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HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1332 of 2016**

1 - Prakash Jaiswal @ Prakash Jayaswal S/o Shri Aabaji Jaiswal, Aged About 32 Years The Then Assistant Grade II, Directorate Of Health Services, Chhattisgarh, Raipur, Civil And Revenue District Raipur, Chhattisgarh.

... Appellant**Versus**

1 - State of Chhattisgarh Through Aarakshi Kendra, Anti Corruption Bureau, Raipur, District Raipur, Chhattisgarh.

... Respondent

For Appellant	:	Shri Kashif Shakeel, Advocate.
For State	:	Shri Atanu Ghoash, Dy. Govt. Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J**Judgment reserved on 13.10.2026****Judgment delivered on 28.10.2026**

- The present appeal has been filed by the appellant against the impugned judgment of conviction and order of sentence dated 18.10.2016 passed by the Special Judge (Prevention of Corruption Act) & Ist Additional Sessions Judge, Raipur, in Special Criminal Case No.28/2009 whereby the appellant has been convicted for the offence under Sections 7, 13(1) (d) read with Section 13(2) of The Prevention of Corruption Act, 1988 (in short, the PC Act) and sentenced for RI for one year with fine of Rs.5,000/-. In default of payment of fine amount, one month additional SI for both the offences with a direction to run both the sentences concurrently.

2. Brief facts of the case are that, the appellant was working as Assistant Grade-II and posted at the office of Directorate, Health Services, Chhattisgarh, Raipur in the year, 2009. The wife of complainant namely Smt. Sunita Raj was posted as Women Multipurpose Health Worker and posted at Community Health Centre, Keshkal who was on leave from 20.07.2007 to 22.05.2008 on the ground of her ailment and she made her application for settlement of her leave of 113 days to Block Medical Officer, Keshwal, from where her application was forwarded to the office of Chief Medical & Health Officer, Jagdalpur, for its approval, and in turn, it was sent to Directorate Health Services, Chhattisgarh Raipur. The complainant Binu Raj, PW-2 and his wife contacted the appellant for settlement of their claim, on which, the appellant is said to have demanded Rs.1000/- as bribe, which the complainant gave to him. After about one month, the appellant again demanded Rs.1000/- more and Rs.8000/- after completion of the work. On 03.08.2009 the appellant made a telephonic call to the wife of complainant in her mobile phone informing that he has obtained the orders from competent authority on her leave settlement and called her on 04.08.2009 at 12 Noon at Directorate, Raipur with bribe amount of Rs.8000/-. Since the complainant and his wife do not want to give bribe to the appellant, the complainant made a written complaint Ex.P/2 on 04.08.2009 to the office of Anti Corruption Bureau (in short ACB) Raipur. On the same day, a trap party was constituted, independent witnesses were called and after verification of complaint made by the complainant, the trap proceeding was drawn. The complainant handed over Rs.5000/- in 10 denomination of Rs.500/- in which the phenolphthalein (Sodium Carbonate) powder

was applied. Specimen pouch of phenolphthalein powder was prepared, sealed and after drawing necessary Panchnamas, the tainted currency notes were kept in the pocket of the full pant of the complainant and he was convinced the manner it is to be given to the appellant and was advised not to touch the said currency notes before handing it over to the accused. They also convinced him to make gesture after completion of transaction. A micro cassette tape recorder was also handed over to him for recording of conversation. They proceeded towards the office of the appellant. The complainant entered into the office room of appellant and after sometime he came out and made gesture about completion of transaction and the members of trap party caught the appellant and tainted currency notes were recovered from the right pocket of full pant of appellant. The hand wash of the appellant was turned into pink colour. The tainted notes, handwash solution and other documents were recovered, necessary Panchnamas were prepared and transcript of the conversation recorded in micro tape-recorder was also prepared, the tape-recorder and other material were seized and unnumbered FIR Ex.P/26 was recorded. The numbered FIR, Ex.P/12 was registered against the appellant for the offence under Sections 7 of the PC Act. The handwash solution were sent for its chemical examination to State FSL Raipur from where report Ex. P/34 was received and contents of Sodium Carbonate and phenolphthalein were found in the sent articles. The appellant was arrested.

3. Statement of witnesses were recorded and after completion of usual investigation, charge sheet was filed against the appellant before the trial court for the offence under Sections 7, 13(1)(d) and 13(2) of The PC Act.

The trial court framed charge against the appellant for the offence under Sections 7, 13(1)(d) and 13(2) of the PC Act. The appellant abjured his guilt and claimed trial.

