2026 INSC 1230

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 571 OF 2015

HAR PARSAD GAUR ...APPELLANT(S)

VERSUS

STATE (NCT OF DELHI) ....RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

We have heard Mr. Parthiv K Goswami, learned senior counsel for the appellant and Dr. Nachiketa Joshi, learned senior counsel for the respondent.

2. This appeal takes exception to the judgment and order dated 19.12.2014 passed by the High Court of Delhi at New Delhi (briefly 'the High Court' hereinafter) in Criminal Appeal No. 782 of 2008 (*Har Parsad Gaur Vs. State).*

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Reason:

3. Appellant was prosecuted in CC No. 40 of 2003 before the Court of Special Judge, Delhi under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the PC Act' hereinafter). *Vide* the judgment and order dated 28.08.2008, learned Special Judge convicted the appellant for committing the offences under Sections 7 and 13(1)(d) punishable under Section 13(2) of the PC Act. By a separate order dated 29.08.2008, appellant was sentenced to undergo rigorous imprisonment (RI) for a period of two years and to pay fine of Rs. 10,000.00 with a default stipulation for the offence under Section 7 of the PC Act; he was also sentenced to undergo RI for a period of two years and to pay fine of Rs. 10,000.00 with a default stipulation for the offence under Section 13(2) of the PC Act; with the declaration that both the sentences would run concurrently.

4. Appellant assailed his conviction and sentence before the High Court in Criminal Appeal No. 782 of 2008. *Vide* the judgment and order dated 19.12.2014, the High Court upheld the conviction of the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. However, the sentence

awarded to the appellant by the trial court was reduced from two years of RI to one year of RI for each of the offences with no alteration of the fine amounts or the default sentences.

5. Aggrieved thereby, appellant approached this Court by filing Special Leave Petition (Criminal) No. 1335 of 2015. By order dated 09.02.2015, the learned Chamber Judge rejected the application of the appellant seeking exemption from surrendering. *Vide* order dated 20.02.2015, this Court issued notice on the special leave petition as well as on the prayer for suspension of sentence. Thereafter, *vide* order dated 06.04.2015, leave was granted and the sentence imposed on the appellant was suspended. Consequently, appellant was directed to be enlarged from custody. That is how Criminal Appeal No. 571 of 2015 came to be registered.

6. At the outset, it would be apposite to note down the relevant facts.

7. The complainant is Puran Chand. He was employed with M/s. Pooja Printers. He had filed a case before the Labour Court against M/s. Pooja Printers alleging non-payment of his

wages. By award dated 25.05.2001, the Labour Court directed Mr. Ashok Bansal, Proprietor of M/s. Pooja Printers (PW-3), to pay the wages to Puran Chand which was quantified at Rs. 41,425.00.

8. Puran Chand filed an execution application before the Court of Labour Commissioner. On 19.07.2002, the Labour Commissioner sent a letter to the District Collector for recovery of the aforesaid amount from M/s. Pooja Printers. The matter regarding recovery was marked to the appellant Har Parsad Gaur who at that point of time was working as Tehsildar, Kotwali having his office at the old civil supply building.

9. On 23.09.2002, the complainant Puran Chand went to the office of the appellant and requested him to expedite the recovery proceedings. According to the complainant, when he made the request, appellant demanded Rs. 3,000.00 as bribe. Being out of work and without wages, the complainant could not meet such a demand. He, therefore, met the appellant a number of times thereafter but on every occasion, the appellant

demanded the said bribe amount of Rs. 3,000.00. Ultimately, the complainant had to pay the bribe amount to the appellant.

10. According to the complainant, even thereafter the cheque(s) had not been sent to the office of the Labour Commissioner. When he met the appellant after about 10 days i.e. on 07.12.2002, the appellant demanded a further amount of Rs. 1,000.00 as bribe from the complainant. In this connection, appellant had called him at his residence on telephone in the morning of 06.01.2003 and asked him to come with the bribe amount of Rs. 1,000.00 on that day between 01:00 pm to 01:30 pm to the State Bank of India (SBI) building at Tis Hazari court complex.

