



CRL.A NO. 1651 OF 2006

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2025:KER:62475

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19TH DAY OF AUGUST 2025 / 28TH SRAVANA, 1947

CRL.A NO. 1651 OF 2006

AGAINST THE JUDGMENT DATED 31.07.2006 IN CC NO.15 OF 2005 ON THE
FILE OF CBI SPECIAL COURT I, ERNAKULAM

APPELLANT/ACCUSED:

SASI

AGED 48 YEARS,

S/O.RAMANKUTTY, IRUMPANAM,, TELEPHONE EXCHANGE, ADMALI.

BY ADVS.

SRI.B.RAMAN PILLAI (SR.)

SRI.ANIL K.MUHAMED

SRI.R.ANIL

SRI.DELVIN JACOB MATHEWS

SRI.GEORGE PHILIP

SRI.RAJU RADHAKRISHNAN

SHRI.SALISH ARAVINDAKSHAN

RESPONDENT/COMPLAINANT:

C.B.I., COCHIN

BY ADV SHRI.SREELAL N.WARRIER,SREELAL N.WARRIER, SPL.PUBLIC
PROSECUTOR, CENTRAL BUREAU OF INVESTIGATION (CBI)

OTHER PRESENT:

ADV.B.RAMAN PILLAI (SR.)

ADV.SREELAL N.WARRIER,SPL PP CBI.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 19.08.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



C R

A. BADHARUDEEN, J

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Crl. Appeal No. 1651 of 2006

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Dated 19th day of August 2025

JUDGMENT

The sole accused in C.C.No.15 of 2005 on the files of the Special Judge, CBI-I, Ernakulam, has preferred this Criminal Appeal under Section 374 of the Code of Criminal Procedure (CrPC, for short hereafter) challenging conviction and sentence imposed against him, in the said case as per judgment dated 31.07.2006. Superintendent of Police, SPE/CBI is the respondent herein.



2. Heard the learned counsel for the accused/appellant and the learned Special Public Prosecutor appearing for the CBI in detail. Perused the prosecution records and also the decisions placed by the learned counsel for the accused/appellant.

3. The prosecution case is that, while the accused was functioning as a public servant in the capacity of Telecom Mechanic at the Irumpupalim Telephone Exchange, he demanded Rs.500/- from PW1 Smt.Subaida Aliyar on 15.6.2005 as illegal gratification as a reward for giving telephone connection No.272485 to her residence under the OYT Scheme and he had accepted Rs.200/- from her on the same day. Thereafter, the accused continued repeated demand for the



balance illegal gratification of Rs.300/-. As she was being repeatedly contacted by the accused, PW1 finally agreed to pay the balance illegal gratification as and when she would receive money from her husband, who had been working in Gulf. Then the accused gave PW1 two telephone numbers, one that of his residence and the other that of his telephone booth, to PW1 by directing her to contact him as and when she would receive the money. Then, as instructed by one Mr.Aliyar, the husband of her sister, she had informed this matter to the CBI over the phone on 30.6.2005, and consequently, the CBI initiated trap proceedings after initial verification. The accused repeated his demand for the balance illegal gratification of Rs.300/- and on



1.7.2005, he agreed to accept Rs.200/- from PWI at her residence at 2 p.m. on 1.7.2005. Pursuant to that, on the same day the accused reached the residence of PW1 and demanded and accepted illegal gratification of Rs.200/- at 02.00 p.m., on 1.7.2005. Then the accused was caught red-handed by the CBI. Accordingly, the prosecution alleges that the accused had committed the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

4. In this matter, when the Final Report filed alleging commission of the above-said offences, the trial court proceeded with trial after completing the pre-trial formalities. During trial, PWs 1 to 11 were examined, Exts.P1 to P27, and MOs1 to 10



were marked from the side of the prosecution. After completion of the prosecution evidence, the accused was questioned under Section 313(1)(b) of the CrPC, and an opportunity was given to him to adduce defence evidence. Ext.D1 was marked from the side of the defence. On appraisal of the evidence, trial court found that the accused had committed offences and accordingly, he was sentenced to undergo rigorous imprisonment for one year for the offence under Section 7 of the PC Act. The accused was further sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for six more months under Section 13(2) r/w 13(1)(d) of the PC Act.



