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(2023) 18 Supreme Court Cases 251

(BEFORE ABHAY S. OKA AND RAJESH BINDAL, JJ.)

2J

NEERAJ DUTTA .. Appellant;

Versus

STATE (GOVERNMENT OF NCT OF DELHI) .. Respondent.

Criminal Appeal No. 1669 of 2009†, decided on March 17, 2023

A. **Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — Ss. 7, 13(1)(d)(i) and (ii) r/w Ss. 13(2) and 20 [as stood prior to the amendment made by Act 16 of 2018 with effect from 26-7-2018] — Trap case — Demand of illegal gratification — Requirements of proof of — Whether can be proved in absence of complainant's testimony or direct evidence, by placing reliance on circumstantial or other evidence — Law clarified**

— In the absence of evidence of the complainant (direct/primary, oral/documentary evidence), it held permissible to draw an inferential deduction of culpability/guilt of a public servant under Ss. 7 and 13(1)(d) r/w S. 13(2) based on other evidence adduced by the prosecution

— However, to prove charges under S. 7 under Ss. 13(1)(d)(i) and (ii), prosecution, held, has to prove beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe and, thus, absence of proof of demand for illegal gratification and mere possession or recovery of currency notes, held, will not be sufficient to constitute such offence — Further, invocation of presumption under S. 20, held, permissible only on proof of two basic facts, namely, "demand" and "acceptance" of gratification, which required to be proved under S. 7

— Further, though the unamended S. 7, specifically refers to "any gratification", the substituted S. 7 does not use the word "gratification", but it uses a wider term "undue advantage" — Therefore, the allegation being of demand of gratification and acceptance thereof by the accused, it held must be as a motive or reward for doing or forbearing to do any official act — Further held, the fact that the demand and acceptance of gratification were for motive or reward as provided in S. 7 can be proved by invoking the presumption under S. 20 provided the basic allegations of the demand and acceptance are proved — Further, proof of acceptance of illegal gratification, held, also necessary to prove the offences under cls. (i) and (ii) of S. 13(1)(d)

— Further held, though the proof need not be only by direct, oral or documentary evidence, but when reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the court to draw a conclusion of guilt and, therefore, the facts so established must be consistent

† Arising from the Judgment and Order in *Yogesh Kumar* v. *State*, 2009 SCC OnLine Del 641 (Delhi High Court, Criminal Appeal No. 15 of 2007, dt. 2-4-2009) **[Reversed]**

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with only one hypothesis that there was a demand made for gratification by the accused

— As per prosecution, the appellant while working as an LDC in DVB office, allegedly demanded Rs 10,000 as illegal gratification for installation of new electricity meter in complainant's shop — Complainant not examined because of his death and, thus, the first demand, remained unproved, because of none except the complainant found present at the time of first demand allegedly made by the appellant — Second demand allegedly made during trap, also not proved by the shadow witness, as he did not state that there was any discussion in his presence between the appellant and the complainant on the basis of which an inference could have been drawn that there was a demand made for gratification by the appellant — Further, the shadow witness found having no knowledge about what transpired between the complainant and the appellant earlier — Further, the shadow witness admittedly found having no personal knowledge about the purpose for which the cash was allegedly handed over by the complainant to the appellant — Further, except the shadow witness, none examined to prove the alleged demand, but the claim made by the defence that a recovery drive was conducted by the appellant, also supported by the IO as he recovered certain amount from the appellant's car — Further, considering other materials including delay in lodging complaint, prosecution's case regarding demand of bribe for installing new electricity meter also found doubtful

— Resultantly, circumstances brought on record, held, did not prove the alleged demand for gratification and, therefore, the ingredients of the offence under S. 7, held, not established and consequently, the offence under S. 13(1)(d), held, will also not be attracted — Therefore, conviction set aside (Paras 13, 14, 16 to 22 and 25 to 30)

Held :

In absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence. (Para 20)

The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. However, the proof need not be only by direct, oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. (Para 21)

