2025:KER:72764

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF OCTOBER 2025/14TH ASWINA, 1947

CRL.A NO. 1473 OF 2006

AGAINST THE JUDGMENT DATED 29.07.2006 IN CC NO.16 OF 1998 OF ENQUIRY COMMISSIONER& SPECIAL JUDGE,THRISSUR

APPELLANT/ACCUSED:

A.K.RAJENDRAN
AGED 47 YEARS
S/O.KUMARAN, FORMER VILLAGE ASSISTANT,
O/O. SPECIAL TAHSILDAR, LA III, KOCHI
INTERNATIONAL AIRPORT, ANGAMALY.

BY ADVS.
SRI.R.ANIL
SRI.DELVIN JACOB MATHEWS
SRI.GEORGE PHILIP
SRI.RAJU RADHAKRISHNAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT.REKHA S., SR.PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15.09.2025, THE COURT ON 06.10.2025 DELIVERED THE FOLLOWING:

CR

JUDGMENT

Dated this the 6th day of October, 2025

The appellant, who was convicted and sentenced by the Enquiry Commissioner and Special Judge, Thrissur, in C.C.No. 16/1998 by judgment dated 29.07.2006, has preferred this appeal, challenging the said conviction and sentence on multiple grounds. The State of Kerala is the respondent herein.

2. Heard the learned counsel for the appellant/accused as well as the learned Special Public Prosecutor in detail. Perused the evidence available in the records of the Special Court and the decisions placed by the learned counsel for the appellant.

3. In a nutshell, the prosecution allegation is that, the accused demanded Rs.25,000/- (Rupees twenty five thousand only) as illegal gratification from PW1, Sri.Paul Varghese, as a motive or reward for not making any reduction in the value of

improvements of the land acquired for Kochi International Airport and for disbursing the compensation. Accordingly, he demanded and accepted Rs.10,000/- on 05.09.1997 and again, Rs.15,000/- was demanded and accepted on 19.09.1997 and he was trapped along with Rs.15,000/- by the trap team. Accordingly, the prosecution alleges commission of offences punishable under Section 7 as well as under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act' for short) by the accused.

4. According to the learned counsel for the appellant/accused, initially, the Deputy Collector (LR), the Special Tahsildar as well as the Village Assistant were arrayed as accused in the First Information Statement as accused Nos.1 to 3. After investigation, final report filed against the appellant alone, excluding the others from the array of accused. Thereafter, when PW1 was examined, he deposed about demand of bribe by the Deputy Collector and Special

Tahsildar also. Acting on the said evidence, by invoking the power under Section 319 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short), they got arrayed as additional accused by the Special Court. However, challenging the said order, the above persons approached this Court and the said order was set aside and accordingly, their case was quashed. According to the learned counsel for the appellant/accused, in the instant case, the case of the prosecution as well as the evidence given by PW1 is that, accused Nos.1 to 3 in the First Information Report visited the property of PW1 and demanded bribe for the purpose of not reducing the value of improvements for the property assessed as Rs.71,000/-. According to the learned counsel for the appellant, the appellant, who is the Village Assistant, is low in hierarchy, had any role either to reduce or increase the land value for improvements. The prosecution records would show that the demand was by the Deputy Collector and the

Tahsildar, who were capable of doing the said exercise. Accordingly, it is pointed out that the story of demand and acceptance of Rs.25,000/- (Rs.10,000 + Rs.15,000) by the accused is an improbable story and the appellant/accused was made as a scapegoat to give clean chit to the Deputy Collector and the Tahsildar, though they demanded the bribe and made to accept the same by the accused under the guise of accepting the amount for a ‘Kuri’ transaction.

5. It is pointed out by the learned counsel of the appellant/accused further that, in this case, the demand, which is the most essential ingredient to prove the offences under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988, has not been proved. Therefore, the prosecution failed to prove the offences alleged against the accused, and in such view of the matter, the conviction and sentence are liable to be set aside.

