- each and the same were kept in the pocket of the complainant and the complainant was directed to give those currency notes to the appellant and also instructed to give sign thereafter. The complainant handed over those notes to the appellant and made a sign on which the members of the trap party immediately apprehended. On 25/10/1996, the trap team along with the witnesses reached the place Puranibasti, Raipur and directed the complaint to meet with the appellant. Then, the appellant and complainant started going towards the road near Awadhiyapara Chowk and there, the complainant gave money to the appellant and gave signal. Thereafter, the trap team reached the spot and caught red handed the appellant. The currency notes were recovered from the hand of the appellant and the notes were washed in the sodium carbonate solution they turned pink. The test

was positive. Thereafter the prosecution after completion of investigation laid the charge sheet before the special court. the appellant abjured his guilt and he was prosecuted for the offences under Section 7 and 13(1) (d) of Prevention of Corruption Act.

2. In course of trial the prosecution examined as many as 8 witnesses to bring home the charges. The accused person abjured the guilt; pleaded innocence; and false implication.

3. The learned trial Court after appreciating the oral and documentary evidence available on record proceeded to convict the appellant herein for the aforementioned offence and sentenced him as mentioned herein-above against which this appeal has been preferred by the appellant-accused herein questioning the impugned judgment of conviction and order of sentence.

4. (i) Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. He would submit that as per the evidence of PW-2, Ashok Kumar Verma, when he requested the arrears amount from the appellant, who was then Bill Assistant, the appellant clearly stated that the arrears would be released only after receiving approval from the higher authority. It is an admitted fact that at the time of this communication, the appellant was not in a position to prepare or disburse the arrears, as the complainant made the request on 24.10.1986, whereas the order for preparation and approval of the arrears was received from

the higher authority only on 19.11.1986, demonstrating that the appellant was not competent to release the amount on the date of the request. Supporting this, DW-3 M.B. Dablee deposed that the order for releasing the complainant's back wages was received about a month after the complaint, while DW-4 P.K. Tiwari stated that without prior approval of the higher authority, the appellant could not disburse the arrears, and the order was indeed issued on 19.11.1986 (Exbt. D/1). S.K. Ohri (DW-5) also confirmed that due to non-availability of the bill preparation order from Head Office Bhopal, the appellant could not prepare the arrears bill, exhibiting documents D/2 and D/3.

(ii) Learned counsel further submits that the prosecution has produced no oral or documentary evidence to prove demand of illegal gratification. PW-2 admitted that the appellant had only indicated that release would follow higher authority approval. DW-1 R.K. Murti stated that the complainant attempted to give Rs. 20/- to the appellant, which was refused as the appellant could not act without approval, and DW-2 similarly corroborated this refusal during his posting at MPSRTC. Accordingly, no offence under the Prevention of Corruption Act has been established against the appellant. To reinforce these submissions, reliance is placed on the judgments of the Hon'ble Supreme Court in ***B. Jayaraj v. State of A.P., 2014 13 SCC 55; P. Satyanarayana Murthy v. State of A.P., 2015 10 SCC 152; C. Sukumaran v. State of Kerala, 2015 11***

SCC 314; and N. Vijayakumar v. State of T.N., 2021 3 SCC 687.

(iii) Learned counsel would further submit that the charge in the present case was framed under the Prevention of Corruption Act, 1947 (Sections 5(1)(d) r/w 2) and Section 161 of the IPC, whereas the trial was conducted under the Prevention of Corruption Act, 1988 (Sections 7 and 13(1)(d)). It is an admitted fact that the sanction for prosecution was issued on 18.02.1988, prior to the enforcement of the new Act on 01.08.1988. Reliance is placed on the decision in ***Sukhdev Singh Jamwal vs. State of Maharashtra (2004 Cr.L.J. 4338)***, wherein it was held that a sanction granted under the old Act cannot be treated as a sanction under the new Act, as the provisions of the two Acts are not mechanically interchangeable. He would submit that in the present case, since the sanction was issued under the old Act and the trial proceeded under the new Act, the proceedings are clearly vitiated. It is, therefore, submitted that the appellant is entitled to the quashing of the trial and discharge/acquittal.