11. At this stage, complainant went to the office of the Anti-Corruption Bureau and got his complaint recorded by Inspector S.S. Sandhu (PW-10). The complaint was recorded in the presence of one *panch* witness Ramesh Chand, who was working as a Peon in the Department of Animal Husbandry, Delhi Government. The complaint was signed by the

complainant Puran Chand and by the *panch* witness Ramesh Chand whereafter it was signed by PW-10.

12. Complainant Puran Chand produced two currency notes of Rs. 500 denomination, details of which were noted down by PW-10 in his pre-raid report. Thereafter, he treated those two currency notes with *phenolphthalein* powder and demonstration as to its effect was given. The two currency notes of Rs. 500 denomination which were treated with *phenolphthalein* powder were handed over to the complainant for being given to the appellant on demand. It is stated that on completion of the aforesaid procedure, complainant, the *panch* witness and PW-10 washed their hands with clean water and soap. Instructions were given to the *panch* witness to remain close to the complainant and to overhear the conversation between him and the appellant. He was further instructed to give a pre-determined signal once the transaction was complete.

13. On that day i.e. 06.01.2003, at around 12:30 pm, PW-10 alongwith the complainant, the *panch* witness, Inspector H.N. Meena (PW-9) and other members of the raiding party left

the office of the Anti-Corruption Bureau in a government Maruti van vehicle for the SBI building, Tis Hazari court complex. The raid party reached there within 15-20 minutes. The vehicle was left at some distance away from the SBI building. PW-9 Inspector H.L. Meena and the driver stayed back in the vehicle. The complainant and the *panch* witness went towards the SBI, Tis Hazari Branch. They were followed by PW-10 and other members of the raiding party.

14. According to PW-10, at about 12:55 pm, the complainant and the *panch* witness stood near an STD booth situated outside the SBI branch at the Tis Hazari court complex. At around 01:05 pm, PW-10 saw that one person, who was medium built and wearing blue coat, came near the complainant and the *panch* witness and kept his hand on the back of the complainant.

15. Thereafter, the complainant shook hands with that person and started a conversation. At about 01:10 pm, PW-10 received the pre-determined signal from the *panch* witness whereafter he alongwith the raiding team rushed towards the spot where the three were having the conversation. PW-10

stated that the *panch* witness had informed him that the appellant had specifically demanded and accepted bribe of Rs. 1000.00 from the complainant with his right hand and had kept the same in the right side inner pocket of his coat. PW-10 disclosed his identity as Inspector of the Anti-Corruption Bureau and challenged the appellant that he had accepted bribe of Rs. 1,000.00 from the complainant. PW-10 offered his search as well as the search of the raiding team personnel which was refused by the appellant. Thereafter, on his instructions, the *panch* witness recovered the two treated currency notes of Rs. 500 denomination from the right side inner pocket of the coat of the appellant. PW-10 took the left hand wash of the appellant and also wash of the right side inner pocket of the coat, both of which turned pink. The treated water was then transferred into four small empty clean bottles and were sealed.

16. Thereafter PW-9 was called to the spot and was handed over custody of the appellant, case property as well as the documents. On completion of investigation, chargesheet was submitted before the Court of the Special Judge and charges were framed. As the appellant pleaded not guilty and

claimed to be tried, the trial commenced. Prosecution examined 10 witnesses whereafter the statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 (CrPC) was recorded.

17. It may be mentioned that during the trial, before their evidence could be recorded, the complainant as well as the *panch* witness passed away. However, on conclusion of the trial, the trial court on an analysis of the documents and the evidence of PW-10, together with the fact that the hand wash and the wash of the right side inner pocket of the coat of the appellant had turned pink, opined that it was sufficient to draw the presumption under Section 20 of the PC Act. Since the appellant failed to give a reliable explanation by way of rebuttal, the trial court *vide* the judgment and order dated 28.08.2008 held the appellant to be guilty under Section 7 and Section 13(1)(d) punishable under Section 13(2) of the PC Act and by a separate order dated 29.08.2008 imposed the sentence as above.