5. The learned counsel for the accused/appellant argued that this is an illegal trap without registering an FIR before trap. That apart, Ext.P2 complaint given by PW1 also was obtained just before trap as instructed by the CBI, as deposed by PW1. According to the learned counsel for the accused/appellant, proceeding to trap an accused without completing the registration of FIR would show that the same is illegal and the intention of PW8, the officer who led the trap is to implicate the accused in this crime to achieve his motive. According to the learned counsel for the accused/appellant, Exts.P3 and P7 are the telephone conversations in between PW1 and the accused. Ext.P3 was recorded at 09.00 am on 01.07.2005, and Ext.P7 was



recorded at 02.30 p.m. on 01.07.2005. After reading the telephone conversations in minute niceties as stated in Exts.P3 and P7 in detail, it is argued by the learned counsel for the accused/appellant that there was no demand for bribe as alleged by the prosecution and the conversation would go to show that the complainant induced and compelled the accused/appellant to come to her residence and to receive money which was allegedly accepted by him during trap proceedings, later recovered from him. According to the learned counsel for the accused/appellant, in this matter, the evidence given by PW1, who acted as a weapon at the hands of the CBI, after putting Ext.P2 complaint, as instructed by them, is not believable. The



learned counsel submitted further that the trap was initiated as instructed by Aliyar, the relative of PW1, but the demand of bribe was not informed to Aliyar. Either Aliyar or her husband were not properly informed about such demand. The learned counsel for the accused/appellant argued that Ext.P20, FIR was registered at 11.00 a.m. and the entry was made at 11.15. a.m. But when PW9, who registered the FIR was examined, he stated that he started registration of FIR on getting Ext.P2(a) information from the Additional Sub Inspector, CBI through the fax message received by PW8. During cross-examination, PW9 stated that he started registration of FIR at 11.15 am. and completed by 03.30 p.m. It is in this backdrop the learned



counsel for the accused argued that the trap at 02.00 p.m. is illegal, since the same was before completing the registration of FIR. According to learned counsel for the accused, in order to succeed a prosecution alleging commission of offence under Section 7 r/w Section 13 of the PC Act, demand and acceptance of bribe should have been established, and when the said ingredients failed to be established, the offences could not be said to be proved. In this connection, the learned counsel for the accused/appellant placed decision of the Apex Court reported in ***(1954) 2 SCC 655, RamJanam Singh v. State of Bihar,*** referring to Paragraphs 44 to 46, and the same reads as under:-



“44. Now, whatever the truth of this tale may be, it is evident from the prosecution case that this was not a case of laying a trap, in the usual way, for a man who was demanding a bribe but of deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decision.

45. Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardians and keepers of the law. However regrettable the necessity of employing agents provocateurs may be (and we realise to the full that this is unfortunately often inevitable if corruption is to be detected and bribery stamped out), it



is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly decided shall not be done.

46. The very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them; and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the wickedness of wrongdoing, it behoves society and the State to protect them and help them in their good resolve: not to place further temptation in their way and start afresh a train of



criminal thought which had been finally set aside. This is the type of case to which the strictures of this Court in Shiv Bahadur Singh v. State of Vindhya Pradesh¹ apply.”

6. Apart from that, another decision of this Court reported in **1967 KLT 968 Lukose v. State of Kerala** also given emphasis to buttress this point with reference to paragraph No.6, where this Court held that demand by the accused for the bribe is an essential ingredient of the offence punishable under Section 4(1) and Section 5(1)(d) r/w 5(2) of the PC Act, 1947. The learned counsel for the appellant/accused also placed the decision of this Court in **1971 KHC 147 Karim Kunju Alias Karim v. State of Kerala** in this regard.