4. In order to prove charge against the appellant, the prosecution has examined as many as 12 witnesses. The statement under Section 313 CrPC of the appellant was also recorded in which he denied the circumstances appears against him, pleaded innocence and submitted that he has been falsely implicated in the offence. He would further submit that he neither demanded nor accepted the bribe amount from anyone. The complainant Binu Raj gave amount to him which was the loan amount obtained by Ashok Ramteke. The same has also been explained to the officer of ACB.
5. After appreciation of oral as well as documentary evidence led by the prosecution, the trial court convicted the appellant and sentenced him as mentioned in the earlier paragraph of this judgment. Hence this appeal.
6. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses. On the same day the officers of ACB proceeded on the complaint made by the complainant without initial verification of the complaint or without recording any conversation. Even no preliminary enquiry was done by the ACB and within a few hours the entire proceeding have been conducted. The call detail record has not been filed by the prosecution. The complainant himself have stated in his evidence that he contacted with one Ramteke who was also a Clerk in the office and he never met with the present appellant and demanded any bribe from him. Thus,

three ingredients of offence i.e. demand, acceptance and recovery have not been duly proved by the prosecution, and therefore, no offence is made out against the appellant. Merely recovery of amount from the appellant is not sufficient to hold him guilty in the offence in question. There are material contradictions in the evidence of Panch witness N.P. Kashyap, PW-7 and the complainant PW-2. The other Panch witness L.P. Patel have not been examined. The prosecution has also failed to prove that subject work of complainant was under the competency and jurisdiction of appellant. There was no voice sample or test report of the frequency of the voice of the complainant and appellant so as to hold that there was conversation between the appellant and the complainant. Until and unless it is proved that the voice recorded in the tape-recorder is the true voice of complainant as well as appellant by any scientific report, it cannot be accepted that the voice recorded are the voice of complainant and appellant. There is no any shadow witness in the case to prove the subject transaction between the appellant and complainant. Thus, the prosecution has failed to prove its case beyond reasonable doubt against the appellant and therefore conviction and sentence of the appellant is not sustainable and the appeal deserves to be allowed.

7. On the other hand, learned counsel for the State opposes the submissions made by the counsel for the appellant and would submit that from the evidence adduced by the prosecution, the demand as well as acceptance has duly been proved. The evidence of complainant is corroborated by the evidence of other witnesses including Panch witnesses. Even if the trap proceeding was drawn on the same date on which the complaint was made, but that itself is not sufficient to

disbelieve the prosecution case as there is no specific mechanism provided that trap proceeding cannot be drawn on the same day. The complainant made a written complaint; the officers of ACB satisfied after due verification of the complaint and constituted a trap party including Panch witnesses and thereafter trap proceeding was drawn. Recovery of tainted currency notes from the pocket of pant of appellant and change of his handwash into pink color dully corroborated with the trap proceeding and handing over the bribe amount to the appellant. The appellant was unable to prove probable defence in the case. The complainant has also proved the demand made by the appellant and in furtherance thereof recovery of tainted notes from appellant. Thus, there is sufficient and overwhelming evidence against the appellant and therefore, the judgment of conviction and order of sentence passed by the trial court is justified and needs no interference.

8. I have heard the counsel for the parties and perused the records of the trial court.
9. In a case of illegal gratification, there are three essential ingredients to constitute the offence, they are (i) demand (ii) acceptance and (iii) recovery. In the case of ***Mukhtiar Singh (Since Deceased) through his legal representatives Vs. State of Punjab reported in (2013) 14 SCC 153*** it was held by the Hon'ble Supreme Court in paras 14 & 23 as under:-

“14. In P. Satyanarayana Murthy, this Court took note of its verdict in B. Jayaraj V. State of A.P2. Underlining the mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that 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 proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in *P. Satyanarayana murthy* on a survey of its earlier decisions on the prerequisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC p. 159, para 23)

"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

10. In the matter of ***Neeraj Dutta Vs. State (NCT) of Delhi reported in***

(2023) 4 SCC 731, the constitutional Bench of Hon'ble Supreme Court

has discussed the scope of proof of Section 7 and 13(1) (d) of the

Prevention of Corruption Act, 1988 which reads as under:-

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

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

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

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

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d) (i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d) (i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

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

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

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

89. In view of the aforesaid discussion and conclusions, we find that there is no conflict in the three-Judge Bench decisions of this Court in B. Jayaraj and P. Satyanarayana Murthy with the three-Judge Bench decision in M. Narsinga Rao, with regard to

the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1) (d) (I) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion, we hold that there is no conflict between the judgments in the aforesaid three cases."