18. As noted supra, appellant assailed his conviction and sentence before the High Court. By the impugned judgment and order dated 19.12.2014, the High Court relied upon Section 20 of the PC Act and held that the appellant could not dislodge the statutory presumption against him. Accordingly, the appeal preferred by the appellant was dismissed. However, the sentence was reduced from two years to one year.

19. This then is the case summary.

20. Mr. Parthiv Goswami, learned senior counsel for the appellant, at the outset submits that both the trial court and the High Court fell in error in convicting the appellant under Sections 7 and 13(1)(d) of the PC Act in as much as the foundational facts comprising demand of illegal gratification and voluntary acceptance thereof by the appellant remained entirely unproved on record.

20.1. Mr. Goswami submits that both the complainant and the *panch* witness having passed away prior to the trial, no primary evidence was brought forth to substantiate the accusation that the appellant had ever demanded any

gratification. Thus, demand of illegal gratification and acceptance thereof by the appellant remained unproved. Therefore, reliance placed on Section 20 of the PC Act is not justified. Presumption under Section 20 of the PC Act will only come into play once the above foundational facts are held to have been proved.

20.2. According to Mr. Goswami, PW-10 had arrived at the scene of occurrence only after the alleged transaction was over. He had no personal knowledge of the prior exchange or conversation between the complainant and the appellant, thus rendering his testimony regarding what the *panch* witness had purportedly communicated to him wholly inadmissible in evidence on the ground of hearsay.

20.3 Learned senior counsel for the appellant has referred to the additional documents, more particularly, the depositions of PW-4 and PW-7 to contend that there was no occasion for the appellant to demand any bribe from the complainant. PW-4 was serving as Lower Division Clerk in the office of the Deputy Labour Commissioner. In compliance with the instructions of

the Deputy Labour Commissioner addressed to the Assistant Commissioner, two cheques were received by him from the Assistant Collector, Kotwali for a total sum of Rs. 41,452.00 on 01.01.2003. Similar is the deposition of PW-7 who stated that there were two cheques being dated 28.11.2002 and 28.12.2002. Both the cheques were received in the office of the Deputy Labour Commissioner on the same day i.e. 01.01.2003. According to Mr. Goswami, when both the cheques were already transmitted to the office of the Deputy Labour Commissioner on 01.01.2003, question of demanding bribe by the appellant on 06.01.2003 did not arise at all. He submits that the High Court fell into grave error by drawing a presumption under Section 20 of the PC Act merely on the basis of recovery of the tainted currency notes and chemical wash tests ignoring the fact that proof of demand is a *sine qua non* for an offence under Section 7 or Section 13(1)(d) of the PC Act, which remained unproved.

20.4. Learned senior counsel for the appellant in support of his submissions has placed reliance on the following decisions:

(i) *Neeraj Dutta Vs. State (Government of NCT of Delhi)*[1];

(ii) *Neeraj Dutta Vs. State (Government of NCT of Delhi)*[2]; and

(iii) *State of Uttar Pradesh Vs. A.K. Gaba*[3].

20.5. Summing up his submissions, learned senior counsel contends that the conviction and sentence of the appellant are wholly unsustainable in law and those are liable to be set aside. Appeal should accordingly be allowed.

21. *Per contra,* Dr. Nachiketa Joshi, learned senior counsel appearing for the respondent has supported the impugned judgment and order of the High Court and seeks dismissal of the appeal.

21.1. Dr. Joshi submits that prosecution had proved its case beyond reasonable doubt through reliable circumstantial and corroborative evidence. He submits that the complaint Ex. P-10/A contained detailed particulars of the illegal demand. This together with the recovery of the tainted currency notes from the right side inner pocket of the appellant's coat remained

[1] (2023) 4 SCC 731
[2] (2023) 18 SCC 251
[3] (2026) SCC Online SC 967

undisputed. He also submits that both the left hand wash and the pocket wash of the appellant reacted positively to the *phenolphthalein* and *sodium carbonate* tests, thereby establishing conscious physical handling of the tainted money.