5. (A) *Per contra*, learned State counsel supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. According to the learned State counsel the present matter is a well-proven case under the Prevention of Corruption Act, wherein the appellant, being a public servant, has demanded and accepted a bribe of Rs.100/-

from the complainant to make the arrears bill of the complainant He would submit that the prosecution has successfully discharged its burden of proof under all the essential ingredients of the offence.

(B) Learned counsel would submit that after completing all pre-trap formalities including chemical marking of notes (phenolphthalein powder), the complainant met the appellant and upon receiving the pre-arranged signal by the complainant, the trap team caught the appellant red handed. Learned counsel would submit that the appellant's hands tested positive for phenolphthalein when dipped in sodium carbonate solution (the solution turned pink). Learned counsel would submit that the trial Court has rightly convicted the appellant for the aforesaid offence, thus, the present appeal deserves to be dismissed.

6. I have heard learned counsel for the parties perused the pleadings and documents.

7. For the sake of convenience, it would be appropriate to quote the relevant case laws with regard to demand, acceptance, recovery of illegal gratification, which is quoted below :

8. The Supreme Court in the matter of **Neeraj Dutta Vs. State (Govt of NCT of Delhi)** reported in **(2022) SCC Online SC 1724**, held 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 inturn 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) (1) 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."

9. In the case of **Panalal Damodar Rathi Vs. State of Maharashtra, AIR 1979 SC 1191** the Supreme Court observed as under:-

"8. There could be no doubt that the evidence of the complainant should be corroborated in material particular. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment bribery, the complainant cannot be

placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.…

10. The status of person offering bribe and the caution required while assessing his evidence implicating a Govt. servant was examined by the Supreme Court in its subsequent decision in the case of **M.O. Shamsudhin v. State of Kerala, 1995 SCC (3) 351**, wherein, it was held as under:

"12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not be subjected to the same rigorous test which are generally applied to a case of an approver. Though bribe givers are generally treated to be in the nature of accomplices but among them there are various types and gradation. In cases under the Prevention of Corruption Act the complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there must be a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving die trap cannot succeed. When there is such a demand by the public servant from person who is unwilling and if to do public good approaches the authorities and lodges complaint then in order that the trap succeeds he has to give the money. There could be another type of bribe giver who is always willing to give money in order to get his work done and having got the work done he may send a

complaint. Here he is a particeps criminis in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a party for laying a trap stands on a different footing because he is a only a victim of threat or coercion to which he was subjected to. Where such witnesses fall under the category of "accomplices" by reason of their being bribe givers, in the first instance the court has to consider the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that may be needed in a case may vary having regard to the facts and circumstances."

11. What therefore, emerges from the principles enunciated by the Supreme Court is that the complainant's evidence has to be scrutinized carefully and the Court has to consider the degree of complicity and then look for corroboration, if necessary, as a rule of prudence. The extent and nature of corroboration that may be needed in a case, may vary, having regard to the facts and circumstances.

12. In the matter o**f M.R. Purshotham Vs. State of Karnataka (2015) 3 SCC 247,** the Hon'ble Supreme Court has held that when demand of bribe is not proved by the prosecution, mere possession and recovery of the currency notes from the accused without proof

of demand will not bring home the offence under Section 13(1) (d) of the Act.

13. In **B. Jaiyaraj v. State of Andra Pradesh (2014) 13 SCC 5**, it has been held by the Hon'ble Supreme Court that 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 of the Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. Presumption against public servant under Section 20 of the Act can be drawn only if demand for acceptance of illegal gratification is proved.

14. Similar view has been taken in the matter of **A. Subair Vs. State of Kerala, 2010 AIR SCC 1115** and **Subhash Parbat Sonvane Vs. State of Gujarat AIR 2003 SC 2169.**

15. Evidence on record led by the prosecution as also by the defence is required to be scrutinized in order to find out as to whether the prosecution has been able to prove beyond reasonable doubt the **demand, acceptance** and **recovery**.