11. In *Jaswinder Singh (Dead through LRs) Vs. State of Punjab, (2026)*

SCC Online SC 1952, the Hon'ble Supreme Court has observed as under:-

13. This Court in *P. Satyanarayana Murthy Vs. State of A.P.*¹ held that proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act; in absence thereof, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto would thus not be sufficient to bring home the charge under the aforesaid two sections of the PC Act. Therefore, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the PC Act (2015) 10 SCC 152 would not entail his conviction thereunder. This Court held thus:

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

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14.2. Thus among other things what the Constitution Bench declared was that proof of demand and acceptance of illegal gratification by a public servant is the sine qua non to establish the guilt of the public servant under Sections 7 and 13 (1) (d) (i) and (ii) of the PC Act. An offer by the bribe giver and the demand by the public servant have to be proved by the

prosecution as a fact in issue for conviction under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act.”

- 12.** PW-2, Binu Raj is the complainant. He stated in his evidence that Smt. Sunita Raj is his wife. She was employed as Women Multipurpose Health Worker and posted at Community Health Centre, Keshkal. Due to her ill health, she could not join her duty from 20.07.2007 to 22.05.2008 and her leave was settled as Earned Leave from 20.07.2007 to 09.11.2007 (113 days) and from 10.11.2007 to 27.02.2008 (110 days) as Commuted Leave and leave without pay for 84 days from 28.02.2008 to 22.05.2008. For settlement of Earned Leave of 113 days, she made an application to Block Medical Officer, Keshkal which was forwarded to the office of Chief Medical and Health Officer, Jagdalpur, from where the case was sent to Directorate of Health Services, Raipur. He came to Directorate, Raipur along with his wife and met with Ramteke Babu, Clerk posted at Nursing Cell, who demanded Rs.1000/- and asked to pay the remaining amount of Rs.8000/- after completion of work. He handed over Rs.1000/- to Ramteke Babu and he assured him that he will come with amount whenever he receive telephonic call. On 03.08.2009 Ramteke Babu made a telephonic call to his wife and asked her to come along with remaining amount of Rs.8000/-. He also said that amount would be given to appellant Prakash Jaiswal and he is on leave at that time. Since he does not want to give bribe to the appellant, he made a written complaint Ex.P/1 on 04.08.2009. The officers of ACB asked him to give a complaint in the name of the person who was working in place of Ramteke Babu. Thereafter, he made a written complaint against the appellant which is Ex.P/2. He also informed the officers of

ACB that appellant had called him at 12 Noon and thereafter the officers of ACB verified his complaint and constituted a trap party by calling two Panch witnesses. He handed over Rs.5000/- in 10 denomination of Rs.500/- in which the phenolphthalein (Sodium Carbonate) powder was applied by Constable. His Talashi was also taken by the officers of ACB and Panchnama Ex.P/3 was prepared. Thereafter, the tainted currency notes were kept in the left pocket of his full pant and was convinced the manner it is to be given to the appellant and was advised not to touch the said currency notes before handing it over to the appellant. They also convinced him to make gesture after completion of transaction. The handwash solution of witnesses were also prepared and solutions were seized by keeping it in the separate bottles. A micro cassette tape recorder was also handed over to him for recording conversation between him and the appellant and Panchnama Ex.P/4 was prepared. They proceeded towards the office of the appellant. When he entered into the office room of appellant, he made a telephonic call to Ramteke and then he asked him to give the amount to Jaiswal and take the copy of the order. He asked him that he brought Rs.5000/- and then Ramteke asked him to give the entire amount of Rs.8000/-. He handed over Rs.5000/- to Jaiswal and came back to ATM to withdraw an amount of Rs.3000/-. Near ATM, he made gesture about completion of transaction and the members of trap party caught the appellant and tainted currency notes were recovered from the pocket of full pant of appellant. The hand wash of the appellant was turned into pink colour. The tainted notes, handwash solution and other documents including the order of

settlement of leave were recovered, necessary Panchnamas were prepared and transcript of conversation recorded in micro tape-recorder was also prepared, the tape-recorder and other material were seized. Spot map Ex.P/8 was prepared by the Patwari and Panchnama of entire proceeding Ex.P/9 was prepared.