7. Repelling these contentions, the learned Special Public Prosecutor for the CBI would submit that in this case, on 30.06.2005, PW1 contacted CBI over the phone and informed about the demand of bribe by the accused in the matter of providing OYT Scheme telephone connection to PW1, for which she applied on 09.06.2005. According to the learned Special Public Prosecutor on 11.06.2005, the accused reached the residence of PW1 and informed her about providing of OYT Scheme telephone connection to her and demanded Rs.500/- for connecting the same. Initially, she gave Rs.200/- and agreed to give Rs.300/- thereafter. On getting telephonic information from PW1, the CBI and party reached the place of



trap. Then, on getting Exts.P3 and P7 telephone talks made by the accused to the complainant demanding bribe and acting on Ext.P2 complaint lodged by PW1, this crime was registered at 11.15. a.m. though the same finished at 03.30. p.m. According to the learned Special Public Prosecutor, the trap proceedings were initiated on the basis of the telephonic information given by PW1 to the CBI office regarding demand of bribe and acting on Ext.P2 complaint. Therefore, there is no illegality either in the trap or in registering the crime and as such the contention that this is an illegal trap would not succeed. The learned Special Public Prosecutor read out the evidence of PW1, supported by evidence of PW2, the independent witness his evidence was not



at all shaken during cross-examination along with Exts.P3 and P7 telephonic conversation to prove demand of bribe and acceptance of the same by the accused to complete the offences alleged against him and found to be proved by the special court. Accordingly, it is submitted that no interference is required in the verdict, impugned.

8. Having appraised the rival contentions, the points arise for consideration are:-

1. Whether the contention raised by the learned counsel for the accused that the entire trap is illegal would sustain in the eye of law?



2. Whether the Special Court went wrong in finding that the appellant/accused committed offence punishable under Section 7 of the PC Act?
3. Whether the Special Court went wrong in finding that the appellant/accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act?
4. Whether the verdict under challenge would require interference?
5. The order to be passed?

Point Nos.1 to 4:-

9. In order to appraise the points on par with the arguments advanced by both sides, evaluation of evidence is essential. PW1,



the complainant deposed that she applied for a telephone connection under the OYT scheme since her husband had been employed in Saudi Arabia to make calls. Accordingly she filed Ext.P1 application for the same and deposited Rs.10,000/- on 09.06.2005. On 11.06.2005, Sasi (the accused) reached her house and informed that her telephone was ready and for connecting the same for which Rs.500/- to be paid to him. PW1 identified the accused at the dock as the person who came and demanded the bribe. Later, he reached her house at 15.06.2005 and connected the telephone and demanded Rs.500/- for the same. Although, PW1 did not have any intention to give bribe, the accused compelled her to give Rs.500/- and accordingly she



had given Rs.200/- and was accepted by the accused. Further she agreed to give Rs.300/- later when her husband's money would be getting. After 2-3 days the accused telephoned PW1 and demanded Rs.300/- and given his number to inform him when her husband's money would be received. Accordingly two telephone numbers were given. Later she informed the same to Mr. Aliyar, who is the husband of her sister and he informed that this matter to be intimated to the CBI office, and accordingly, she telephoned to CBI office on 30.06.2005 and she disclosed everything pertaining to demand and acceptance of bribe by the accused. According to the learned counsel for the



accused/appellant, even no GD entry is available regarding this aspect.