In fact, PW 7, the investigating officer, deposed that cash of Rs 71,900 was found in the appellant's car. This lends support to the defence that there was a recovery drive conducted by the appellant. Apart from the evidence of the shadow witness, PW 5, there is no other evidence that is pressed into service by the prosecution for proving the demand by the appellant. Even taking the statements of PW 5 in the examination-in-chief as correct, it is impossible to even infer that

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the demand of Rs 10,000 was made by the appellant by way of gratification. Every demand made for payment of money is not a demand for gratification. It has to be something more than mere demand for money. (Para 27)

There is one more important factual aspect to be noted which creates serious doubt about the prosecution's case. In the complaint filed by the complainant deceased on 17-4-2000, in the form of his statement recorded by the Anti-Corruption Bureau, he has stated that pursuant to the application dated 6-5-1996, a meter was installed in his shop and after a few months, he found that the meter was removed. However, the Special Court has observed in para 19 of the impugned judgment that a complaint regarding a stolen electricity meter was registered at the instance of the complainant on 25-4-2000. Thus, the grievance regarding stolen meter was made by the complainant 8 days after the alleged demand for bribe. In fact, PW 7 admitted that the complainant did not produce a copy of the application made by him for providing electricity meter. PW 7 further stated that the complainant did not clearly tell him that he had given such application. In absence of proof of making such application, the prosecution's case regarding demand of bribe for installing new electricity meter becomes doubtful. Moreover, till 24-4-2000, the complainant did not register a complaint regarding commission of offence. This makes the prosecution's case regarding the demand of gratification on 17-4-2000 for installing a new electricity meter extremely doubtful. (Para 28)

Neeraj Dutta v. *State (NCT of Delhi)*, (2023) 4 SCC 731 : (2023) 2 SCC (Cri) 352, *followed*

Yogesh Kumar v. *State*, 2009 SCC OnLine Del 641, *reversed*

Neeraj Dutta v. *State (NCT of Delhi)*, (2019) 14 SCC 311 : (2019) 4 SCC (Cri) 825 : (2020) 1 SCC (L&S) 794; *M. Narsinga Rao* v. *State of A.P.*, (2001) 1 SCC 691 : 2001 SCC (Cri) 258, *referred to*

B. **Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988 — S. 20 r/w S. 7 — Presumption under — Requisite ingredients need to be proved for drawing such presumption along with its meaning and nature, stated — However, this presumption is rebuttable, and preponderance of probability is enough for such rebuttal**

Held :

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. (Para 16)

B. Jayaraj v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543; *P. Satyanarayana Murthy* v. *State of A.P.*, (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11; *N. Vijayakumar* v. *State of T.N.*, (2021) 3 SCC 687 : (2021) 2 SCC (Cri) 515; *C.M. Girish Babu* v. *CBI*, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1, *followed*

Appeal allowed SK-D/70226/SR

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Advocates who appeared in this case :

S. Nagamuthu, Senior Advocate [Satinder S. Gulati and Raj Kishor Choudhary (Advocate-on-Record), Advocates], for the Appellant;

Ms Aishwarya Bhati, Additional Solicitor General [Ms Manisha Chava, Ms B.L.N. Shivani, Ms Shivika Mehra, Ms Poornima Singh, Nitin Pavuluri and Shreekant Neelappa Terdal (Advocate-on-Record), Advocates], for the Respondent.

Chronological list of cases cited ***on page(s)***

1. (2023) 4 SCC 731 : (2023) 2 SCC (Cri) 352, *Neeraj Dutta* v. *State (NCT of Delhi)* 256*a*, 257*f-g*, 257*g*, 259*d*, 261*d-e*
2. (2021) 3 SCC 687 : (2021) 2 SCC (Cri) 515, *N. Vijayakumar* v. *State of T.N.* 259*g*, 260*e*
3. (2019) 14 SCC 311 : (2019) 4 SCC (Cri) 825 : (2020) 1 SCC (L&S) 794, *Neeraj Dutta* v. *State (NCT of Delhi)* 255*e-f*, 255*f*, 259*d-e*
4. (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11, *P. Satyanarayana Murthy* v. *State of A.P.* 255*f*, 259*g*
5. (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543, *B. Jayaraj* v. *State of A.P.* 255*e-f*, 259*g*, 260*a*, 260*f-g*
6. (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1, *C.M. Girish Babu* v. *CBI* 260*f*
7. 2009 SCC OnLine Del 641, *Yogesh Kumar* v. *State* **(reversed)** 254*e-f*, 254*f-g*, 255*e*, 264*c*
8. (2001) 1 SCC 691 : 2001 SCC (Cri) 258, *M. Narsinga Rao* v. *State of A.P.* 255*f*