13. At this stage, leading question was being asked from this witness, to which he stated that he has not disclosed in his police statement that they met with Prakash Jaiswal who demanded Rs.1000/- and he immediately handed over the same to him. He also denied that on 03.08.2009 the appellant Prakash Jaiswal made a telephonic call to his wife and demanded Rs.8000/- from her. He also denied that when he went to the office of appellant, the appellant Prakash Jaiswal demanded Rs.8000/- as bribe.
14. In cross examination, he admitted that the case file with respect to leave of his wife was being dealt with by Ramteke Babu. He admits that on 3rd Ramteke Babu informed them over phone that their work has been completed and called him. He admits that Ramteke babu asked him to give the amount of bribe to Prakash Jaiswal and he would be on leave on that day. On 4th he reached to the office of Directorate, Health Services. Before that, he never met with Prakash Jaiswal nor had any conversation with him. He admits that he informed the officers of ACB that it is the Ramteke Babu who asked him to give the amount to Prakash Jaiswal as he would be on leave on that day. He admits that the officers of ACB asked him to give his complaint in the name of Prakash Jaiswal and on that instance he made his complaint to them. He also admits that he informed the officers of ACB that he neither met

with Prakash Jaiswal nor Prakash Jaiswal demanded any bribe from him. He admits that when he reached to the present appellant and told him that Ramteke Babu told him to give the amount to him, to which the present appellant shows his ignorance. In paragraph 22 of his cross examination, he states that between him and Ramteke Babu there was no conversation with respect to any bribe amount. The officers of ACB insisted him to take the appellant out of his office room and then on the pretext that he wants to withdraw money from ATM, the appellant came along with him to show the location of ATM. He also stated in his cross examination that tape-recorder was returned to the officers of ACB on 04.08.2009 itself. The conversation was not being heard at the office of Directorate Health Services. The officers of ACB have also not heard the said conversation on the same day, but it was heard on the next day. On the next day, when he heard the conversation, it was found not clear. He further admits that on the next day the officers of ACB obtained his signatures over various documents and he was unaware about those documents. He specifically admits that appellant never demanded any bribe from him, nor accepted the same.

- 15.** When this witness have specifically stated in his evidence that he never met with accused Prakash Jaiswal and he never demanded any bribe amount from him nor he accepted any bribe from complainant, then the demand made by the appellant itself goes suspicion. Ramteke Babu with whom the appellant had made conversation and he allegedly demanded bribe from him has not been made accused in the present case. From the entire evidence of complainant it is clear that the

appellant was unaware about the conversation between the complainant and Ramteke Babu and he neither demanded bribe from him nor was having any pending work with respect to case file of the wife of complainant.

16. The Hon'ble Supreme Court has held in the matter of ***State of Kerala Vs. C. P. Rao reported in (2011) 6 SCC 450*** that mere recovery of tainted money is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In para 10 it was observed as under:

“10. In *C.M. Girish Babu v. CBI* {2009 (3) SCC 779}, this Court while dealing with the case under the Prevention of Corruption Act, 1988, by referring to its previous decision in *Suraj Mal v. State (Delhi Admn.)* (AIR 1979 SC 1408) held that mere recovery of tainted money, divorced from the circumstances under which it is paid, is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused. In the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.”

17. In the case of ***B. Jayaraj v. State of A.P. (2014) 13 SCC 55*** it was held by the Hon'ble Supreme Court that mere recovery of currency notes cannot prove the offence and it has been held as under:

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

18. In case of ***RPS Yadav Vs. Central Bureau of Investigation reported***

in (2015) 11 SCC 642 it was held by the Hon'ble Supreme Court in para 10 as under:-

“10. In fact, we do not find any such legally acceptable evidence either from PW 3 or from the other so-called independent witness PW 6 or the shadow witness in order to show that the mandatory requirement for conviction under Sections 7 and 13(2) read with Section 13(1)(d), namely, the demand, acceptance and recovery was chronologically proved as against the appellant. In the light of our above conclusion based on the analysis of the evidence led before the Court, we are constrained to hold that the conviction imposed on the appellant by the trial Court as well as confirmation of the same by the High Court cannot be sustained.”

19. Further, in the case of ***Sejappa v. State reported in (2016) 12 SCC***

150 the Hon'ble Supreme Court in paras 10 & 21 held as under:-

“10. In order to constitute an offence under Section 7 of the Prevention of Corruption Act, “proof of demand” is a sine qua non. This has been affirmed in several judgments including a recent judgment of this Court in *B. Jayaraj v. State of A.P.* {(2014) 13 SCC 55}, wherein this Court held as under:

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

“21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in *Mukut Bihari v. State of Rajasthan* {(2012) 11 SCC 642}, wherein it was held as under:

“11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt,

in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.”