21.2. Learned senior counsel for the respondent has argued that once recovery of the marked money from the possession of the public servant is established, the statutory presumption under Section 20 of the PC Act automatically kicks in placing the burden upon the accused to rebut the same by offering credible explanation which the appellant failed to discharge.

21.3. In support of his submissions Dr. Joshi has placed reliance on the following decisions:

(i) *Hazari Lal Vs. State (Delhi Administration)*[4];

(ii) *M. Narsinga Rao Vs. State of Andhra Pradesh*[5];

(iii) *State of Andhra Pradesh Vs. C. Uma Maheshwari Rao*[6];

[4] (1980) 2 SCC 390
[5] (2001) 1 SCC 691
[6] (2004) 4 SCC 399

(iv) *State of Andhra Pradesh Vs. R. Jeevaratnam*[7];

(v) *P. Sarangapani Vs. State of Andhra Pradesh*[8]; and

(vi) *State of Karnataka Vs. Chandrasha.*[9]

22. Submissions made by learned counsel for the parties have received the due consideration of the Court.

23. Section 2 of the PC Act provides various definitions of the words and expressions used in the PC Act. Section 2(c) defines the expression 'public servant' to mean and include any person in the service or pay of the government or remunerated by the government by fees or commission for the performance of any public duty; any person in the service or pay of a local authority etc.

24. There is no doubt, therefore, that appellant Har Parsad Gaur, who was serving as Tahsildar, Kotwali, was a public servant within the meaning of the PC Act.

[7] (2004) 6 SCC 488
[8] (2024) 19 SCC 550
[9] (2024) SCC Online SC 3469

25. As noticed supra, appellant was prosecuted and convicted under Sections 7 and 13(1)(d) of the PC Act. Occurrence had taken place on 06.01.2003.

26. Section 7 of the PC Act, as it stood at the relevant point of time, dealt with public servant taking gratification other than legal remuneration in respect of an official act. Section 7, at the relevant point of time, stood as under:

> **7**. *Public servant taking gratification other than legal remuneration in respect of an official act.*- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years

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

Explanations. - (a) 'Expecting to be a public servant'. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) 'Gratification'. The word 'gratification' is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) 'Legal remuneration'. The words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organization, which he serves, to accept.

(d) 'A motive or reward for doing'. A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

27. In *Jaswinder Singh Vs. State of Punjab*[10], this Court has analyzed Section 7 in the following manner:

> **10.** As per Section 7, whoever being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification other than legal remuneration as a motive or reward for doing or not doing any official act or for showing or not showing in the exercise of his official function(s) favour or disfavour to any person etc. with the Central Government or State Government or any authority mentioned in the said section or with any public servant, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.
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> **10.1.** There are five explanations to Section 7. As per Explanation (a), the expression 'expecting to be a public servant' refers to and is in respect of a person not expecting to be in office, who obtains a gratification by deceiving others into believing that he is about to be in office and that he would then serve them, may be guilty of the offence of cheating but would not be guilty of the offence defined in Section 7. Explanation (b) clarifies that 'gratification' is not restricted to pecuniary gratification or a gratification which is estimable in

[10] 2026 SCC OnLine SC 1952

terms of money. Explanation (c) clarifies that the words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand but will include all remuneration which a public servant is permitted to accept. The expression 'a motive or reward for doing' has been explained in Explanation (d). It says that a person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do or has not done, comes within the ambit of this expression. In terms of Explanation (e), where a public servant induces a person erroneously to believe that his influence with the Government has obtained the title for that person and thus induces that person to give the public servant, money or other gratification as a reward for this service, the public servant has committed an offence under this section.