The Judgment of the Court was delivered by

ABHAY S. OKA, J.—

Factual aspects

1. The appellant was convicted by the Special Judge, Delhi for the offences punishable under Section 7 and clauses (*i*) and (*ii*) of Section 13(1)(*d*) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the PC Act"). The co-accused, Mr Yogesh Kumar, was convicted by the Special Judge for the offence punishable under Section 12 of the PC Act. The co-accused was acquitted[1] by the High Court.

2. The appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs 15,000 for the offence punishable under sub-section (2) of Section 13 of the PC Act. For the offence punishable under Section 7, she was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs 5000. Sentences in default of payment of fine were also imposed. The conviction of the appellant has been upheld by the High Court by the impugned judgment[1].

3. The complainant Mr Ravijit Singh died before the trial commenced. In fact, PW 7, the investigating officer, deposed that the complainant was murdered. In his complaint, the complainant stated that he was doing business of sale and purchase of cars in a shop situated at Vikas Puri, New Delhi. His case is that there was no electricity meter installed in his shop and therefore, on 6-5-1996 he applied for an electricity meter. In the complaint filed by him on 17-4-2000, in the form of his statement recorded by the Anti-Corruption

1 *Yogesh Kumar* v. *State*, 2009 SCC OnLine Del 641

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Bureau, he stated that pursuant to the application dated 6-5-1996, a meter was installed in his shop and after a few months, he found that the meter was removed. As the shopkeepers in the area had got the electricity meters installed through the appellant, he met her.

4. On 17-4-2000, the complainant received a telephone call at 7.30 a.m. from the appellant who was working as an Inspector in the D.V.B./electricity department in the local area. She called him at her residence to discuss the issue of the electricity meter. At 8.00 a.m., when the complainant met her, she demanded a sum of Rs 15,000 for getting the meter installed and ultimately after negotiations, she settled the demand at Rs 10,000. According to the complainant, the appellant stated that she would come to his shop between 3.00 and 4.00 p.m. when the complainant should hand over the papers for the electricity meter and Rs 10,000 as a bribe. The complainant stated that he had no option but to accept her demand for a bribe.

5. The prosecution's case is that on the basis of the aforesaid complaint, a trap was laid. PW 5, Mr S.K. Awasthi, was the shadow witness. When he along with the complainant as well as members of the raiding party visited the complainant's shop at 3.50 p.m., the appellant was not present there. At about 4.40 p.m., a telephone call was received by the complainant that the appellant would come at around 5.30/6.00 p.m. At 5.20 p.m., the appellant came with the co-accused and demanded the documents and bribe of Rs 10,000, which was paid by the complainant. The Special Court held that there was sufficient circumstantial evidence on record to prove the guilt of the appellant. In fact, a finding was recorded on the basis of circumstantial evidence that the demand and acceptance were proved. The order of conviction of the learned Special Court as regards the appellant has been confirmed by the High Court in the impugned judgment[1].