20. In ***N. Vijay Kumar Vs. State of Tamil Nadu, 2021(3)SCC 687***, the

Hon’ble Supreme Court has held that :

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

27. The relevant paragraphs 7, 8 and 9 of the judgment in the case of *B. Jayaraj* (supra) read as under :

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the

money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma v. State of A.P.* [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and *C.M. Girish Babu v. CBI* [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1].

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

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

The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the

prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a “possible view” as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.”

- 21.** PW-7, M.P. Kashyap is the Panch witness. He has stated in his evidence that on 04.08.2009 when he was in his office, he received an order from the Additional District Magistrate, Raipur and he was called to the office of ACB Raipur as a witness in the trap proceeding. L.P. Patel was also another Panch witness who called by the office of ACB. When they reached to the office of ACB, the complaint made by the complainant Binu Raj was given to him. After preliminary verification they made their note in the said complaint Ex.P/2 and then the complainant handed over Rs.5,000/- and thereafter one staff of ACB Mr. Sahu applied phenolphthalein powder over the currency notes. He took search of the clothes of the complainant, but nothing adverse was found. The tainted currency notes were kept in pocket of pant of the complainant and advised him not to touch the same before it is handed to the accused. He also convinced about gesture to be made after completion of transaction. After necessary Panchnamas and pre trap proceeding, they proceeded towards the office of appellant. The complainant entered into the office room of appellant and after some time he came out along with appellant and went towards passage of

mosque and they followed them. Near State Bank ATM at Old Mantralaya Campus, the complainant made gesture about completion of transaction and then they caught hold the appellant. The handwash solution of the appellant was turned into pink colour and it was seized in a bottle. On being search of his clothes, the tainted currency notes were recovered from the pocket of full pant of appellant. The number of tainted currency notes were tallied with pre trap Panchnama. The necessary Panchnamas of handwash solution, recovery of tainted currency notes and other trap proceeding were prepared. Seizure memo Ex.P/18 was also prepared with respect to relevant documents of the case of the complainant. The transcript Ex.P/6 was also prepared in his presence with respect to conversation recorded in the tape-recorder and tape-recorder and cassette were seized vide Ex.P/7. The accused was arrested and details of proceeding were also prepared which is Ex.P/9.

- 22.** In cross examination, he admits that on 04.08.2009 itself at about 11 AM he was called at the office of ACB on the same day and they reached at about 12 Noon. He admits that he did not get verified the complaint made by the complainant. The officers of ACB informed him that the complaint has already been verified. In his presence, the complainant was not advised for recording of conversation between him and the appellant. He did not know as to why the officers of ACB have not verified the conversation recorded in tape-recorder. He admits that the person who demanded bribe from the complainant Binu Raj was not having any authority to deal with the file of complainant. He admits that wife of the complainant was not there with him and he also

did not ask of her not coming. He further states that before proceeding towards the office of appellant, he was not being informed by the ACB about any plan and he was only advised to remain with the trap party. He also did not know recording of the conversation by the complainant. He admits that he was not acquainted with the voice recorded in the tape-recorder and never heard the said noise before the trap proceeding. He also could not identify the person whose voice was recorded and what was the conversation. The transcript was not prepared in his presence at Directorate, Health Services and at the time when conversation was heard at ACB office, the said tape-recorder was not seized from the complainant Binu Raj till that time. He voluntarily stated that it was seized much before that. The complainant was asked to go inside the office room alone. They could not see him as to whom the complainant met inside the office room. When the officers of ACB caught hold the appellant, he protested that he has not taken any money from complainant and he has been falsely implicated in the offence. He further stated in his cross examination that transcript Ex.P/6 was prepared on 04.08.2009 at 3:45 PM. He admits that at that time the members of trap party were not present near ATM. He signed the transcript at ACB office. The transcript Ex.P/6 was prepared at the first floor of Mantralay campus in a office room. The transcript was prepared by a lady employee, but her name was not there in the members of trap party. He admits that he himself was unaware about any demand made by appellant or any conversation between them. He did not know for what reason the complainant gave money to appellant.