6. In this connection, the learned counsel for the

appellant/accused placed latest decision of this Court in **Sunil Kumar K. V. State of Kerala,** reported in **2025 KHC 983**. In paragraph No.12 of the judgment, this Court observed the ingredients as under:

> "12. Indubitably in **Neeraj Dutta's** case (*supra*), the Apex Court held in paragraph No.69 that there is no conflict in the three judge Bench decisions of this Court in *B.Jayaraj and P.Satyanarayana Murthy* with the three judge Bench decision in *M. Narasinga Rao*, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no conflict between the judgments in the aforesaid three cases. Further in

Paragraph No.70 the Apex Court held that 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 13(1)(d) r/w Section 13(2) of the Act based on other evidence adduced by the prosecution. In paragraph No.68 the Apex Court summarized the discussion. That apart, in **State by Lokayuktha Police's** case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the offences punishable under Section 7 and 13(1)(d) r/w 13(2) of the PC Act,1988 and held that demand and acceptance of bribe are necessary to constitute the said offences. Similarly as pointed out by the learned counsel for the petitioner in **Aman Bhatia's** case (supra) the Apex court reiterated the same principles. Thus the legal position as regards to the essentials to be established to fasten criminal culpability on an accused are demand and acceptance of illegal gratification by the accused. To put it otherwise, proof of demand is sine qua non for the offences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and dehors the proof

> of demand the offences under the two Sections could not be established. Therefore mere acceptance of any amount allegedly by way of bribe or as undue pecuniary advantage or illegal gratification or the recovery of the same would not be sufficient to prove the offences under the two Sections in the absence of evidence to prove the demand."

7. It is contended by the learned counsel for the appellant/accused further that, in a case where this Court was not inclined to interfere with the conviction and sentence when considered by the Apex Court in the latest decision of the Apex Court in **Pounammal K. v. State represented by Inspector of Police,** reported in **2025 KHC 6718,** the Apex Court modified the sentence for the period already undergone by confirming the conviction and avoiding further sentence in respect of the accused who was aged 76 years on the date of pronouncement of judgment ie, 21.08.2025. Therefore, the sentence in this case also, to be modified in tune with the decision in **Pounammal's** case (*supra),* in the event this Court confirms the conviction in this

case.

8. Whereas the learned Special Public Prosecutor opposed this contention and zealously submitted that the evidence of PW1, in support of demand and acceptance of Rs.10,000/- initially on 05.09.1997 by the accused and subsequently, Rs.15,000/- on 19.09.1997, was not at all shaken during cross-examination to disbelieve him. Therefore, the evidence of PW1 is sufficient to establish the ingredients as set out in **Sunil Kumar K's** *case* (*supra*). Therefore, the conviction and sentence do not require any interference. It is also submitted that the cause of action adopted by the Apex Court in **Pounammal's** case (supra) also, cannot be applied in this case and the same is to be read in the facts of the said case.

9. In this matter, though initially, FIR was registered against accused Nos.1 to 3, but final report was filed against the present accused only and the Special Court took

cognizance for the offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988 against the accused/appellant and proceeded with the trial. Though during trial, the Special Court invoked the power under Section 319 Cr.P.C. to proceed against the other accused, this Court set aside the said order and accordingly, further trial proceeded against the present appellant/accused alone.

10. The trial court relied on the evidence of PW1 to PW8, Exts.P1 to P10 and MO1 to MO5. No evidence was let in by the accused. On evaluation of the evidence**,** the Special Court found that the accused committed offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988. Accordingly, he was convicted and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only), in default to undergo Rigorous Imprisonment for a further period of six months for the

offence punishable under Section13(1)(d) read with Section 13(2) of the PC Act, 1988. He was also sentenced to undergo Rigorous Imprisonment of 4 years and to pay a fine of Rs.50,000/- (Rupees Fifty thousand only), in default to undergo Rigorous Imprisonment for a further period of six months for the offence punishable under Section 7 of the PC Act, 1988.

Substantive sentences shall run concurrently. The bail bonds of the accused were cancelled.

11. Adverting to the rival submissions, the following questions arise for consideration:-

1. Whether the special court is justified in holding that the accused committed offence punishable under Section 7 of the PC Act, 1988?
2. Whether the special court went wrong in holding that the accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988?

3. What are the essentials to be proved to sustain conviction and sentence under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act ,1988?
4. Whether the verdict under challenge would require interference?
5. The order to be passed?.