28. Appellant has also been convicted under Section 13(1)(d) of the PC Act for committing the offence of criminal misconduct. Section 13(1)(d), as it stood at the relevant time, read as under:

> **13**. *Criminal misconduct by a public servant.* - (1) A public servant is said to commit the offence of criminal misconduct, -
>
> * * * * * *
>
> (d) if he, -

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

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

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

* * * * * *

29. For committing the offence of criminal misconduct in the aforesaid manner, appellant was also punished under sub-section (2) of Section 13 which is extracted hereunder:

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

30. Section 13(1)(d), as it stood at the relevant point of time, declared that a public servant would commit the offence of criminal misconduct if he by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or, by abusing his position as a public servant, obtains for himself or for any other person any valuable

thing or pecuniary advantage; or, while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. For committing the offence of criminal misconduct as aforesaid, a public servant would be liable to be punished with imprisonment for a term which shall not be less than one year (four years with effect from 16.01.2014) but which may extend to seven years (ten years with effect from 16.01.2014) and shall also be liable to fine.

31. It would also be necessary to advert to Section 20 of the PC Act, inasmuch as, the High Court relied upon the aforesaid provision to draw the presumption against the appellant that he had committed the offence under Sections 7 and 13 of the PC Act. Section 20 was substituted with effect from 26.07.2018. Prior to its substitution, Section 20 stood as under:

> **20**. *Presumption where public servant accepts gratification other than legal remuneration.*—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or

for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

31.1. Sub-section (1) of Section 20 is relevant for our present purpose. It says that where in any trial of an offence punishable under Section 7 or Section 13 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that the accused public servant accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward as mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

32. In *P. Satyanarayana Murthy Vs. State of A.P.*[11], this Court held that proof of demand of illegal gratification is the *sine qua non* for the offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. Mere acceptance of any amount allegedly by

[11] (2015) 10 SCC 152

way of illegal gratification or recovery thereof without the proof of demand would not be sufficient to record a conviction under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. This Court held that failure of the prosecution to prove the demand for illegal gratification would be fatal; mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the PC Act would not result in his conviction thereunder. Paragraph 23 of the said decision is relevant and is extracted hereunder:

> **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.

33. A Constitution Bench of this Court in *Neeraj Dutta-1* considered the following question for determination:

> Whether, in the absence of evidence of the complainant, direct or primary evidence of demand of illegal gratification, is it not permissible to draw an inferential deduction of culpability/ guilt of a public servant under Section 7 and Section 13(1)(*d*) read with Section 13(2) of the PC Act based on other evidence adduced by the prosecution?

33.1. It is not necessary to delve into a detailed analysis of the aforesaid decision of the Constitution Bench. Suffice it to say that the question referred was answered in the following manner:

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

33.2. Thus, the Constitution Bench held that in the absence of evidence of the complainant, it is permissible to draw an inferential deduction of culpability of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act based on other evidence adduced by the prosecution.

33.3. The conclusions reached by the Constitution Bench are as under:

88. What emerges from the aforesaid discussion is summarised 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.

* * * * * *

33.4. Thus what the Constitution Bench held is that 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 PC Act. The above fact in issue can be proved by direct evidence as well as by circumstantial evidence. Demand must precede acceptance. 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) of the PC Act. The presumption of fact with regard to the demand and acceptance or obtainment of illegal gratification may be made by a court of law by way of an inference under Section 20 only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the PC Act. In the event, the complainant turns hostile or has died or becomes unavailable to let in evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness. For the aforesaid eventualities, the trial does not abate nor does it result in the acquittal of the accused public servant.