16. The only evidence regarding the alleged demand in the present case is the testimony of the Complainant (PW2), who categorically stated in his deposition that when he approached the appellant for preparation of his arrears bill, the appellant demanded an illegal gratification of Rs. 100/-. Apart from this statement, there is no

other evidence to substantiate the allegation of demand. Therefore, in the absence of any electronic recording, this Court considers it appropriate at this stage to closely scrutinize the testimonies of the witnesses to ascertain whether such a demand was in fact made.

17. The question that thus arises for consideration before this Court is whether the appellant had demanded illegal gratification from the complainant and whether there was any acceptance of the alleged illegal gratification by the appellant.

18. Complainant- Ashok Kumar (PW2), deposed that he had been employed as a Helper in the Corporation since 1977. On 29-09-1981, he was removed from service without any reason being assigned. He stated that he challenged the termination before the Labour Court at Raipur, which, by its order dated 07-01-1984, directed his reinstatement. In compliance with the said order, on 23-02-1984 the Personnel Officer at Durg issued an appointment order, and on 06-03-1984, he was posted at the depot. He was further informed that arrears of wages would be paid to him in accordance with the judgment. On 23-04-1986, the Industrial Court also decided the matter in his favour. He further deposed that when he approached the Divisional Manager, Raipur, with a copy of the appellate judgment, the matter was circulated among different branches. The accused, who was then working as a Bill Assistant, told him that only upon payment of money he would prepare the bill for arrears. About 8–10 days later, when he again

enquired from the accused whether the order for arrears had been received, the accused confirmed that the order had indeed been received but stated that unless money was paid, the bill would not be prepared. He refused to comply and thereafter lodged a complaint before the Inspector, Anti-Corruption Department, Raipur. The Inspector recorded his complaint, introduced him to independent witnesses, and demonstrated the procedure for laying a trap. Phenolphthalein powder was applied to the currency notes, and a sodium carbonate solution was prepared to demonstrate the colour change upon contact. The notes were handed over to him with instructions that he should not touch them unnecessarily and should deliver them to the accused only if demanded. He was further instructed that after handing over the tainted notes, he should place his hand on his head as a signal to the trap party. These instructions were recorded in a memorandum bearing his signatures. A preliminary panchnama was prepared in the presence of independent witnesses, which he identified in Court as Exhibit P/3. He further deposed that early in the morning, certain items such as sodium carbonate powder, bottles, sealing materials, and other articles were placed in a bag by Constable Ram, who carried them in a jeep.

According to this witness, at around 8:30 a.m., he, constable- Seng Singh, Abdul Rashid, S.K. Diwan and Dhanjay, and others proceeded in the jeep. At about 09:30, they reached to

Awadiyapara, they all got down of the jeep there. This witness stated that he was sent to the house of the appellant and rest of the persons were standing there. He was calling the appellant outside of his house, subsequently, the appellant said, he is coming. This witness stated that for that passage of time, he was roaming there. Thereafter, the appellant came and they both while roaming, talking with each other. This witness stated that the appellant again told him that if he would give him money, then only he will prepare his bill. This witness stated that the appellant told him that if he give Rs. 100, then only his will would be prepared. Thereafter, the appellant gave him Rs. 100/- from his shirt pocket, then the appellant told him he will prepare his bill soon. This witness stated that subsequently, the money was kept by the appellant in his pocket and thereafter, this witness raised alarm by signaling the trap party. Immediately thereafter, the raiding party, consisting of Dhanjay, S.K. Diwan, Abdul Rashid and Constable Sen Singh came forward, apprehended the accused, and recovered the tainted amount. He further deposed that the trap proceedings were conducted in his presence. The hand-wash of the accused was taken in sodium carbonate solution, which turned pink in colour. The wash was preserved in sealed bottles, marked, and seized. Two currency notes of ₹ 50/- each, earlier noted and given to him, were recovered from the accused.