6. While hearing this appeal, a Bench of two Hon'ble Judges of this Court came to a conclusion[2] that the decisions of this Court of the Benches of three Hon'ble Judges in *B. Jayaraj* v. *State of A.P.*[3] and *P. Satyanarayana Murthy* v. *State of A.P.*[4] were in conflict with an earlier three-Judge Bench's decision in *M. Narsinga Rao* v. *State of A.P.*[5] Accordingly, the following question was referred to the larger Bench: (*Neeraj Dutta case*[2], SCC p. 317, para 16)

> "*16.* ... 'The question whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(*d*) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution.' "

1 *Yogesh Kumar* v. *State*, 2009 SCC OnLine Del 641
2 *Neeraj Dutta* v. *State (NCT of Delhi)*, (2019) 14 SCC 311 : (2019) 4 SCC (Cri) 825 : (2020) 1 SCC (L&S) 794
3 (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543
4 (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11
5 (2001) 1 SCC 691 : 2001 SCC (Cri) 258

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7. The abovementioned question was referred for decision to a Constitution Bench, which disposed of the reference by the judgment dated 15-12-2022[6]. Broadly, the Constitution Bench held that in the absence of the complainant's testimony in a prosecution for the offences punishable under Sections 7 and 13(2) of the PC Act, the prosecution can rely upon even circumstantial evidence to prove the demand of gratification. In para 88 of the said decision, the Constitution Bench has summarised its conclusions.

Rival submissions

8. Shri S. Nagamuthu, learned Senior Counsel appearing for the appellant submitted that this is a case where there is no evidence of demand of illegal gratification by the appellant. The learned Senior Counsel submitted that proof of demand of gratification by a public servant is a sine qua non for the offences punishable under Sections 7 and 13(1)(*d*) of the PC Act. He submitted that the findings of the courts are based on surmises and conjectures.

9. Ms Aishwarya Bhati, learned Additional Solicitor General appearing for the prosecution supported the impugned judgments. She submitted that PW 5 has proved the demand. Moreover, on the basis of the circumstantial evidence, the demand and acceptance were proved. She also submitted that once the demand and acceptance are established, there is a presumption that the acceptance of gratification proves the existence of motive or reward. The learned ASG submitted that no interference is called for with the impugned judgments.

Legal position

10. Before we analyse the evidence, we must note that we are dealing with Sections 7 and 13 of the PC Act as they stood prior to the amendment made by Act 16 of 2018 with effect from 26-7-2018. We are referring to Sections 7 and 13 as they stood on the date of commission of the offence. Section 7, as existed at the relevant time, reads thus:

> "**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.

6 *Neeraj Dutta* v. *State (NCT of Delhi)*, (2023) 4 SCC 731 : (2023) 2 SCC (Cri) 352

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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 organisation, 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."

11. Section 13(1)(*d*), as existed at the relevant time, reads thus:

"**13. *Criminal misconduct by a public servant.***—(1) A public servant is said to commit the offence of criminal misconduct—

(*a*)-(*c*) * * *

(*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"

The demand for gratification and the acceptance thereof are sine qua non for the offence punishable under Section 7 of the PC Act.

12. The Constitution Bench[6] was called upon to decide the question which we have quoted earlier. In para 88, the conclusions of the Constitution Bench judgment[6] have been summarised, which read thus: (*Neeraj Dutta case*[6], SCC pp. 775-77)

"*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*

6 *Neeraj Dutta* v. *State (NCT of Delhi)*, (2023) 4 SCC 731 : (2023) 2 SCC (Cri) 352

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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

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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." (emphasis in original and supplied)

13. The referred question was answered in para 90 of the aforesaid judgment, which reads thus: (*Neeraj Dutta case*[6], SCC p. 777)

"*90.* Accordingly, the question referred[2] for consideration of this Constitution Bench is answered as under:

> *In the absence of evidence of the complainant (direct/primary, oral/documentary evidence), it is 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 Act based on other evidence adduced by the prosecution*." (emphasis in original and supplied)

14. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the Benches of three Hon'ble Judges in *B. Jayaraj*[3] and *P. Satyanarayana Murthy*[4]. There is another decision of a three-Judges' Bench in *N. Vijayakumar* v. *State of T.N.*[7], which follows the view taken in *B. Jayaraj*[3] and *P. Satyanarayana Murthy*[4].