34. A two-Judge Bench of this Court in *Neeraj Dutta-2* examined the conviction of the appellant for the offences punishable under Sections 7 and Section 13(1)(d)(i) and (ii) of the PC Act following the declaration of law by the Constitution Bench in *Neeraj Dutta-1*. The Bench referred to earlier decisions of this Court dealing with the presumption under Section 20 of the PC Act and held that the presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7 are proved. The two basic facts are 'demand' and 'acceptance' of gratification. Unless the above two basic facts are proved, the presumption under Section 20 would not be available. The demand for gratification and its acceptance must be proved beyond a reasonable doubt. In this regard, reference was made to the decision of the Constitution Bench in *Neeraj Dutta-1* which held that only on proof of the facts in issue, Section 20 would mandate the court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7. That apart, the demand within the meaning of Section 7 cannot be a simplicitor

demand for money but it has to be a demand of gratification other than legal remuneration. This Court held thus:

> **16.** The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.

35. *Aman Bhatia Vs. State*[12] is a two Judge Bench decision of this Court where it has been held that mere recovery of tainted money, by itself, would be insufficient to establish the charge against an accused under the PC Act. The Bench held that to sustain a conviction under Sections 7 and 13(1)(d) of the

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PC Act, it must be proved beyond reasonable doubt that the public servant voluntarily accepted the money, knowing it to be a bribe. It has been held as under:

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

36. Similar view has been taken by another two-Judge Bench of this Court in *A.K. Gaba* where it has been held as follows:

> **16.** The proof of demand of illegal gratification is the gravamen of the offence and in absence thereof, the presumption under Section 20 of the P.C. Act would not arise. Where prosecution evidence is inconsistent and material witnesses turn hostile, benefit of doubt must necessarily enure to the accused.

37. At this stage, let us briefly examine the judgments cited by the respondent. Ofcourse, four of the judgments relied

upon by learned senior counsel for the respondent were delivered much before the decision of the Constitution Bench of this Court in *Neeraj Dutta-1*. Even in those cases also where reliance was placed on Section 114 of the Evidence Act, 1882, the conclusion reached by this Court is that the presumption under Section 20(1) of the PC Act is contingent upon the fact that during trial it should be proved that the accused had accepted or agreed to accept any gratification, though this condition need not be satisfied only through direct evidence. Let us therefore analyze the two judgments relied upon by the respondent which were rendered post *Neeraj Dutta-1.*

38. In *P. Sarangapani,* a two-Judge Bench of this Court relied upon the Constitution Bench judgment in *Neeraj Dutta-1* and held that death of the complainant or non-availability of the complainant at the time of trial could not be said to be fatal to the case of the prosecution nor could it be said to be a ground to acquit the accused. In the absence of the complainant, it is open to the prosecution to prove the contents of the complaint and other facts in issue by leading other oral or documentary evidence. Referring to Section 20 of the PC Act, the Bench held

that once the undue advantage i.e. any gratification whatsoever other than the legal remuneration is proved to have been accepted by the accused public servant, the court is entitled to raise the presumption under Section 20 that he had accepted the undue advantage as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly. The Bench however clarified that such presumption is rebuttable.

38.1. In the facts of that case, the Bench held that the pre-trap and post-trap proceedings were duly proved by the prosecution. Both the courts below had recorded the findings that the prosecution had proved beyond reasonable doubt the conscious acceptance of the tainted currency by the accused and also the recovery of tainted currency from the accused-appellant. Therefore, the burden had shifted onto the appellant to dispel the statutory presumption under Section 20 of the PC Act. The explanation offered by the appellant was not sufficient to rebut the presumption. In the circumstances, the Bench while dismissing the appeal, confirmed the conviction and sentence of the accused-appellant.

39. A three-Judge Bench of this Court in *Chandrasha* also examined the operation and application of the presumption under Section 20 of the PC Act. Referring to various decisions of this Court including the Constitution Bench decision in *Neeraj Dutta-1,* the three-Judge Bench held that the presumption under Section 20 of the PC Act can be drawn only after demand for and acceptance of illegal gratification is proved. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the PC Act. After a thorough analysis, the Bench held that the two basic facts of 'demand' and 'acceptance' of gratification stood proved; thus, the presumption under Section 20 could be invoked to the effect that the gratification was demanded and accepted as a motive or reward as contemplated under Section 7 of the PC Act. While clarifying that such presumption is rebuttable, the Bench opined that even on the basis of pre-ponderance of probability, the accused public servant can rebut such presumption. In the facts of that case, the Bench held that prosecution had proved its case beyond reasonable doubt in respect of the demand and acceptance of the bribe amount from the complainant by the accused-appellant and recovery of tainted currency notes from the possession of the accused-appellant. Therefore, this Court held that

the trial court had rightly drawn the presumption under Section 20 of the PC Act.