During cross-examination, the complainant admitted that he

did not know whether a copy of the order of the Appellate Authority, when presented before the Divisional Office, was ever forwarded to the Head Office at Bhopal. He further admitted that about 15 days after the appellate decision, he had gone to the office of the accused for the first time. He denied the suggestion that on the very first day the accused had demanded ₹20 from him for preparation of the bill, which he had refused to pay. He also denied that Ambika Prasad and other employees were present in the office at that time. He admitted that Peon Ram Suhag used to sit in the office but stated that he did not know whether Ram Suhag had ever seen him giving ₹20 to the accused in his presence. He further stated that about 8–10 days thereafter, he had again gone to the Divisional Office, where he saw one officer of the Legal Department, though he did not remember his name. He admitted that someone had told him that the appellate order had already been received, but he could not say whether the accused had actually received it. He denied the suggestion that when the accused came out of his house, the complainant had attempted to hand over money, but the accused had refused to accept it, stating that no order had been received by him.

19. Abdul Rashid (PW3), in his examination-in-chief, deposed that on 24-10-1986, while he was serving as Assistant Director, Veterinary Department, Raipur, he was called to the residence of Madan Gopal Pathak, where Inspector Dhananjay and other officers were

present. At that time, an application submitted by complainant (PW2) was produced before him. The application recorded that Jagdishwar Prasad (the appellant) had demanded a bribe of ₹100 from the Complainant for preparation of his bill. It further stated that Complainant was unwilling to pay any bribe and therefore sought legal action. The witness stated that Complainant confirmed the correctness of his complaint and signed the application. His signatures, as well as that of the witness, were taken on the document. Thereafter, Complainant produced two currency notes of ₹50 each, which were treated with phenolphthalein powder by Constable Ram. A demonstration was given by preparing sodium carbonate solution, which turned pink when the tainted notes were dipped in it. A preliminary memorandum was prepared, recording the numbers of the currency notes and the results of the demonstration, which bore the signatures of the witness. The witness further deposed that the Complainant was instructed not to touch the tainted notes unnecessarily, to hand them over to the accused only if demanded, and to raise his left hand to his head as a signal after handing over the money. The trap party, including Inspector Balakdas Dhananjay (PW8), Diwan Singh, constables, and others, then proceeded in a jeep and stopped near Jayadhidapara. The Complainant was sent ahead to confirm the presence of the accused, and after he signalled, the raiding party rushed in and apprehended the accused. Investigating Officer-Balakdas Dhanajay

(PW8) introduced himself and questioned the accused about receiving the bribe. The witness stated that thereafter, the hand-wash of the accused was taken in sodium carbonate solution, which turned pink. The hand-wash of the Complainant was also taken, which remained colourless. The two tainted notes of ₹50 each were recovered from the pocket of the accused, and their numbers matched those recorded earlier. When dipped again in sodium carbonate solution, the colour turned pink. All the washes and recovered articles were sealed, marked, and seized in his presence. A seizure memo (Exhibit P/4) and other documents prepared during the proceedings bore his signatures.

During cross-examination, the witness admitted that certain aspects of the proceedings were not within his direct observation. He admitted that at the time of the raid, he remained outside the house at a distance and could not hear the exact conversation between the complainant and the accused. He further admitted that he only saw the Complainant raising his hand to his head as a prearranged signal, following which the accused was apprehended. The witness admitted that he did not personally see the accused accept the money from the complainant, nor did he witness any fresh demand being made in his presence. He further admitted that the area where the proceedings were conducted was a public road used by others, though he could not say whether any passers-by confirmed the alleged acceptance of bribe. He also admitted that,

owing to the lapse of time, he could not recall the exact words exchanged at the spot, and certain details of the trap such as who precisely washed the accused's hands in sodium carbonate solution were not clear in his memory.

20. PW-6 Sanjay Kumar Diwan, Nayab Tehsildar, in his examination-in-chief, deposed that after receiving directions from the higher authority he had gone to the Lokayukt office, where the complainant had lodged a complaint alleging demand of bribe by the accused for preparation of his arrears bill. He stated that he had read the complaint and that an initial panchnama was prepared. He categorically deposed that the complainant produced a currency note of ₹100, whose number was duly recorded, phenolphthalein powder was applied to it, and thereafter the same was kept in the complainant's pocket with necessary instructions. According to him, after reaching the spot, when the complainant was proceeding towards the house of the accused, the accused came out of his house, and from a distance of about 25 steps he saw the complainant hand over the money to the accused. He further stated that immediately on the complainant giving a signal, the trap party apprehended the accused, recovered the tainted note from him and that the hand-wash of the accused turned pink on being dipped in sodium carbonate solution.