23. PW-12, Jayrol Lakda, is the Inspector posted at the office ACB Raipur.

He stated in his evidence that on 04.08.2009 the complainant Binu Raj came to his office and made a complaint Ex.P/2 against the appellant. He was being instructed by the Superintendent of Police for trap proceeding along with complainant. Along with complaint, the complainant has also submitted his consent letter Ex.P/1 executed by his wife Sunita Raj. The complainant informed him about the demand made the by appellant. On his request, a trap party was constituted and two Panch witnesses were called and they were introduced with the complainant. Panch witnesses verified the complaint made by the complainant and made their note on the complaint. Thereafter, he recorded Dehati Nalisi Ex.P/26 against the appellant. The complainant also provided Rs.5000/- in 10 denominations of Rs.500/-. The Panch witness Mr. Kashyap prepared the preliminary Panchnama, the Constable applied phenolphthalein powder on the currency notes, search of complainant was taken and thereafter the tainted currency notes were kept in right pocket of full pant of complainant and convinced him not to touch it until it is handed over to appellant. He was also convinced about gesture to be made after completion of transaction. The handwash solution was seized, Panchnamas were prepared and then he handed over a micro tape-recorder to the complainant for recording conversation between him and appellant. Thereafter, they proceeded towards the office of the appellant. The complainant entered into the office room of appellant and after sometime, he came out along with appellant and went towards ATM through mosque lane. Near ATM, the complainant made gesture about

completion of transaction and then they caught hold the appellant there. He disclosed his name and designation. Handwash solution of appellant turned into pink colour. The solution were seized in a separate bottle, Talashi Panchnama Ex.P/16 was prepared and tainted currency notes were recovered from the pocket of the pant of the appellant and seizure memo Ex.P/17 was prepared. The other official record of the case was also seized vide Ex.P/3. Tape-recorder was seized vide Ex.P/7. Spot Map Ex.P/8 was prepared by the Patwari. The appellant was arrested and his arrest was informed to his family members. The seized articles were sent for chemical examination to State FSL from where report Ex.P/34 was received and contents of Sodium Carbonate were found on sent articles and solutions.

- 24.** In cross examination, he admits that before 04.08.2009 he was unaware about any complaint made by the complainant Binu Raj. He met with Binu Raj at about 10 AM on 04.08.2009. Before meeting him, he already made his complaint to Superintendent of Police. He also admits that as and when they received any complaint, they get it verified. Since date and phone number was mentioned in the complaint made by the complainant, they did not verify the same and also not obtained any call details. He admits that wife of the complainant have not made any complaint to ACB office. He admits that in the preliminary Panchnama Ex.P/5 it has been mentioned that the complainant has orally informed him that if he will go with the micro tape-recorder to the appellant, he would raise suspicion on his conduct and therefore his complaint was not verified. In E to E part of preliminary Panchnama, it is mentioned that proceeding was suspended at 2:25 PM on

04.08.2009 and till 2:25 PM he was unaware about the place of incident i.e. Directorate, Health Services. He was also not aware about the place of transaction of bribe amount till that time. He admits certain discrepancies on date and time over the Panchnama Ex.P/9. He did not know who was the dealing clerk of case file of complainant's wife. When he made communication to Directorate Health Services, in its reply Ex.P/23 it was informed that in the Nursing Cell, Mr. Jaiswal and Mr. Ramteke are jointly working for dealing of the file. He also did not know who wrote notesheet in the case file of the wife of complainant. He did not know as to whether Ramteke Babu was on leave on that date or not. He denied that on the date of incident the complainant informed him over telephone that Ramteke is not present in the office and he asked to give bribe money to Prakash Jaiswal. The document Ex.P/30 was prepared by the Additional SP Mr. Khilari. He also did not know as to whether any amount was withdrawn from ATM at the time of trap proceeding or not. When the tape-recorder was handed over to the complainant for recording conversation, there was no Panchnama prepared that it was blank cassette and no any conversation is recorded in it. He also could not identify the voice of the conversation recorded in tape-recorder. He admits that in the transcript Ex.P/6 there was no mention of any demand of Rs.4000, 5000/- or Rs.8000/-. The voice of conversation recorded in tape-recorder was not clear. He admits that the relevant part of transaction i.e. demand of Rs.8000/-, negotiation for Rs.5000/- and withdrawal of remaining amount of Rs.3000/- from ATM are not there in the transcript Ex.P/6. He also admits that from the call detail, the conversation between the appellant

and wife of complainant could be verified; the holder of mobile also could be verified, however, he could not tell as to why the said proceedings were not drawn.

25. From the evidence of Investigating Officer it also transpires that the voice recorded in the said tape-recorder was not clear and further that it has not been proved that the voice recorded in the tape-recorder is the voice of the appellant. There is no any voice sampling or voice frequency test conducted by the prosecution to prove that it was the voice of appellant which was recorded in the tape-recorder during conversation with the complainant. Even as per his own evidence there is no mention of any amount of bribe as the conversation was not clear. In view of the fact that the witnesses were not acquainted with the voice of the appellant or complainant, there is no voice sampling or voice frequency test, it cannot be said that the voice recorded in the tape-recorder is the voice of appellant and the complainant for which the appellant is being prosecuted.