10. PW1 given evidence further supporting Ext.P3 and P7 conversations as well as filing of Ext.P2 complaint before the CBI. She also deposed about the entrustment of Rs.200/- to the CBI and return of the same after smearing phenolphthalein by the CBI. She also deposed about the demonstration of phenolphthalein test. Accordingly the money was entrusted back to her and she was instructed to give the money only when demanded by the accused/appellant. Her further version is that she along with four other persons being the team of trap reached her residence. Later CW6 examined as PW3, who accompanied



the trap team changed her saree and worn a maxi and PW3 carried a tap recorder to record the conversation. At 02.00 p.m. the accused/appellant reached her residence and knocked on the door, and when she opened the door he entered inside. When she enquired why did he come, then he informed that he came for the purpose of the phone and demanded the balance amount soon she gave Rs.200/-, and the same was accepted by the accused/appellant and placed in the pocket of his shirt. Later he told to PW1 that when connection would be provided to the telephone booth Rs.2000/- would be given and this connection was obtained by fortune. She deposed about subsequent recovery of the notes marked as MO1 series from the pocket of the



accused after identifying the same and supported the preparation of by Ext.P6 mahazar, regarding the said recovery.

11. In this case, PW8, the Inspector of CBI Kochi was the officer who received Ext.P2 complaint at 08.30 p.m. on 01.07.2005. After pre-verification about the reputation of the accused/appellant through local enquiry in Adimaly, he faxed Ext.P2 to the SP CBI, Kochi, after making Ext.P2(a) endorsement at the bottom of Ext.P2. It was PW9 who was working as additional SP CBI Kochi, registered RC 16(A)/2005 on the basis of the fax message received from PW8 on 01.07.2005.



12. While addressing the first question as to whether the trap is illegal for the reason that no crime was registered prior to the trap, it is relevant to note that the case of the prosecution is that when the accused/appellant demanded Rs 500/- as bribe on 11.06.2005 and 15.06.2005 and compelled PW1 to pay the same initially, she paid Rs.200/- Again when she was compelled she informed the same to Aliyar, the husband of her sister, in turn he instructed her to inform the same to the CBI and accordingly, the officials proceeded with pre-trap proceedings and in this way PW9 reached the place of occurrence in the early morning and at 11.00 a.m. and obtained Ext.P2 complaint given at 08.30 pm by PW1 and he registered FIR as evident from Ext.P20. It is true



that when PW9 was cross-examined, he stated that he started registration of FIR at 11.15 a.m. and finished the same at 03.30 p.m. The accused/appellant reached the house of PW1 and accepted Rs.200/- at 02.00 p.m. on 01.07.2005, and that is before 03.30 p.m. Even though it is submitted by the learned counsel for the accused/appellant that Ext.P2 was given by PW1 as instructed by the CBI during re-examination she stated that what she stated in Ext.P2 was correct and accordingly, the contention raised by the learned counsel for the accused that the CBI obtained Ext.P2 complaint written at their option could not be accepted, though the CBI helped PW1 a poor lady to make her complaint and never the CBI sponsored the complaint as argued



by the learned counsel for the accused/appellant. PW1 also reiterated that on 30.6.2005 she telephoned about demand of bribe by PW1. Since the FIR was registered at 11.15 a.m. and the trap was at 2.00 p.m. it could not be held that the trap was without registering a crime. If anything continued as part of registration of FIR after 02.00 p.m. that by itself is insufficient to hold that the trap was before registering the FIR and the same as illegal. Similarly when PW1 given statement to the effect that the contents of Ext.P2 was at her volition, even though the preparation of the same was assisted by CBI, the same could not have any deterrent effect so as to disbelieve Ext.P2 or the version of PW1. Therefore, the contention raised by learned counsel for



the accused/appellant that the entire trap is illegal, could not sustain.

13. In this matter, apart from the evidence of PW1, PW3, who is the WPC of the CBI Ernakulam she was a member of the trap team also given evidence supporting the trap, and her evidence is that on 1.7.2005 she reached Irumpupalam by 8.15 a.m. along with the trap team, from where they reached Moleth house at 8.30 a.m. When PW8 enquired about Subaida Aliyar, PW1 came forward and represented that she was the said person. When asked about her complaint, PW1 narrated everything and then PW8 asked PW1 to give a complaint in writing and consequently PW1 wrote and issued Ext.P2 complaint. The CBI