In cross-examination, PW-6 admitted that before the demonstration, the officer conducting it did not properly wash his

hands with sodium carbonate solution, and no prior instructions regarding this were given. He acknowledged that after the two ₹50 notes were obtained, phenolphthalein powder was applied, but he could not say whether the notes were dipped in sodium carbonate solution before the powder was applied. He further admitted that he did not personally see either of the two notes being dipped in the solution, and that before the Complainant put the notes in his pocket, the pocket itself was not washed with sodium carbonate solution. He confirmed that the trap party carried phenolphthalein powder and sodium carbonate solution separately, but he could not verify whether all procedural steps were correctly followed for both notes. He admitted that he could not clearly hear the conversation between the complainant and the accused due to distance and the presence of bystanders. He admitted that he did not personally see the accused accept the money, that the spot was a public place with people moving about, and that he could not confirm if the notes were forcibly given or dropped into the accused's pocket.

21. Investigating Officer-Balakdas Dhanajay (PW8) stated that from 1980 to 1990, he served at the Lokayukt Office, Raipur, as Inspector and later as Deputy Superintendent of Police. During the proceedings, the complainant produced two currency notes of 50 demonstration, which were treated with phenolphthalein powder and placed in his shirt pocket. Instructions were given to indicate

handling by hand gestures. This witness deposed that when they proceeded to the spot, at a checkpoint, the vehicle carrying the complainant was stopped, and the trap team closely observed the accused. After 10–15 minutes, the complainant handed over the currency, which the accused covered in his shirt pocket. The trap team then intercepted the accused's hands to confirm handling of the marked notes.

During cross-examination, this witness admitted that he, along with Constable Ramji, applied a light layer of phenolphthalein powder on the notes at the residence of Shri Madan Gopal Padi before handing them to the accused. He further admitted that, prior to applying the powder, the notes were not dipped in the sodium carbonate solution. The witness also stated that the distance between the trap team and the complainant and the appellant, while they were conversing, was about 20–25 yards. He admitted that from the place where he and the trap team were standing, they could not see the house of the appellant. He further admitted that they did not hear what conversation took place between the appellant and the complainant.

22. P.K. Tiwari, who has been examined as DW1, deposed that he does not personally know the accused, though the accused was employed in their department. As a general practice, bills are prepared by the assistant, and after being duly passed, the payment is made. Ordinarily, if the bill is placed without objection and in

proper circumstances, then after obtaining sanction, the payment is released. The witness further stated that Exhibit D-2 is a letter written by him, dated 19/11/1986, which he had forwarded to the competent authority. This letter pertains to preparation of the arrears bill of the Complainant. Without such an order, the arrears of salary could not have been paid.

In cross-examination by the prosecution, the witness admitted that the said letter was addressed by him to the Chief Works Manager, M.P.S.R.T.C., Raipur, and not to the Commissioner. He expressed his inability to state who were the Accountants working at the Divisional Workshop, Raipur, in November 1986. He reiterated that he had not known the accused prior to his involvement in this case, but came to know him only after his arrest. He admitted that Exhibit D-2 is a true copy, and the original was sent to the Chief Works Manager, M.P.S.R.T.C. He also expressed ignorance as to what further action was taken by the Divisional Workshop of M.P.S.R.T.C. on the said communication.

23. DW2: R.K. Murti (R.S. Rao) stated that he is working as a Senior Clerk in the Establishment Section of the Divisional Workshop of the M.P. State Road Transport Corporation at Fafadih, Raipur, District Raipur. The appellant was also working in the same department as a Bill Assistant and is presently posted at Depot No.2, Raipur. He deposed that the incident is about 12–13 years old. At that time, the Complainant had come to the accused and

was arguing with him. On noticing the argument, the witness went to the accused and inquired about the matter. The accused informed him that the Complainant was pressurizing him to prepare a bill without any order and, pointing towards the table, told him that he was trying to offer him ₹20/-. The witness also saw the said note of ₹20/-. At that time, one Ram suhag, Waterman, was also present near the table. The witness, being acquainted with the complainant, tried to explain to him that without an order no bill could be prepared. Still, the Complainant insisted that once the order would come, the accused should prepare the bill. The accused again told him that without a proper order he would not prepare the bill. Thereafter, the Complainant threatened the accused, saying, “he is the son of a police officer, he will have him sent to jail,” and then left the place. The witness further deposed that when the accused was later trapped, the Lokayukt officials came to the divisional office for inquiry, at which time he told them that the appellant was an honest person who never engaged in illegal transactions and that money was forcibly thrust upon him. He narrated the entire incident to the officials. One of the police officers told him not to interfere in the matter, otherwise he would also face trouble.