12. In the instant case, the trial court relied on the evidence of PW1, the defacto complainant, to hold that the prosecution had succeeded in proving that the accused had demanded and accepted Rs.15,000/- at 11:00 a.m. on 19.09.1997, in addition to Rs.10,000/- received prior to that on 05.09.1997. That apart, the evidence of PW2, the independent trap witness, and PW6 and PW7, the trap laying officers also were given adherence to justify the verdict of the trial court. Coming to the evidence of PW1, he testified that the landed property of PW1 in Nedumbassery was acquired for the purpose of construction of Kochi International Airport. The total

compensation would come to Rs.27 lakh. Out of the same, Rs.71,000/- was the value of improvements. The land acquisition proceedings were held in Land Acquisition Special Tahsildar's Office, LAIII for Kochi International Airport in Angamaly. The accused was the Village Assistant therein. Sri.Padmanabha Panicker (PW3) was the then Special Tahsildar of the said office. Raghunandanan was the Deputy Collector of Land Acquisition at that time whose office was at Civil Station, Kakkanadu. During August 1997, the accused, PW3 and Raghunandanan came to inspect his properties. During this time, the accused demanded bribe of Rs.25,000/- from PW1. Deputy Collector Raghunandanan told PW1 that if he did not pay that amount he would reduce the value of improvements. According to PW1, he understood that accused had demanded that amount for himself, PW3 and Raghunandanan. PW1 was told by Sri. Padmanabha Panicker and Raghunandanan that if PW1 paid Rs.25,000/- to the

accused, the matter would be set at right. On September 5, 1997, he met the accused at his office and paid Rs 10,000/-. Thereafter, the Special Tahsildar (PW3) issued a cheque for Rs.7,68,311/-. The accused told him that only if he paid the balance bribe amount of Rs.15,000/-, the cheque for the balance compensation amount would be issued. As PW1 was not prepared to pay balance bribe amount, he went to Thiruvananthapuram and complained to the Superintendent of Police, Vigilance Headquarters Unit therein. PW6, the then Deputy Superintendent of Police at Vigilance Headquarters Unit, Thiruvananthapuram recorded the statements of PW1 and obtained the signature therein on September 18, 1997 at 11 AM. He identified the said FIS as Ext.P1. Thereafter, the independent witnesses PW2 and CW5 came there. In their presence, on the instruction of PW6, PW1 produced Rs.15,000/-, the trap money, which consisted of 30 currency notes of Rs.500/- each. Those currency notes were marked as

the MO1 series, as identified by PW1. PW6 noted the numbers of those currency notes in Ext.P1(a) F.I.R. and obtained the signatures of PW2 and Sri. Baby John (CW5). The currency notes were then smeared with Phenolphthalein powder by the Inspector, Sri.Jamaludhin (CW6) and were placed in the pocket of the shirt of PW1 to give the same only when demanded by the accused. All of them then met PW7, Sri.Christy Bastian, another Deputy Superintendent of Police therein, for further proceedings. PW7, PW1, the independent witnesses and the trap team members then proceeded to the office of the accused in Angamaly in two vehicles. They reached Aluva in the night and took rooms at Thettayil Tourist Home, Paravoor Junction. On the next day morning, PW7 called PW1, PW2 and CW5 to his room and told them about the complaint of PW1. PW7 instructed PW1 to give a signal by scratching his hair once the bribe was demanded and accepted by the accused. Thereafter, they proceeded to the

office of the accused in Angamaly. On the instruction of PW7, PW1 proceeded to the office of the accused. Thereafter, PW1 went to the office room of the accused. The accused asked him whether he had brought the amount. PW1 replied in the affirmative and took MO1 series currency notes, from his pocket and gave the same to the accused. The accused took the amount in his right hand and put the same in the right pocket of his pants. PW1 then went outside and gave the pre-arranged signal. PW7, PW2, CW5 and the trap team members entered into the office of the accused. PW1 identified the accused by pointing him to PW7 and told PW7 that accused had demanded and accepted the bribe amount.

13. PW1 had categorically sworn that during August 1997 accused came to inspect the properties and met PW1 and demanded Rs.25,000/- for not making any reduction of the value of improvements and for disbursing the

compensation amount without any delay. Although PW1 was meticulously cross-examined, nothing elicited to discredit his evidence in the matter of demand and acceptance of MO1 series by the accused, after demanding and accepting Rs.10,000/- prior to that. PW1 asserted that he paid Rs.10,000/- to the accused on September 5, 1997 at the office of the accused, as the compensation awarded was more than Rs.20 lakh and on that date, the Special Tahsildar (PW3) issued the cheque for Rs.7,68,311/- being part of the compensation amount awarded.