officers connected a telephone recorder to the telephone at Moleth house. At first PWI was made to contact over the residence number of the accused. As the accused was not there, again she was made to contact the number of the accused at the shop. PW1 talked for about two minutes over the phone to the accused. The said conversation was recorded. The said tape recorder was replayed and Ext.P3 transcript was made. Ext.P4 mahazar was prepared for the same. It was understood that the accused would be coming to the residence of PW1 at 2 p.m. for obtaining bribe. Then the trap team went out, reached Adimali and PW8 conducted verification regarding the complaint. Ext.P2 was faxed to the CBI office, Ernakulam. Thereafter, they



returned to Moleth house by 11.30 a.m. Ext.P2 complaint was read aloud. The independent witnesses clarified doubts from PW1. Thereafter, demonstration of Sodium Carbonate Phenolphthalein test was conducted. PW1 produced MOI series currency notes and its numbers were noted and then the Phenolphthalein smeared MOI series currency notes were placed in the purse of PW1 by PW8. Strict instruction was given to PW1 not to touch it unless and until demanded by the accused. All of them washed their hands by using soap and water. PW8 asked her to accompany PW1 to her house and she was entrusted with a tape recorder for recording the conversation in between PW1 and the accused. She was directed to see the transactions



and to overhear the conversation. PW1 was directed to give the signal by calling the name of her son Firoz on the acceptance of bribe by the accused. Ext.P5 entrustment mahazar was prepared. She along with PW1 and Firoz reached the house of PW1 by 12.50 p.m. by an autorickshaw. Others followed them by the CBI vehicle. She changed her sari, wore a maxi, and placed the tape recorder in the pocket of the maxi. Out of the two bedrooms, she along with PW1 sat in one of the bedrooms, and PW8, CW5, CW11 and PW7 occupied the other bedroom. Others were waiting in the car parked some distance away. At 2 pm, the accused came and knocked on the door of the hall. When PW1 proceeded to open the door, she also accompanied her. PWI



opened the door and asked the accused, 'what'? The accused replied that it was for the purpose of the phone and he then demanded money. PW1 took MO1 series currency notes from the purse and gave it to the accused. The accused after obtaining the amount put it in the pocket of his shirt. When the accused enquired about her (PW3), PW1 told him that she was her relative. PW1 asked the accused whether the accused used to obtain bribe like this. Then the accused answered that this was not bribe and all the house owners use to pay Rs.500/- on giving telephone connection and the STD booth people would pay Rs.2,000/- on giving connection. By that time, PW8 and others who were waiting in the other room came out and asked the



accused whether he had obtained bribe. The accused became perplexed and he was seen rubbing both his hands together. By that time, other team members also came over there. The accused admitted that he had obtained bribe. When asked about the bribe amount, the accused admitted that it was in his pocket. Sodium Carbonate solution was prepared. When the accused dipped his right hand in it, it turned pink. The said solution was preserved, and is MO3. Another solution was prepared and when the accused dipped his left hand fingers in it, it turned pink. The said solution is preserved and is MO4. PW8 arrested the accused. PW7 was asked to take out the money from the pocket of the shirt of the accused. He took it and its numbers were verified



with the numbers contained in Ext.P5 mahazar and the same were tallying. Then MO2 shirt worn by the accused was obtained and its pocket portion was dipped in Sodium Carbonate solution, the solution turned pink. The said solution was preserved and is MO5. Ext.P6 mahazar was prepared. The micro cassette was replayed and Ext.P7 transcript of the conversation was prepared. Thereafter, a search was conducted at the house of the accused and then all of them proceeded to Ernakulam. On the way, they went to Moleth house again, and the packet of Phenolphthalein powder and M06 demonstration solution kept there were collected from there.



14. During cross-examination of PW3, nothing extracted to discredit or disbelieve the testimony of PW3. During re-examination, PW3 clarified that the younger sister of PW1 had paid Rs.20/- to Firoz while they departed from Moleth house and it was from that amount Rs.15/- was paid as autorickshaw charges.