40. Having surveyed the statutory provisions and the relevant judgments, we may now revert back to the evidence tendered in this case. As noticed above, prosecution examined 10 witnesses. However, it is a fact that neither the complainant Puran Chand nor the *panch* (shadow) witness Ramesh Chand could enter the witness box as both of them passed away before their depositions could be recorded by the trial court. As a result, there is no direct or primary oral evidence of:

(i) any prior demand of bribe allegedly made by the appellant to the complainant on 23.09.2002 or on 07.12.2002;

(ii) any telephonic conversation or demand allegedly made by the appellant to the complainant on the morning of 06.01.2003; and

(iii) the exchange of words, demand of bribe and/or conscious voluntary acceptance of illegal gratification by and between the complainant and the appellant at the spot outside the SBI building on the afternoon of 06.01.2003.

41. Thus, the prosecution case regarding the trap rests entirely on the testimony of the trap officer i.e. Inspector S.S. Sandhu (PW-10). In his examination-in-chief, he stated that at the relevant point of time, he was posted as Inspector in the Anti-Corruption Bureau, Government of NCT of Delhi. On 06.01.2003, at about 11:00 am, the complainant had come to the office where his complaint was recorded in the presence of the *panch* witness Ramesh Chand. The complaint was regarding demand of bribe of Rs. 1,000.00 by the appellant from the complainant. Appellant was serving as Tehsildar, Kotwali and he had demanded the bribe from the complainant for forwarding the two cheques received from M/s. Pooja Printers to the office of the Labour Commissioner. He then narrated the steps taken including chemical treatment of the two currency notes of Rs. 500 denomination furnished by the complainant. He stated that the complainant was instructed to do the transaction in such a manner that the *panch* witness should be able to see the transaction and also hear the conversation. Likewise, the *panch* witness was instructed to remain close to the complainant and to overhear the conversation between the complainant and the appellant and to see the transaction whereafter he was instructed to give the signal by hurling his hand over his head.

41.1. PW-10 stated that at around 12:30 pm of 06.01.2003, he alongwith the complainant, *panch* witness, Inspector H.N. Meena and other members of the raiding party left the office in a government Maruti van for the SBI building. On reaching the place, the government vehicle was left at some distance away with Inspector H.N. Meena and the driver staying behind. While the complainant and the *panch* witness went ahead, PW-10 and other members of the raiding party followed them whereafter they took suitable position.

41.2. While the complainant and the *panch* witness stood near a STD booth outside the SBI Branch, at around 01:05 pm, PW-10 saw one person, who was medium built and was wearing blue coat, coming near the complainant. He kept his hand on the back of the complainant. PW-10 saw the complainant shaking hands with that person and starting a conversation. He stated that at about 01:10 pm, he received the pre-determined signal from the *panch* witness whereafter he alongwith the raiding team rushed towards the spot where the *panch* witness told him that the appellant had specifically demanded and accepted bribe of Rs. 1,000.00. While the bribe was received by his right hand, appellant kept the same in the right side inner pocket of his coat.

41.3. In his cross examination, PW-10 stated that the *panch* witness had told him that the accused (appellant) had accepted the bribe money with his left hand and had kept the same in the inner right side pocket of his coat.

42. Notwithstanding the right hand left hand discrepancy, it is evident that the above statement of PW-10 regarding what was narrated to him by the *panch* witness is nothing but hearsay evidence. PW-10 himself had not seen or heard any demand for illegal bribe being made by the appellant or acceptance of the same. It was entirety relayed to him by the *panch* witness. In the absence of the *panch* (shadow) witness testifying as to the correctness of the said statement, such hearsay statement of PW-10 would be inadmissible in evidence and cannot establish the fact in issue viz. the demand for and voluntary acceptance of illegal gratification by the appellant.