14. The version of PW1, that he visited the office of the accused and received the cheque, as mentioned above, was not disputed by the accused and this aspect as could be discernible from Ext. P2, the file pertaining to the same. In fact, there were two land acquisition proceedings against PW1, viz.,

LAC672/96 and LAC688/96. Ext. P2 was the file of LAC688/96. In page 109 of that file, PW1 had acknowledged the receipt of the said cheque on September 5, 1997, which is not disputed. All these facts clearly proved the version of PW1 that he met the accused on September 5, 1997 and paid Rs.10,000/- and only thereafter, PW3 issued that cheque. In fact, nothing extracted during cross-examination of PW1 that he had any grudge or animosity towards the accused. Thus, the learned Special Judge believed the evidence of PW1 regarding the prior demand and acceptance of bribe by the accused, as alleged by the prosecution.

15. The counsel for the accused argued that the award was passed in 1996, that thereafter accused could not do anything in respect of that award and that therefore, the version of PW1 that the accused came to inspect his lands and demanded bribe could not be believed. PW1 had explained that after passing award, he complained to District

Collector and thereafter, the accused came to inspect the lands. That apart, during cross-examination of PW1, when the learned counsel for the accused attempted to extract evidence to the effect that the accused had not demanded any amount from PW1, PW1 reiterated that the accused demanded bribe of Rs.25,000/- when he came to inspect the land which was meant for acquisition. During cross-examination, he reiterated that the said demand was made by the accused at his office also. In fact, as already discussed, the evidence of PW1 was not shaken during cross-examination.

16. PW2 examined in this case is the then Assistant Engineer, PWD, the independent witness, who participated in the pre and post trap proceedings. PW2 testified that, he appeared before the Dy.S.P., Vigilance, on the date of trap. On September 18, 1997 afternoon, he along with the Vigilance team, including PW1 and other independent witness proceeded to the office of the accused in Angamaly in two

vehicles. In the night at about 10 PM, they reached near Aluva and took rooms at Thettayil Tourist Home at Paravoor Junction. In the morning at about 10 O' clock, PW7 called PW1, PW2 and CW5 to his room and explained about the significance of Phenolphthalein-Sodium Carbonate test. Thereafter, at about 10.30 AM, they proceeded to the office of the accused. Then as instructed by PW7, PW1 went inside the office of the accused. After sometime PW1 came outside and gave the pre-arranged signal by scratching his head. Thereafter, PW7, PW2, CW5 and the members of the trap team entered the office of the accused. PW7 asked the accused whether he had received the amount from PW1. The accused answered in the affirmative and said that he had kept the amount in his right side pocket of the pants. PW7 then took sodium carbonate solution in a glass and dipped his fingers in it and there was no colour change. He identified the said solution as MO2. Then the right hand fingers of the

accused were dipped in a separate sodium carbonate solution, soon the colour of the solution turned pink. He identified the said solution as MO3. On the instruction of PW7, PW2 took MO1 series currency notes from the right pocket of the pant of the accused. They compared the numbers and denomination of those currency notes with the numbers mentioned in Ext.P1(a) and found the same were one and the same. The corners of those notes when dipped in sodium carbonate solution, the solution showed pink colour change. MO4 was that said solution. The pants of the accused was taken after giving a dhothi to him and when the right side pocket portion of the pants was sprinkled with sodium carbonate solution, the said portion showed pink colour change and he identified MO5 as the said solution.

17. PW6 and PW7 are the then Dy.S.P.s of Vigilance Headquarters Unit who laid the trap. PW6 testified that at about 11 AM on September 18, 1997, PW1 came to his office and gave

Ext.P1 First Information Statement. Acting on the same, he registered Ext.P1(a) F.I.R. According to him, MO1 series currency notes were produced by PW1 and PW6 noted the numbers and denomination of trap money in Ext.P1(a) itself and then phenolphthalein powder was smeared on MO1 series currency notes entrusted to him. Then the same were placed in the left pocket of the shirt of PW1 and thereafter, PW1, the independent witnesses and trap team members were sent to PW7 for further proceedings in this case.

18. The learned counsel for the accused argued that PW6 admitted in cross-examination that PW1 came to his office on 17-9-1997 and that therefore, the version of PW6 that Ext.P1 was recorded on 18-9-1997 cannot be believed and that the accused is entitled to acquittal on that ground. When cross-examined, PW6 stated that on 17-9-1997, PW1 met the Superintendent of Police and he did not meet him. His evidence on that aspect was supported by PW1 and PW7, another Deputy Superintendent of Police of Vigilance Headquarters Unit who laid

the trap and conducted investigation. Therefore, this contention is not sustainable.