During cross-examination, this witness admitted that he does not know when, where, and in whose presence the trap was conducted. He also stated that he does not know in connection

with which bill the quarrel took place between the complainant and the accused. He voluntarily clarified that it was regarding arrears of salary. He admitted that he does not know whether the ₹20/- note lying on the table was actually kept there as bribe or not, but stated that the accused had told him that the complainant was trying to give him ₹20/- for getting the work done. The witness further admitted that no action was taken against the complainant with respect to the alleged ₹20/- offered, as no formal complaint was made by the accused or anyone else. He also admitted that such quarrels between employees were common in their department. He clarified that at the relevant time he was working in the Establishment Section and not in the Bill Section, whereas the accused was working in the Bill Section. He further stated that both he and the accused used to sit in the same room, facing each other. He admitted that Ram Suhag, Waterman, had been working with their department since 1986 and continued till date. He denied the suggestion that the Complainant had no quarrel with the accused or that he was deposing falsely to save the accused. His statement was read over to him, which he admitted to be correct.

24. DW3: Ram Suhag (Waterman) deposed that he knows the accused, who was working in their office as Bill Assistant. The witness himself was employed there as a Waterman. He deposed that about 2–3 years prior to the incident, when he went to serve water at the

table of the accused, he saw the accused in a dispute with another person, who, according to the witness, had come from the Court. The witness further deposed that the said person was arguing with the accused in connection with the preparation of a bill and, upon the accused's refusal, threatened him with dire consequences. He deposed that the person placed a ₹20/- note on the table of the accused and asked him to do his work. The witness also heard that person telling the accused that if he would not prepare the bill, he would "see to it" since he was the son of a police officer. At that moment, Murti Babu also came there. Thereafter, the witness went to another table to serve water.

During cross-examination, the witness admitted that he had never seen the person who quarreled with the accused prior to that date. He denied the suggestion that no quarrel took place in his presence and that he was deposing falsely on the basis of what was told to him by the accused. He also denied the suggestion that because the accused belongs to his department, he was giving false evidence to protect him.

25. M.P. Dablee (DW4) deposed that in the year 1984–86, he was working as a clerk in the Regional Workshop at Raipur, and the appellant was posted there as a Bill Assistant. The witness further deposed that unless the Regional Office at Raipur received the sanctioning orders, no unit could prepare the bills. In the present case, the sanction order was received nearly one month later, and

only thereafter the arrear bill could be prepared. He categorically stated that the arrear bill of the Complainant was actually prepared after receiving the sanction order, and prior to that, the appellant could not have made the bill on his own. He further clarified that the directions for preparing such arrear bills used to be issued in the name of the General Manager, and upon receiving such instructions, he had marked the matter to the appellant for preparing the bill. Thus, the preparation of the bill of the appellant was in accordance with the official order which was received after due time, and not otherwise.

In cross-examination, he denied knowledge of the trap proceedings at Raipur on 24.10.1986 and reiterated that the bill could not have been prepared in absence of sanction from the higher authorities.

26. In prosecutions under the Prevention of Corruption Act, the proof of *demand* of illegal gratification is indispensable. In the present case, the complainant (PW2 – Ashok Kumar), while narrating his employment history and the litigation resulting in reinstatement, deposed that the accused had demanded ₹100/- for preparing the arrears bill. However, the shadow witness Abdul Rashid (PW3) also did not corroborate the allegation of demand. Though he supported the pre-trap formalities, he admitted during cross-examination that he neither heard the conversation between the complainant and the accused nor saw the accused actually accept

the tainted money. His testimony is, therefore, limited to procedural aspects of recovery but does not establish the crucial element of demand.