26. In the matter of ***Rajesh Gupta Vs. State through Central Bureau of Investigation, 2022 (2) SCR 864*** it has been held by the Hon'ble Supreme Court that tape recorded statement is admissible in evidence if the voice of the speaker is identified by the maker of record and other persons recognizing his voice. In paragraph 12 of said judgment, it has been held as under :

“12. On the issue of evidentiary value and credibility of the recording in the cases of trap, the law is well settled in the case of Ram Singh vs. Col. Ram Singh 1985 (Suppl) SCC 611, wherein this Court held that tape recorded statement is admissible in evidence if the voice of the speaker is identified by the maker of the record and other persons recognizing his voice. In case, the maker is unable to identify the voice, strict proof would be required to determine whether or not, the said voice is

of alleged speaker. The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence, direct or circumstantial. The possibility of tampering with, or erasure of any part of the tape recorded statement must be totally excluded. The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances, otherwise, the transcript as prepared, is inadmissible in evidence.”

27. Admittedly, in the present case the prosecution has not proved the fact that the voice recorded in the tape-recorder was the voice of the appellant. Therefore, possibility of tampering with the tape-recorder and alleged conversation cannot be ruled out.

28. Further, in absence of certificate under Section 65-B of the Evidence Act, the evidence of a digital tape-recorder is not admissible as held by the Supreme Court in ***Sanjay Singh Ramrao Chavan Vs. Datratray Gulabrao Phalke & Others, 2015(3)SCC 123***. In paragraph 16, the Hon’ble Supreme Court has held that:

“16. It is to be noted that in the first complaint filed by the second respondent - the de facto complainant, there is no allegation for any demand for bribe by the appellant. The allegation of demand is specifically against accused no.2 only. That allegation against the appellant is raised only subsequently. Be that as it may, the only basis for supporting the allegation is the conversation that is said to be recorded by the voice recorder. The Directorate of Forensic Science Laboratories, State of Maharashtra vide Annexure-B report has stated that the conversation is not in audible condition and, hence, the same is not considered for spectrographic analysis. Learned Counsel for the respondents submit that the conversation has been translated and the same has been verified by the panch witnesses. Admittedly, the panch witnesses have not heard the conversation, since they were not present in the room. As the voice recorder is itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the translation. Source and authenticity are the two key factors for an electronic evidence, as held by this Court in *Anvar P.V. v. P.K. Basheer and others*[4].”

29. PW-1, Sunita Raj, is the wife of complainant Binu Raj. She stated in her evidence that from 20.07.2007 to 22.05.2008 she could not appear in

her duty because of her ailment and she made an application for Earned Leave certificate with the department. Her case was forwarded to Directorate Health Services Raipur and after about a year they met with the clerk Prakash Jaiswal who demanded Rs.1000/- to forward her file. He also demanded Rs.8000/-after obtaining the requisite order. Her husband was in touch with appellant, but she could not know about their conversation. She could not give bribe to the appellant and therefore she executed a consent letter Ex.P/1 in favour of her Husband. In cross examination, she admits that at the time when she executed consent letter Ex.P/1, she was aware about the fact that the order has already been passed on her application. She admits that in her consent letter there is no mention of any demand made by the appellant in lieu of the order on her application. She further states that she disclosed in her police statement Ex.D/1 about demand of Rs.1000/- at the same time and Rs.8000/- after passing of order and if it is not there she could not tell the reason. She was not aware about Ramteke Babu at Directorate Office Raipur. She denied that her file was under the charge of Ramteke Babu. She admits that she has not made any complaint to higher officer of her department against Prakash. She admits that her husband got trapped two other persons.