19. Apart from their evidence, the evidence of PW3, who earlier arrayed in the FIR as an accused, was given emphasis by the prosecution to prove the contents of Exts.P2 and P4 files pertaining to the acquisition. The learned counsel for the accused argued that the evidence of PW3, who is one among the co-accused, on various stages of this case, as mentioned herein above, could not be relied on. Shockingly, the learned counsel himself relied on the evidence of PW3 to hold that all the three accused persons in the FIR were together visited the property for assessing the valuation, where the learned Public Prosecutor argued that the entire documents regarding valuation as per Exts.P2 and P4 were prepared by the accused. Anyhow, Exts.P2 and P4 are public documents. PW3 deposed that Exts. P2 and P4 files of his office relating to the acquisition of land of PW1. Ext.P4(a) was page No. 1 in Ext.P4 file which is the Mahazar of the land of the accused. Ext.P4(b) was the sketch of

that land. Ext.P4(c) was the list of the improvements therein. Ext.P4(d) was the 'Thandaper kanakku' of that land. Ext.P4(e) was the award. Ext.P4(f) was the notice issued to PW1. The award was for Rs.20,48,832/-, In Exts. P4(a), P4(b), P4(c) and P4(d), accused had signed. In Exts.P4(e) and P4(f), PW3 had signed. Similarly in Exts. P2(b) to P2(g), accused had signed. In that case, the award was for Rs.7,68,311/-. Ext. P2(h) was the award issued to PW1. Ext.P2(i) was the notice. Ext. P2(k) was the petition filed by PW1 for issuance of the cheque. On the back of the same, PW3 endorsed that a cheque for Rs.7,68,311/- was issued to PW1 on September 5, 1997. Ext.P2(a) was the receipt for having received the cheque. Thus, these documents would clearly show that on September 5, 1997 PW1 had received the cheque from PW3 which probabilise the version of PW1 that he had met the accused on that date. Further Exts. P2 and P4 files would show that the accused was actively involved in assessing the compensation of the land and he had prepared the valuation thereof.

20. It is relevant to note that in order to prove Exts.P2(a), (b) and (c), PW4, the then Valuation Assistant in the office of the accused, also was examined. She deposed that she was present at the time of the trap in the office of the accused and had seen PW1 entering to the office of the accused and coming out after some time. However, even though she was cross-examined to disbelieve the version, the same was not succeeded and the evidence of PW5 also would fortify the prosecution case as to arrival of PW1 in the office of the accused on the date of trap on 19.09.1997 and the presence of the accused on the date of trap at the office.

21. According to the learned counsel for the appellant/accused, during cross-examination, PW1 had given evidence that, he had attempted to make his property, which was under acquisition, originally as wet land to dry land, but accused Nos.1 to 3 in the FIR not allowed the same. According to him, because of this denial, PW1 was in inimical terms with the accused and accordingly, a false trap case was foisted. But

when this aspect was suggested to PW1 that he was in inimical terms with the accused, on this count, PW1 readily answered that he had no grievance in this regard.

22. Now, it is necessary to address the essential ingredients required to attract the offences under Section 7 and Section 13(1)(d) r/w Section 13(2) of the PC 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) xxxxx

(b) xxxxx

(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. Xxxxx

(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.

23. In this connection, it is relevant to refer a 5 Bench decision of the Apex Court in **[AIR 2023 SC 330], Neeraj Dutta Vs State (Govt. of N.C.T. of Delhi)**, where the Apex Court considered when the demand and acceptance under Section 7 of the P.C Act to be said to be proved along with ingredients for the offences under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act and in paragraph 68 it has been held as under :

> "68. What emerges from the aforesaid discussion is summarised as under:
>
> a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and (ii) of the Act.
>
> (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent

acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

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

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

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

(ii) On the other hand, if the public servant makes a demand and the bribe

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

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

public servant when accepted by the bribe giver and 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."

24. Thus the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the P.C Act is

extracted above. Regarding the mode of proof of demand of bribe, 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. 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. The mode of proof of demand and acceptance is 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. 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.