27. PW6 – Sanjay Kumar Diwan, Nayab Tehsildar, though formally associated with the trap, conceded that he was observing from a distance of nearly 25 steps, that he could not hear the conversation between the complainant and the accused, and that he did not personally see the accused accept the money. He further admitted several lapses in the handling of phenolphthalein powder and sodium carbonate solution, which cast doubt on the procedural integrity of the trap. These admissions substantially weaken the probative value of his testimony.

28. The Investigating Officer – Balakdas Dhananjay (PW8) similarly admitted that the trap team was positioned at a distance of 20–25 yards and could neither hear the conversation nor see the accused accept the notes. He also admitted that the phenolphthalein-treated notes were not first dipped in sodium carbonate solution before their use, which is a deviation from standard procedure. His testimony, therefore, does not bridge the evidentiary gap left by the complainant and the shadow witness.

29. On a cumulative consideration of the above depositions, the prosecution evidence with regard to demand is riddled with inconsistencies. The complainant did not affirm a clear demand at

the time of trap; the shadow witness did not witness acceptance; and the official witnesses (PW6 and PW8) were too far to either hear or see the transaction. What remains is only the recovery of tainted currency, which, in absence of proof of demand, is insufficient in law to sustain conviction. Therefore, from the above evidence adduced by the prosecution, demand is not proved.

30. So far as the question of acceptance of illegal gratification is concerned, the prosecution has relied upon the evidence of the complainant (PW2), shadow witness (PW3), independent officer (PW6), and the Investigating Officer (PW8). However, a careful reading of their depositions reveals that none of these witnesses had personally seen the accused accept the money. PW3 conceded that he did not observe the accused receiving the tainted currency. Both PW6 and PW8 further admitted that from their respective vantage points they could neither hear the conversation nor see the actual transaction. Thus, the element of acceptance remains unsubstantiated by direct ocular testimony.

31. As regards seizure, while it is true that tainted notes were recovered from the accused and his hand-wash turned pink when dipped in sodium carbonate solution, the prosecution evidence on this point suffers from a fundamental contradiction. PW6 (Nayab Tehsildar) stated that the trap money consisted of one ₹100 note; whereas PW3 (shadow witness) and PW8 (Investigating Officer) categorically deposed that two ₹50 notes were treated with

phenolphthalein and recovered. PW2 himself wavered between the two versions, at one stage saying that the accused demanded ₹100/- but later admitting that it was in the form of two ₹50 notes. Such inconsistency about the denomination of the tainted notes strikes at the root of the prosecution case, as the very identity of the incriminating material is rendered doubtful.

32. The defence version, as emerging from the testimonies of DW2 (R.K. Murti), DW3 (Ram Suhag), and DW4 (M.P. Dablee), gains significance in this context. Both DW2 and DW3 categorically deposed that they had seen the complainant attempting to force money upon the accused despite his refusal, and even placing currency notes on the accused's table. Their account, though from defence witnesses, is consistent with the suggestion that the recovery was a result of planting or thrusting, and not conscious acceptance. DW4 further clarified that the arrears bill could not have been prepared without prior sanction, thereby lending support to the accused's stand that there was no occasion for him to demand or accept money.

33. On a cumulative appraisal, while the seizure of tainted notes from the accused is not in dispute, the absence of unimpeachable evidence of voluntary acceptance of the bribe, coupled with the glaring contradiction regarding whether the trap money consisted of one ₹100 note or two ₹50 notes, renders such seizure legally inconclusive. The benefit of doubt, therefore, must weigh in favour

of the accused, as acceptance and seizure cannot be presumed in law merely from recovery without cogent corroboration of demand and conscious receipt.

34. Thus, while the factum of recovery stands proved formally, its evidentiary worth is substantially weakened in view of the absence of proof of demand, the doubtful circumstances surrounding acceptance, and the serious inconsistency about the denomination of the trap money. Consequently, the recovery, in isolation, cannot sustain the conviction.

35. In the matter of **State of Lokayuktha Police, Davanagere v. C.B. Nagaraj**, decided on 19.05.2025 in CRA No.1157 of 2015, 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])."*

36. 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) (i) and (ii)*
>
> *(iii) In both case, 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.