6 *Neeraj Dutta* v. *State (NCT of Delhi)*, (2023) 4 SCC 731 : (2023) 2 SCC (Cri) 352
2 *Neeraj Dutta* v. *State (NCT of Delhi)*, (2019) 14 SCC 311 : (2019) 4 SCC (Cri) 825 : (2020) 1 SCC (L&S) 794
3 *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543
4 *P. Satyanarayana Murthy* v. *State of A.P.*, (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11
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15. In para 9 of the decision in *B. Jayaraj*[3], this Court has dealt with the presumption under Section 20 of the PC Act. In para 9, this Court held thus: (SCC p. 59)

> "*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." (emphasis supplied))

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.

17. In *N. Vijayakumar*[7], another Bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (*i*) and (*ii*) Section 13(1)(*d*) read with Section 13(2) of the PC Act. In para 26, the Bench held thus: (SCC p. 699)

> "*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 *C.M. Girish Babu* v. *CBI*[8] and in *B. Jayaraj* v. *State of A.P.*[3] *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 the 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

3 *B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543
7 *N. Vijayakumar* v. *State of T.N.*, (2021) 3 SCC 687 : (2021) 2 SCC (Cri) 515
8 (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1

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initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court." (emphasis supplied)

Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.

18. Section 7, as existed prior to 26-7-2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved.

19. In this case, we are also concerned with the offence punishable under clauses (*i*) and (*ii*) Section 13(1)(*d*) which is punishable under Section 13(2) of the PC Act. Clause (*d*) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26-7-2018, has been quoted earlier. On a plain reading of clauses (*i*) and (*ii*) of Section 13(1)(*d*), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (*i*) and (*ii*) of Section 13(1)(*d*).

20. In view of what is laid down by the Constitution Bench[6], in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct, oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(*d*) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

21. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct, oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct

6 *Neeraj Dutta* v. *State (NCT of Delhi)*, (2023) 4 SCC 731 : (2023) 2 SCC (Cri) 352

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evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand.

Consideration of the evidence on record

22. Now, coming to the evidence on record, according to the prosecution, the direct evidence is in the form of evidence of PW 5 Mr S.K. Awasthi. In this case, the complainant had died and therefore, he could not be examined. The raiding party consisted of PW 5, Mr S.K. Awasthi, an Officer in Irrigation Department; PW 6, Mr O.D. Yadav, Traffic Inspector and PW 7, Mr Niranjan Singh, ACP. Going by the complaint which could not be proved through the complainant, it is the case of the prosecution that the first demand was made by the appellant to the complainant in the morning of 17-4-2000 when he met her at her residence. There was no charge framed on the basis of this demand. According to the prosecution's case, the second demand was made during the trap. There is absolutely no evidence about the first demand made in the house of the appellant as no one except the complainant was present there.

23. According to the prosecution's case, PW 5 was the witness to the second demand made by the appellant on 17-4-2000 at around 5.20 p.m. PW 5 stated in his evidence that though the complainant had informed the trap party that the appellant will be visiting his shop at about 3.50 p.m., the appellant did not turn up. Subsequently, a telephone call was received by the complainant informing that she would come by 5.30/6.00 p.m. Ultimately, according to the case of PW 5, at about 5.20 p.m., the appellant along with the co-accused came to the complainant's shop.

24. The version of PW 5, which according to the prosecution constitutes demand, reads thus:

> "*Mrs Neeraj Dutta asked the complainant to give papers regarding his electricity meter and Rs 10,000 to her as she was in a hurry.* Complainant handed over the documents of his electricity meter and treated GC Notes of Rs 10,000 to Mrs Neeraj Dutta in her right hand after taking the same out of left pocket of his shirt. Mrs Neeraj Dutta handed over said GC Notes to his associate Yogesh Kumar to count and she told the complainant that his work would be done." (emphasis supplied)