15. The learned counsel for the accused/appellant though did not read the unchallenged evidence of PW3, read the evidence of PW7 the Deputy Manager, State Bank of India, Aluva Branch who being part of the trap given evidence in support of the prosecution case. PW7 deposed that on 01.07.2005, he had also participated in the trap proceedings in



this case as an independent witness. He along with another independent witness and CBI officers including a woman officer reached Inumpupalam on 1.7.2005 and went to Moleth house where PW1 was present. According to him, PWI narrated her complaints and gave Ext.P2 complaint in writing. A recorder was connected to the telephone at Moleth house and thereafter PWI talked to the accused over the phone. The conversation was recorded. The recorder was replayed and its transcript was prepared. Ext.P3 is the said transcript, for which Ext.P4 mahazar was also prepared. According to PW7, even though the accused had demanded Rs.300/-, when PWI asked the accused whether she needed only pay Rs.200/-. The accused agreed for the same.



The accused agreed to obtain the amount from the house of PWI prior to 2 p.m. on that date. After preparing Ext.P4 mahazar, all of them went out, reached Adimali and then returned to Moleth house by 11.30 a.m. Regarding the demonstration of Sodium Carbonate, Phenolphthalein test, entrustment, preparation of Ext.P5 mahazar, their departure from Moleth house to the house of PW1, the signal that was worked out, the positions taken by PW1 and PW3 in a bed room, the position taken by PW7, PW8 and two others in the other bed room, the entrustment of the tape recorder with PW3 for recording the conversation between PW1 and the accused, the arrival of the accused at 2 p.m. the conversation between PW1 and the accused, the demand and



acceptance of Rs.300/- by the accused from PW1, the hand wash of the accused in Sodium Carbonate solution etc., the evidence adduced by PW7 are exactly corresponding to and corroborating the evidence of PW1 and PW3. The pink solution obtained from the right hand wash of the accused is MO3. The Pink solution obtained from the left hand wash of the accused is MO4. According to PW7, he took MOI series from the pocket of MO2 shirt worn by the accused. When verified with the numbers of the currencies entrusted with PW1 noted in Ext.P5, the numbers of MOI series tallied. The pocket portion of MO2 shirt was subjected to the Sodium Carbonate test. The solution turned pink and the same is MO5. The tape recorder conversation



between PWI and the accused recorded by PW3 was replayed and Ext.P7 transcript of the same was prepared. Ext.P6 mahazar was prepared. Thereafter, they went to the house of the accused and conducted a search there. Further, according to PW7, on the next day, he along with CW4 were called to the CBI office and the tape recorder conversation of PW1 and the accused recorded by PW3 was transferred to CD in their presence, for which Ext.P17 proceedings was prepared. MO7 is the said CD. Even though, PW7 was subjected to searching cross-examination, and nothing could be brought out in order to discredit or disbelieve his testimony.



16. Now, it is necessary to address the ingredients required to attract the offences under Section 7 and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. The same are extracted as under:—

Section 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.

*Section 13:- **Criminal misconduct by a public servant.** – (1) A public servant is said to commit the offence of criminal misconduct,-*

- (a) xxxxxx*
- (b) xxxxxx*
- (c) xxxxxx*
- (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.

xxxxxxx

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

17. The decision of this Court reported in **2024 (4)**

KHC 52, Bharat Raj Meena v. Central Bureau of



Investigation, Ernakulam with reference to Paragraph No. 12, where it was held that:-

*“It is trite that proof of demand and acceptance of illegal gratification by a public servant is a prerequisite to establish the guilt of the accused / public servant under Section 7 of the PC Act. Indeed, proof of demand and acceptance of illegal gratification by a public servant can also be proved by circumstantial evidence in the absence of direct, oral and documentary evidence [See **Neeraj Dutta v. State (Govt. of NCT of Delhi, 2023 (4) SCC 731**]. Recently, the Supreme Court in **Jagtar Singh v. State of Punjab, AIR 2023 SC 1567** reiterated the principle that the demand of illegal gratification, at least*



by circumstantial evidence, is sine qua non to attract the offence under Section 7 or Section 13(1)(d)(i) and (ii) of the PC Act. S.13(1)(a) of the PC Act provides that the prosecution is obliged to prove that the accused accepted or obtained or agreed to accept or agreed to obtain any gratification as a motive or reward as contemplated under Section 7 of the PC Act . Thus, the demand and acceptance by the public servant for illegal gratification must be independently proved by the prosecution as a fact in issue to establish the guilt under Section 7 or 13(1)(a) of the PC Act.”