37. By placing reliance upon the decision rendered by the Supreme Court in the matter of ***Rakesh Kapoor v. State of Himachal Pradesh,*** reported in ***(2012) 3 SCC 552*** (paras 16 to 19), learned counsel for the appellant would submit that the charge in the present case was framed under the Prevention of Corruption Act, 1947 (Sections 5(1)(d) r/w 2) read with Section 161 IPC, whereas the trial proceeded under the Prevention of Corruption Act, 1988 (Sections 7 and 13(1)(d)). It is an admitted fact that the sanction for prosecution was issued on 18.02.1988, which is prior to the enforcement of the 1988 Act on 01.08.1988. The aforesaid decision is not applicable to the facts of the present case. However, in the matter of ***Nar Bahadur Bhandari and Anr. v. State of Sikkim & Others***, reported in (***1998) 5 SCC 39,*** the Supreme Court held thus at para 10:

> *"10. The contentions urged on behalf of the petitioners are based on a wrong understanding of the provisions of the Act of 1988. No doubt, Section 3 of the said Act refers only to offences punishable under the Act and the Special Courts constituted under Section 3 will have jurisdiction to try the offences punishable under the Act but Section 3 cannot be read in isolation. It should be read along with other provisions of the Act to understand scope thereof. Section 30(1) of the Act of 1988 repeals the Acts of 1947 and 1952. That does not mean that any offence which was committed under the Act of 1947 would cease to be triable after the repeal of the said Act. Normally Section 6 of the General Clauses Act*

would come into play and enable the continuation of the proceedings including investigation as if the Repealing Act had not been passed. As per the provisions of Section 6 of the General Clauses Act the position will be as if the Act of 1947 continues to be in force for the purpose of trying the offence within the meaning of the said Act. Section 6 of the General Clauses Act however makes it clear that the said position will not obtain if a different intention appears in the repealing Act. In the present case, the Act of 1988 is the repealing Act. Sub-section (2) of Section 30 reads as follows:

> *"30. (2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."*

The said sub-section while on the one hand ensures that the application of Section 6 of the General Clauses Act is not prejudiced, on the other it expresses a different intention as contemplated by the said Section 6. The last part of the above sub-section introduces a legal fiction whereby anything done or action taken under or in pursuance of the Act of 1947 shall be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act of 1988. That is, the fiction is to the effect that the Act of 1988 had come into force when such thing was done or action was taken."

38. From the aforesaid decision of the Supreme Court, it is manifest that if any sanction was granted prior to enactment of the Act, 1988, does not mean that the same would cease to be triable after repeal of the said Act. In view of saving clause under Section 30(2) of the Prevention of Corruption Act, 1988, the action taken

under the Prevention of Corruption Act, 1947 will be deemed valid under the new Act, 1988 provided that they are not in consistent with the provisions of the new Act, 1988.

39. However, the failure of the prosecution to prove demand and acceptance of illegal gratification render the proceedings unsustainable. The charges against the appellant are, therefore, not proved.

40. In light of the foregoing, the prosecution has failed to discharge its burden of proof. The evidence, whether oral, documentary, or circumstantial, falls short of establishing the essential ingredients of the alleged offence of bribery. The conviction recorded by the Trial Court is therefore unsustainable.

41. Accordingly, the appeal is allowed. The conviction and sentence of the appellant under the aforementioned provisions are hereby set aside, and the appellant stands **acquitted** of all charges.

42. The appellant is reported to be on bail. His bail bonds shall remain in force for a further period of six months in terms of Section 437-A of the Cr.P.C. (481 of Bharatiya Nagarik Suraksha Sanhita (BNSS)). The Registry is directed to transmit the trial Court record forthwith for necessary information and follow-up action.

Sd/-

(Bibhu Datta Guru)
Judge

Rahul/Gowri

HEAD NOTE

In view of saving clause under Section 30(2) of the Prevention of Corruption Act, 1988, the action taken under the Prevention of Corruption Act, 1947 will be deemed valid under the new Act, 1988 provided that they are not in consistent with the provisions of the new Act, 1988.