25. Rest of the examination-in-chief deals with the acceptance by the appellant and recovery. Now the question is whether, on the basis of the evidence on record, the prosecution has proved the demand of gratification by the accused. When we consider the issue of proof of demand within the meaning of Section 7, it cannot be a simpliciter demand for money but it has to be a demand of gratification other than legal remuneration. All that PW 5 says is when the appellant visited the shop of the complainant, she asked the complainant to give papers regarding the electricity meter and Rs 10,000 to her by telling him that she was in a hurry. This is not a case where a specific demand of gratification for providing electricity meter was made by the appellant to the complainant in the presence of the shadow witness. PW 5 has not stated

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that there was any discussion in his presence between the appellant and the complainant on the basis of which an inference could have been drawn that there was a demand made for gratification by the appellant. The witness had no knowledge about what transpired between the complainant and the appellant earlier. PW 5 had admittedly no personal knowledge about the purpose for which the cash was allegedly handed over by the complainant to the appellant.

26. We may note here that as per the version of the appellant in her statement under Section 313 of the Code of Criminal Procedure, 1973 ("CrPC"), on 17-4-2000, she was working as an LDC in DVB office. On that day, she was busy with her official duty in a collection drive organised by the department to collect dues from the consumers. Her explanation is that the complainant was her neighbour and he wanted her assistance to deposit electricity charges. She stated that earlier, she had a transaction of sale and purchase of a car through the complainant. She has also stated that the complainant was a history-sheeter and there were three first information reports (FIRs) registered against him. In this context, PW 5 was questioned in the cross-examination. The relevant answer given by PW 5 reads thus:

> "I cannot confirm or deny that accused Neeraj Dutta along with her cashier and other staff consisting of four-five members had collected Rs 71,000 in the single delivery point camp held at Jai Vihar and she along with her staff members were coming in her car and on the way she stopped at the shop of the complainant who was her neighbour to collect the balance sale proceeds of Rs 1 lakh of her previous car from the complainant as she had sold the said car through the complainant to M/s Sagar Motors and this payment was to be received by her through complainant from M/s Sagar Motors."

27. It is pertinent to note here that PW 5 did not confirm the correctness of the suggestion but stated that he was not in a position to deny the same. In fact, PW 7, the investigating officer, deposed that cash of Rs 71,900 was found in the appellant's car. This lends support to the defence that there was a recovery drive conducted by the appellant. Apart from the evidence of PW 5, there is no other evidence that is pressed into service by the prosecution for proving the demand by the appellant. Even taking the statements of PW 5 in the examination-in-chief as correct, it is impossible to even infer that the demand of Rs 10,000 was made by the appellant by way of gratification. Every demand made for payment of money is not a demand for gratification. It has to be something more than mere demand for money.

28. There is one more important factual aspect to be noted which creates serious doubt about the prosecution's case. In the complaint filed by the complainant deceased on 17-4-2000, in the form of his statement recorded by the Anti-Corruption Bureau, he has stated that pursuant to the application dated 6-5-1996, a meter was installed in his shop and after a few months, he found that the meter was removed. However, the Special Court has observed in para 19 of the impugned judgment that a complaint regarding a stolen electricity meter was registered at the instance of the complainant on 25-4-2000. Thus,

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the grievance regarding stolen meter was made by the complainant 8 days after the alleged demand for bribe. In fact, PW 7 admitted that the complainant did not produce a copy of the application made by him for providing electricity meter. PW 7 further stated that the complainant did not clearly tell him that he had given such application. In absence of proof of making such application, the prosecution's case regarding demand of bribe for installing new electricity meter becomes doubtful. Moreover, till 24-4-2000, the complainant did not register a complaint regarding commission of offence. This makes the prosecution's case regarding the demand of gratification on 17-4-2000 for installing a new electricity meter extremely doubtful.

29. In the present case, there are no circumstances brought on record which will prove the demand for gratification. Therefore, the ingredients of the offence under Section 7 of the PC Act were not established and consequently, the offence under Section 13(1)(*d*) will not be attracted.

30. Hence, the appeal must succeed. We set aside the impugned judgment[1] and the judgment of the Special Court and set aside the conviction and sentence of the appellant. The bail bonds of the appellant stand cancelled. The appeal is allowed.

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1 *Yogesh Kumar* v. *State*, 2009 SCC OnLine Del 641