43. What remains on record is the recovery of the tainted currency notes from the right side inner pocket of the coat worn by the appellant and the fact that the left hand wash as well as the coat pocket wash had turned pink.

44. We have already discussed supra, buttressed by various decisions of this Court, that mere recovery of tainted currency notes,

absent proof of demand, cannot sustain a conviction under Sections 7 and 13(1)(d) of the PC Act.

45. In the absence of any primary evidence of demand, prosecution was under an obligation to prove the circumstances leading to an irresistible inference of guilt of the appellant.

46. An examination of the official record would belie the prosecution case regarding motive and demand. The crux of the complaint Ex P-10/A was that the appellant was withholding two recovery cheques received from M/s. Pooja Printers and was demanding a bribe of Rs. 1,000.00 as a condition precedent to forward the two cheques to the office of the Labour Commissioner. However, contemporaneous official record seized by the investigating agency belie this assertion. The original order sheet Ex. P-7/A and the forwarding letter Ex. P-7/F established that the appellant's office had already dispatched both the cheques to the office of the Deputy Labour Commissioner on 28.12.2002. This fact is corroborated by PW-4 Sudhir Kumar who was serving as LDC in the office of the Deputy Labour Commissioner and PW-7 Suresh Kumar Verma who was also serving as LDC in the office of the Sub-Divisional Magistrate/Tehsildar. Both the witnesses deposed that the two cheques were dispatched on 28.12.2002 and were received in

the office of the Deputy Labour Commissioner on 01.01.2003. Furthermore, the proceedings before the Assistant Labour Commissioner dated 07.01.2003 (Ex. P-14) revealed that the complainant Puran Chand had appeared before the Labour Department on 07.01.2003 and collected both the cheques which were lying deposited there since 01.01.2003. Therefore, no official work or proceeding in relation to the complainant was pending before the appellant on 06.01.2003. The official act of recovering the amount and transmitting the cheques to the Labour Department stood executed by the appellant on 28.12.2002 and had reached the Labour Department on 01.01.2003. In the above backdrop, the charge that appellant had telephoned the complainant in the morning of 06.01.2003 threatening that the cheques would be with-held unless Rs. 1,000.00 was paid to him as bribe, is contrary to the official record.

47. In the circumstances, the explanation offered by the appellant in his statement recorded under Section 313 CrPC that the complainant had met him near the SBI Branch to convey gratitude for forwarding the two cheques and while shaking hands, tried to thrust the currency notes into his coat pocket, cannot be discarded altogether. While the prosecution must prove its case beyond all reasonable doubt, the accused is only required to establish his

defence on the touchstone of pre-ponderance of probabilities to rebut the presumption under Section 20 of the PC Act. In view of the official records showing prior completion of work, the defence version was plausible and satisfied the test of pre-ponderance of probabilities.

48. Thus, it is evident that neither the demand for bribe by the appellant nor the conscious acceptance of the bribe by the appellant can be said to have been proved. In the absence of such proof, drawing of presumption under Section 20 of the PC Act was impermissible.

49. That being the position, the impugned judgment and order of the High Court dated 19.12.2014 passed in Criminal Appeal No. 782 of 2008 and the judgment and order of the learned Special Judge, Delhi dated 28.08.2008 passed in CC No. 40 of 2003 are hereby set aside. Appellant Har Parsad Gaur is acquitted of the charges framed against him under Section 7 and Section 13(1)(d) read with Section 13(2) of the PC Act. Since the appellant is on bail, his bail bonds would stand discharged.

50. Consequently, the criminal appeal is allowed. All pending applications stand disposed of.

.....J.
[UJJAL BHUYAN]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI;
NOVEMBER 17, 2026.