18. In fact the legal position as held in ***Bharat Raj Meena*** (supra), ***Neeraj Dutta*** (supra), and ***Jagtar Singh***



(supra) to the effect that the demand and acceptance of illegal gratification is sine qua non to attract offence under Section 7 of the PC Act. That apart, as per Section 13(1)(a) of the PC Act, the prosecution is obliged to prove that the accused accepted, obtained, or agreed to accept or agreed to obtain any gratification as a motive or reward as contemplated by Section 7 of the PC Act. There is no doubt that the demand and acceptance—the elements of the offence punishable under Section 7 of the PC Act—can be proved by either direct evidence or, in the absence of direct and documentary evidence, by circumstantial evidence.



19. In ***Neeraj Dutta Vs State, (AIR 2023 SC 330)***, a 5 Bench of the Apex Court considered the essentials to be considered when the demand contemplated under Section 7 of the P.C Act and the ingredients for the offences under section 7 and 13(1)(d) r/w 13(2) of the PC Act is in question and held in paragraph 68 as under:

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

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



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

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

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



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

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



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



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

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by



documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate, nor does it result in an order of acquittal of the accused public servant

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1) (d) and (ii) of the Act. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.”



20. While evaluating the evidence regarding the demand and acceptance of MO1 series notes by the accused as bribe apart from the testimony of PW1 (the complainant), the evidence of PW3—who accompanied PW1 and was present inside the house during demand and acceptance of the bribe by the accused—along with the testimony of PW7 regarding the pre-trap and post-trap proceedings, supported the case of the prosecution to prove said offences by the accused beyond reasonable doubt.

21. The learned Senior counsel argued nothing to substantiate that how the evidence of PW3, the independent evidence is to be discarded and he did not refer the said evidence.



On evaluation of the entire prosecution records, it is emphatically clear that the prosecution successfully proved demand and acceptance of Rs.200/- by the accused from the complainant as bribe in connection with the supply of OYT Scheme telephone to PW1. Therefore, the ingredients to attract offences under Section 7 as well as Section 13(1)(d) r/w 13(2) of the PC Act are proved by the prosecution as rightly found by the special court. Thus, the conviction imposed by the special court for the said offences would not require any interference.

22. Coming to the sentence the special court imposed one one-year rigorous imprisonment for the offence under Section 7 of the PC Act, 1988 and also three years rigorous imprisonment



and to pay fine of Rs.10,000/- for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act, 1988. Default sentence for non-payment of fine was imposed for a period of six more months.

23. Having considered the facts of this case, I am inclined to modify the sentence to the statutory minimum.

24. In the result, appeal is allowed in part. Conviction imposed by the special court is confirmed and sentence stands modified as under:-

25. The sentence imposed by the special court for the offence under Section 7 of the PC Act, 1988 is modified for a period of six months rigorous imprisonment and also to pay fine



of Rs.5,000/-. In default of payment of fine the accused shall undergo rigorous imprisonment for a period of fifteen days. For the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, the accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/-, in default of of payment of fine, the accused shall undergo rigorous imprisonment for four weeks. Substantive sentence shall run separately, and the default sentence shall run concurrently.

26. The order restraining execution of sentence stands vacated. Accordingly, the accused/appellant is directed to surrender before the special court forthwith to undergo the modified sentence.



If the accused/appellant fails to surrender as directed, the special court is directed to execute the modified sentence without fail.

The Registry is directed to forward a copy of this judgment to the special court forthwith for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

RMV