25. In paragraph No.12 of the decision in **Sunil Kumar's** case (*supra)*, this Court observed the ingredients, as already extracted.

26. Coming to the contention raised by the learned counsel for the accused/appellant, in the decision in **Pounammal K.'s** case (*supra),* where the Apex Court modified the sentence for the period already undergone, i.e., the sentence lesser than the statutory minimum, it could be gathered that the Apex Court exercised the said power under Article 142 of the

Constitution of India. In this connection, it is relevant to refer another decision of the Apex Court in **Dashrath v. State of Maharashtra,** reported in **2025 KHC 6456,** where the Apex Court considered the question as to whether power conferred under Article 142 of the Constitution of India can be exercised to reduce a minimum sentence prescribed in the Statute. In the said decision, the Apex Court held that *the excise of power conferred by Article 142, in a case such as the present where a minimum sentence is prescribed by the statute, cannot be tinkered, for, the same would amount to legislation by the Court; and, prescription of a term of sentence quite contrary to what the Parliament has legislated would be legally impermissible. The statutory prescription in relation to punishment for a minimum period, unless challenged, cannot be reduced by this Court even in exercise of powers under Article 142 of the Constitution.*

27. Going by the decision in **Dashrath's** case (*supra),* the power under Article 142 of the Constitution of India also could not be invoked to reduce a sentence than the minimum

sentence provided by the statute, as the same would amount to legislation by the Court overstepping on the domain of the legislature, which is impermissible.

28. Following the decision in **Pounammal' s** case (*supra),* referred by the learned counsel for the appellant/accused also, this Court cannot reduce the sentence beyond the statutory minimum, since no power under Section 142 of the Constitution of India bestowed on this Court. Therefore, this contention could not be appreciated in the matter of sentence.

29. On scrutiny of the evidence, it could be gathered that the evidence of PW1 not at all shaken during cross-examination to disbelieve his version as to demand and acceptance of Rs.10,000/- by the accused on 05.09.1997 as well as Rs.15,000/- on 19.09.1997. Even though it is argued by the learned counsel for the accused/appellant that there was delay in producing the FIR before the court, it is discernible that the trap was laid in Ernakulam district whereas the FIR was

registered in Thiruvananthapuram. The FIR available in this case was not clear to read when the FIR was received by the Court and the same was in a dilapidated condition. Even if it is accepted that the FIR was received only on 20.09.1997 by the Court, considering the fact that, the trap was on 19.09.1997, the delay is too short or no substantive delay. Therefore, this aspect has no much significance to hold that the same is fatal to the prosecution.

30. On re-appreciation of the relevant evidence, relied on by the Special Court to find commission of offences under Section 7 as well as under Section 13(1)(d) r/w 13(2) of the PC Act, 1988 by the accused, it is discernible that the Special court rightly appreciated the evidence available to hold that the accused initially accepted Rs.10,000/- on 05.09.1997 and thereafter, again, demanded and accepted Rs.15,000/- on 19.09.1997 as illegal gratification to establish the ingredients to find commission of the above offences. In such view of the matter, the conviction imposed by the Special Court is only to be

confirmed.

31. Coming to the sentence, the same can be modified considering the request of the learned counsel for the appellant, to the statutory minimum.

32. In the result, this criminal appeal stands allowed in part. The conviction imposed by the Special Court is confirmed, but the sentence stands modified as under:

(i) The appellant/accused is sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.50,000/- (Rupees Fifty thousand only) for the offence punishable under Section13(1)(d) read with Section 13(2) of the PC Act, 1988, in default of payment of fine, the appellant/accused shall undergo Rigorous Imprisonment for a further period of three months.

(ii) The appellant/accused is sentenced to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.35,000/- (Rupees Thirty five thousand only) for the offence punishable under Section 7 of the PC Act, 1988,in

default of payment of fine the appellant/accused shall undergo Rigorous Imprisonment for a further period of two months,

(iii) The substantive sentences shall run concurrently and the default sentences shall run separately.

33. The order suspending execution of sentence and granting bail to the appellant/accused shall stand vacated and the bail bond executed by the appellant/accused stands cancelled. The appellant/accused is directed to surrender before the special court to undergo the modified sentence within two weeks from today, failing which, the special court shall execute the modified sentence without fail.

Registry is directed to forward a copy of this judgment to the trial court concerned for compliance and further steps.

Sd/-

A. BADHARUDEEN
JUDGE

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