- 30.** PW-3, Shivbaran Mishra is the Assistant Sub Inspector of Police posted at the office of ACB Raipur and he was also a member of trap party. On complaint being made, it was verified by the Panch witnesses and then they made their note on it. The complainant gave Rs.5000/-for trap proceeding and its Panchnama was prepared. The Sub Inspector R.P. Sahu applied phenolphthalein powder on the currency notes. The

handwash solution was seized and tainted currency notes were kept in right pocket of full pant of complainant and he was advised not to touch the same before handing over the same to appellant. Various Panchnamas were prepared and then they proceeded towards the office of appellant. The complainant entered into the office room of appellant and after sometime he came out along with appellant and went towards ATM through mosque lane. Near ATM, the complainant made gesture about completion of transaction and then they caught hold the appellant there. Tainted currency notes were recovered from the pocket of the pant of the appellant and his Handwash solution turned into pink colour. The solution were seized in a separate bottle, Talashi Panchnama Ex.P/16 was prepared. In cross examination, he stated that as and when any complaint is being received by the ACB office, it was verified by the department first and then asked the complainant to produce the conversation between them. It is not necessary that in every case the complaint is required to be verified, but it is on the discretion of the Superintendent of Police. They proceeded towards the place of incident at 2 PM and after 20-25 minutes the complainant came out from office room of appellant. The shadow witness who had gone with the complainant have not informed anything about the proceeding inside the room. He also did not know as to whether any clerk Ramteke was there or not. In the complaint, the complainant made complaint alleging that the appellant had demanded Rs.5000/- as bribe and he did not know why they went near ATM. He did not know about demand of Rs.8000/- for which they went near ATM.

- 31.** PW-4, Ram Narayan Shrivastava, is the Patwari who prepared the spot map Ex.P/8.
- 32.** PW-5, Lochan Pandey, Deputy Superintendent of Police, was posted at SHO at ACB Office Raipur. He registered the FIR Ex.P/12 and forwarded a copy thereof to the concerned trial court. He also forwarded copy of FIR to Superintendent of Police, ACB. In cross examination he admits that Dehati Nalish was forwarded to him for registration of FIR on 06.08.2009. He did not know as to why Dehati Nalish was sent after about two days.
- 33.** PW-6, Arun Kumar Mishra, is the Assistant Grade-I posted at Law & Legislative Department, Mantralaya, Raipur, who proved the sanction for prosecution Ex.P/14.
- 34.** PW-8, Ram Prasad Sahu, is the Police Sub Inspector at ACB Raipur. He applied Sodium Carbonate powder in the currency notes and kept it in pocket of pant of complainant. He is also the witnesses of seizure memo Ex.P/15 by which specimen pouch of Sodium Carbonate powder was seized. PW-9, Kishore Chatur has proved the service record of appellant Ex.P/21&22.
- 35.** PW-10, Bhagwan Singh Rathore is the Inspector of Police at ACB officer Raipur. He was also a member of trap party and proved the trap proceeding, however, in cross examination, he stated that at the time when he reached to the office of ACB, the complainant made his complaint. He admits that there is no preliminary verification of his complaint. He could not notice discrepancy in the documents Ex.P/3 & P/5. He did not know about withdrawal of amount from ATM and why they went towards ATM. He did not know about the reason for any

transaction made between appellant and complainant. The transcript of the conversation was prepared near ATM and it was also heard at the same place. The conversation recorded in tape-recorder was not clear, but he could not say as to whose voice was there in the tape-recorder. He was not acquainted with the voice of complainant and appellant.

36. PW-11, Dr. Smt. Alka Gupta is the Deputy Director posted at the office of Directorate Health Services Raipur. He proved the document Ex.P/23 by which the posting order of the appellant has been given to the ACB and the work distribution there. In cross examination she admits that all the works of Section was being done by the employees jointly. She could not tell as to who dealt with case file of the Smt. Sunita Raj.

37. From all these evidences, the prosecution has failed to prove about verification of the complaint; any conversation between the appellant and the complainant and any demand made by the appellant and the conversation recorded in the tape-recorder is the voice of the appellant. Even in the conversation there is no any amount disclosed with respect to alleged bribe as has been claimed by the appellant. When the complainant himself has said that he never met with appellant before such transaction, nor he demanded any money from him, it cannot be said that the prosecution has been able to prove the demand made by the appellant beyond reasonable doubt. As has been held in the aforesaid judgments of Supreme Court that mere acceptance and recovery of bribe amount is not sufficient to hold the appellant guilty for the illegal gratification in absence of any demand made by him and the same is the position here in the present case that

the prosecution has utterly failed to prove the demand made by the appellant from the complainant. Therefore, the conviction of the appellant for the alleged offences cannot be sustained.

38. Accordingly, by giving the appellant benefit of doubt, his appeal is **allowed**. The impugned judgment of conviction and sentence is hereby set aside and the appellant is acquitted from the alleged offences. The appellant is reported to be on bail. His bail bond shall remain in operation for a period of six months as provided under Section 481 of BNSS, 2023.

39. The trial court record be send back forthwith along with copy of this judgment for necessary compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder