The State Of Karnataka vs Chandrasha on 26 November, 2024

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Bench: Sanjay Kumar

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2024 INSC 899

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2646 OF 2024

THE STATE OF KARNATAKA

VERSUS

CHANDRASHA

JUDGMENT

R.MAHADEVAN, J.

1. At the outset, it would be apposite to point out the observation of this Court in Swatantar Singh v. State of Haryana1 (SCC p. 17, para 6), which reads as under:

> "6..... Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

2. This is an appeal filed by the State against the final Judgment and Order dated 16.02.2022 passed by the High Court of Karnataka, Kalaburagi Bench 2 in Criminal Appeal No.200105 of 2015.

(1997) 4 SCC 14 : 1997 SCC (L&S) 909 Hereinafter shortly referred to as "the High Court"

3. By the impugned Judgment, the High Court set aside the order of conviction dated 13.10.2015 passed by the Principal Sessions Judge, Kalaburagi3 in Special Case No.586 of 2010 and thereby acquitted the respondent herein from the charges punishable under Sections 7 and 13(1)(d) r/w

Section 13(2) of the Prevention of Corruption Act, 19884.

4. The case of the prosecution as culled out from the records is as follows:

> One Subhashchandra S. Alur (P.W.1), who was working as Second Division Assistant in Shri Mahanteshwar High School situated at Mahantapura Chinamagera Village, Afzalpur Taluk, Kalaburagi District, made a complaint (Ex.P1) on 05.08.2009, alleging that after preparing a bill for encashment of surrender leave salary payable to himself and three non-teaching staff of his school, he submitted the bill to the Sub Treasury Office, Afzalpur on 29.07.2009, as per the instructions of the Block Education Officer, Afzalpur. On examination of the same, the respondent, who was working as First Division Assistant in the said office of the Sub Treasury, directed the complainant (P.W.1) to take back the bill as it cannot be passed. When the complainant made request for passing the same, the respondent demanded illegal gratification of Rs.500/- each (in total, Rs.2,000/-). On enquiry, he came to know that the respondent was in the habit of passing the bills only after receiving the bribe amount. Since the complainant was not inclined to pay the demanded amount, he went to the office of Lokayukta, Hereinafter shortly referred to as "the trial Court" For short, "the Act" Gulbarga, Karnataka, on 30.07.2009, wherein, a tape recorder was handed over to him to record the conversation of the respondent in the Sub Treasury Office. Accordingly, the complainant went to the office of the Sub Treasury and enquired with the respondent, who demanded the bribe amount of Rs.2,000/- and told him that only after payment of the same, the bill will be passed, and cheque will be issued. The said conversation was recorded in the tape recorder and was handed over by the complainant to the Lokayukta Police on 05.08.2009 with a request to take action against the respondent. After receipt of the complaint, the Lokayukta Police registered a case in Crime No.13 of 2009 for the offence under Section 13(1)(d) r/w Section 13(2) of the Act.

5. Based on the complaint lodged by the complainant, trap was laid on 05.08.2009, in which, the bribe amount of Rs.2,000/- was recovered from the possession of the respondent. Upon conducting a thorough investigation, the Lokayukta Police filed a charge sheet, which was taken on file as Special Case No.586 of 2010 and thereafter, charges were framed against the respondent for the offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the Act. The respondent pleaded not guilty and claimed trial.

6. To substantiate the charges framed against the respondent, the prosecution examined P.W.1 to P.W.12 witnesses and marked Exs.P1 to P30 documents, besides M.O.1 to M.O.10 material objects. However, no oral and documentary evidence were let in, on the side of the respondent.

7. After hearing both sides and upon examining the materials available on record, the trial Court by judgment dated 13.10.2015, found the respondent guilty of the offences under Sections 7 and 13(1)(d) r/w Section 13(2) of the Act and convicted him and sentenced him to undergo imprisonment for a period of six months and to pay a fine of Rs.2,500/-, in default to undergo

further period of two months' imprisonment for the offence under Section 7 of the Act, and to undergo imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default to undergo further period of six months imprisonment for the offence under Section 13(1)(d) r/w Section 13(2) of the Act. Both the sentences were ordered to run concurrently.

8. Challenging the aforesaid judgment of conviction and sentence passed by the trial Court, the respondent preferred an appeal in Crl.A.No.200105 of 2015, which was allowed, and the respondent was acquitted from the charges by the High Court, by judgment dated 16.02.2022. Feeling aggrieved and being dissatisfied with the same, the State has preferred the instant appeal.

9. Assailing the judgment and order passed by the High Court, the learned counsel for the appellant made the following submissions:

> 9.1. As per the evidence of the complainant (P.W.1), the respondent initially refused to pass the bill, and he asked the complainant to take back the same;

however, at the request of the complainant, the respondent agreed to get the bill passed by influencing his higher officials and demanded illegal gratification for the same.

9.2. According to the respondent, he passed the bill relating to the complainant and others on 29.07.2009 and the cheque was prepared by the Treasury Office on 30.07.2009 and hence, no work was pending with him as on the date of trap i.e., on 05.08.2009. However, the cheque was not issued to the complainant nor any intimation in this regard, was given to the school authorities. 9.3. The case of the prosecution was that the respondent demanded illegal gratification of Rs.2,000/- for showing official favour in the matter of getting the bill sanctioned that was due to be paid to the complainant and others by influencing his higher officials. Even if the respondent has no pending work with him, and he demands and accepts any gratification, the essential ingredients for the offence under Section 7 of the Act get attracted.

9.4. After obtaining necessary sanction (Ex.P25) from the Director of Treasury, Bangalore, (P.W.11) who is the competent authority as well as disciplinary authority at the relevant point of time, the prosecution was launched against the respondent for the charges framed against him and hence, there was no infirmity or illegality in initiating the prosecution against the respondent. 9.5. P.W.1 to P.W.3 along with P.W.4 and P.W.5 coupled with Investigating Officers (P.W.10 and P.W.12) consistently deposed about the drawing of seizure mahazar (Ex.P11) and their evidence also supported the case of the prosecution in entirety qua demand and acceptance of bribe amount and recovery of the same from the respondent. Therefore, the presumption under Section 20 (1) of the Act must be raised in favour of the prosecution.

9.6. Placing reliance on the decision of this Court in Krishna Ram v. State of Rajasthan5, it is submitted that once it is proved that money was recovered from the possession of the respondent, the burden of rebutting the presumption contemplated under section 20(1) of the Act shifts upon the respondent, but he failed to do the same in the cross-examination of the prosecution witnesses. 9.7. Though the respondent has taken a plea that there were loan transactions between himself and

the complainant (PW1) and 8 to 10 days prior to the date of trap, P.W.1 had borrowed a sum of Rs.2,000/- from the respondent and when the respondent pressurised PW1 to return back the said amount, the present case was falsely registered against him, no reliable and convincing evidence was adduced in support of the same.

9.8. Thus, the prosecution proved its case beyond reasonable doubt that the respondent being Government servant while working as First Division Assistant in the office of the Sub-Treasury Office at Afzalpur, demanded Rs.2,000/- from PW1 as illegal gratification for the bill to be passed by influencing his higher officials and on 05.08.2009, the respondent, while accepting the bribe of Rs.2,000/- was trapped by the Lokayukta police and thereby committed the offences punishable under Section 7 and 13(1)(d) r/w Section 13(2) of the Act. 9.9. Considering all these aspects, the trial Court rightly convicted the respondent for the offences as stated above and punished him for the same. 2009 (2) Crimes 337 However, the High Court erred in passing the judgment of acquittal against the respondent, which has to be set aside in this appeal.

10. Per contra, the learned senior counsel for the respondent submitted that the respondent passed the bill on 29.07.2009 and the cheque was made ready on 30.07.2009 and no work was pending with him as on 05.08.2009 and hence, he did not demand any bribe amount from the complainant as alleged by the prosecution. Taking note of the same and also after analysing the oral and documentary evidence let in by the parties, the High Court rightly allowed the appeal filed by the respondent and set aside the judgment of conviction passed by the trial Court and hence, the same need not be interfered with by this court.

11. We have considered the submissions made by the parties and perused the materials available on record carefully and meticulously.

12. In the instant case, the respondent was charged under Sections 7 and 13(1)(d) r/w Section 13(2) of the Act, for demand and acceptance of bribe amount of Rs.2,000/- from the complainant (P.W.1) for passing the bill of encashment of Earned Leave Surrender for Rs.43,323/- pertaining to the complainant and three non-teaching staff of his school. Though the trial Court found him guilty of the aforesaid offences and sentenced him for the same, the High Court reversed the said findings and acquitted the respondent from the charges framed against him. Thus, this appeal is against the judgment of acquittal of the respondent.

13. Section 7 of the Act deals with public servants accepting or attempting to accept illegal gratification other than their legal remuneration. Its essential ingredients are (i)that the person accepting the gratification should be a public servant; and (ii)that he should accept the gratification for himself, and the gratification should be 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 function, favour or disfavour to any person6. Insofar as Section 13(1)(d) of the Act, it was amended by the Prevention of Corruption (Amendment) Act, 2018, with effect from 26th July, 2018. However, in view of Section 6 of the General Clauses Act, Section 13(1)(d) prior to the amendment, is applicable to the facts of the present case, as the offence was stated to have been committed on 05.08.2009. Thus, its essential ingredients are (i)that he should have been a public servant; (ii)that he should have used corrupt or

illegal means or otherwise abused his position as such public servant, and (iii)that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.

14. The law is well settled. In C.M.Girish Babu v. CBI7 and in B.Jayaraj v. State of A.P.8, while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988, it is reiterated that 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 A.Subair v. State of Kerala (2009) 6 SCC 587 (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1 (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543 possession or recovery of currency notes is not sufficient to constitute such offence; and the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved.

15. Pertinently, it is also to be noted that the Constitutional Bench in Neeraj Dutta v. State (Govt of NCT of Delhi)9 has answered the issue 'whether in the absence of evidence of the complainant / direct or primary evidence of demand of illegal gratification, it is permissible to draw an inferential deduction of culpability / guilt of a public servant under Sections 7 and 13(1)(d) read with Section 13(2) based on other evidence adduced by the prosecution' in affirmative, with the following conclusions:

> "88. What emerges from the aforesaid discussion is summarised as under:
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> 88.1.(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.
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> 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.
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> 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.
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> 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:
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> (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 (2023) 4 SCC 731 : 2022 SCC OnLine SC 1724 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.

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

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

88.7.(g) 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) (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 point (e) as the former is a mandatory presumption while the latter is discretionary in nature."

16. Concededly, the respondent herein is a government servant. As per Section 19 of the Act, to proceed against any public servant of Central Government or State Government, necessary sanction should be obtained for a Court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 of the Act. In this case, the prosecution obtained necessary sanction (Ex.P25) from P.W.11, who is the disciplinary authority as well as the competent authority. The sanction order (Ex.P25) clearly states that the Director of Treasury, Bangalore, (P.W.11) after perusal of the documents forwarded by the Lokayukta police, such as, complaint, FIR, entrustment panchanama, seizure panchanama, report from F.S.L, sketch of the scene of occurrence along with the relevant documents pertaining to the case including the statements of witnesses and also the statement of the respondent, accorded sanction to initiate prosecution against the respondent. Therefore, we do not find any procedural irregularity in grant of sanction. It was also deposed by the sanctioning authority (P.W.11) that after going through all these documents which were made available to him by the Lokayukta Police and after satisfying himself that there was a prima facie case to initiate the prosecution against the respondent and after having arrived at such satisfaction, he accorded sanction (Ex.P.25). Thus, it is clear that the prosecution initiated the proceedings against the respondent, after obtaining the sanction order from the competent authority.

17. Keeping in mind the aforesaid legal principles, let us examine the depositions of the prosecution witnesses to prove the charges framed against the respondent. P.W.1 is the complainant, who lodged complaint (Ex.P1) against the respondent, based on which the prosecution was set in motion. He deposed in his evidence that after getting instructions from the Block Education Officer, he presented a bill for Rs.43,323/- towards encashment of surrender leave salary of himself and three non-teaching staff of the school, on 29.07.2009 to the Sub Treasury Office, Afzalpur and requested the respondent to pass the same; on verifying the said bill, the respondent instructed the complainant to take back the same and it cannot be approved; however, the complainant requested him to pass the bill, for which, the respondent demanded a bribe of Rs.2,000/- for influencing his higher officers; since the complainant did not accede to the demand made by the respondent, on 30.07.2009, he went to the office of Lokayukta and informed the same; the officials of Lokayukta handed over a tape recorder for recording the conversation with the respondent; on 31.07.2009, the complainant went to the Sub Treasury Office and enquired with the respondent for passing the bill, who demanded illegal gratification of Rs.2,000/-; and the said conversation was recorded in the tape recorder and was handed over to the Lokayukta police along with complaint (Ex.P1) on 05.08.2009; and Ex.P.l (a) is his signature. 17.1. The complainant further stated in his evidence that on 05.08.2009, the Lokayukta Inspector summoned PW2 and PW3 as panchnama witnesses and introduced the complainant, who informed them about the illegal gratification made by the respondent and thereafter, conversation recorded in the tape recorder was heard by them, which was reduced in writing (Ex.P21); subsequently, the complainant produced four currency notes of Rs.500/- denomination; the Lokayukta police smeared phenolphthalein powder to the currency notes and handed over the same to Ishappa (PW3), who counted the notes, kept the same in the left side pant pocket of the complainant, then, both hands of P.W.3 were dipped into sodium carbonate solution, which turned into pink colour and the solution was collected in a bottle (M.O.1) and thereafter, entrustment mahazar (Ex.P2) was prepared and Exs.P3 to P10 photographs were also taken. 17.2. The evidence of P.W.1 also proceeds to state that the complainant along with PW.2 and P.W.3. and Lokayukta Inspector and his staff started to go to the Sub Treasury Office in a jeep and

they parked their jeep in the bus stand; then, the complainant and shadow witness (P.W.2) went inside the office of the respondent; the complainant met the respondent and enquired about the passing of the bill; at that time, the respondent demanded the bribe amount and also took the complainant to a hotel, in which, the complainant handed over the amount; after counting the currency notes, the respondent kept the same in his left side pant pocket; and on giving signal, the Lokayukta police came to treasury office, caught hold of the respondent, after following due procedure, seized the tainted currency notes from the left side pant pocket of the respondent and thereafter, prepared seizure mahazar (Ex.P11), besides collecting the material objects (M.O.2 to M.O.7); and the photographs taken during such seizure, were marked as Exs.P12 to P17.

17.3. The deposition of P.W.1 was corroborated by P.W.2 and P.W.3 panch witnesses. The shadow witness Basawaraj (P.W.2) who accompanied the complainant at the time of trap, categorically stated in his evidence about the drawing of seizure mahazar (Ex.P11), more particularly, the recovery of tainted currency notes from the possession of the respondent and the pant worn by the respondent at the time of trap. The trap witness Ishappa (P.W.3) also stated about the same in his evidence. Thus, the evidence of P.W.1 to P.W.3 clearly demonstrated the successful completion of trap, the demand and acceptance of illegal gratification by the respondent for passing the bill pertaining to the complainant and others.

17.4. P.W.4 and P.W.5 are the officials working in the office of the Sub Treasury of Afzalpur, who produced the records connected with this case, as directed by the Investigating Officer. PW.4 - Basawaraj deposed in his evidence that on the date of alleged trap, himself and the respondent were working in the Sub Treasury Office of Afzalpur. Through him, the copy of the work allotment order was placed on record as Ex.P.29, which states that the respondent was working as First Division Assistant, who was looking after the section of passing the bills for encashment of surrender leave salary, which were liable to be submitted to his higher officials for approval. The evidence of PW.4 coupled with Ex.P29 makes it clear that the respondent was entrusted with the work of receiving and checking the surrender leave salary bill presented by the complainant. Further, P.W.4 in his chief examination, categorically stated that the money was recovered from the respondent; and in the cross-examination stated that the bills prepared in the school were produced to treasury through staff and he did not know that the respondent has no pending work relating to the complainant as on 05.08.2009. The certified copies of Attendance register, Token receipt, Cheque and Bill passing register were marked through him, as Exs.P18 to P20 and P23. 17.5. P.W.5 – Shankreppa, who is the Chief Accounts Officer of STO, Afzalpur, deposed in his evidence that on 05.08.2009 at about 02.15 p.m., two persons came and took the respondent out of their office; thereafter, nearly 6 to 7 persons came along with the respondent, made him to sit in his seat; two persons were holding his hands, among them one person introduced himself as the Police Inspector of Lokayukta and informed that they have trapped the respondent, while he was receiving the bribe amount of Rs.2,000/- from the complainant; both hands of the respondent were dipped in sodium carbonate solution and the same turned into light pink colour; the respondent handed over the amount from his pant pocket to the Police; the pant of the respondent was also dipped in sodium carbonate solution, which turned into light pink colour; and the solution was collected in a separate bottles and was sealed. Thus, P.W.4 and P.W.5 consistently deposed in respect of trap laid by the Lokayukta Police on the respondent and seizure of tainted currency notes from the possession of the respondent. 17.6. P.W.6 -

Dattatreya who is the owner of the Hotel, deposed that on 05.08.2009 the respondent came to his Hotel and drank tea.

17.7. P.W.7 – Mahantappa, who is the watchman working in Mahanteshwar High School of Chinamgera Village, deposed that the complainant prepared the surrender leave salary bill pertaining to himself and others through Block Education Officer, who presented the said bill to the S.T.O, Afzalpur for encashment. He further deposed that the complainant informed him that only after payment of Rs.500/- each, the bill will be passed from the Treasury office and hence, all of them contributed the amount and handed over the same to the complainant. Thus, P.W.7 being a circumstantial witness, categorically deposed about the demand of bribe by the respondent and contribution of Rs.500/- each and handing over the same to the complainant to make payment of bribe amount to the respondent.

17.8. P.W.8 - Subbaraya who is the Headmaster of Mahanteshwar High School of Mahantpur deposed that the complainant was working in the said School. In the year 2009- 2010, they prepared a bill for encashment of surrender leave salary pertaining to the complainant and other staff members and submitted for the signature of the Block Education Officer through complainant; subsequently, he came to know that the official in the Sub Treasury Officer demanded bribe amount of Rs.2,000/-; and thereafter, about trap of the respondent by the Lokayukta Police.

17.9. P.W.9 - Rajshekhar who is the Assistant Engineer, stated in his evidence that on 11.08.2009, the Lokayukta Police requested him to prepare the sketch of the scene of occurrence; and accordingly, on 02.09.2009, he went to the spot, which was shown by one Basawaraj, and prepared the sketch of the scene of occurrence (Ex.P.24) and Ex.P.24 (a) is his signature.

17.10. P.W.10- Basawaraj, ASI of DCIB Unit, deposed about the lodging of the complaint by the complainant and the registration of the First Information Report. He further deposed about the institution of trap on the respondent and drawing of entrustment mahazar (Ex.P2).

17.11. PW.12 - Maheshwargouda is the Investigating Officer, who deposed that on 05.08.2009, the complainant came and lodged a complaint and also produced the tape recorder conversation recorded by him; on the basis of the same, FIR (Ex.P26) was registered against the respondent. He narrated in detail about the trap proceedings conducted on 05.08.2009 and successful completion of the same and drawing of seizure mahazar and material objects. Thus, PW.10 and P.W.12 consistently and categorically deposed about the demand and acceptance of bribe amount by the respondent and also recovery of tainted currency notes from the possession of the respondent and the same was reiterated by them in their cross- examination, which clearly corroborated with the evidence of P.W.l to P.W.3.

18. On the side of the respondent, no oral and documentary evidence were adduced to substantiate his stand. Though the learned counsel for the respondent made elaborate cross-examination, nothing was elicited to disbelieve the evidence of prosecution side witnesses.

19. Thus, from the aforesaid materials, it is absolutely clear that the evidence of P.W.1 to P.W.3 read with the evidence of P.W.4 and P.W.5 along with Investigating Officers (P.W.10 and P.W.12) who supported the case of the prosecution in entirety about 'demand' and 'acceptance' of the bribe amount and also recovery of the same from the possession of the respondent.

20. The main contention of the learned senior counsel for the respondent is that the bill was passed on 29.07.2009 and it was sent for preparation of cheque to P.W.4 on the same day itself and the cheque (Ex.P19) was also made ready on 30.07.2009 and hence, on the date of alleged trap i.e., on 05.08.2009, there was no work pending with the respondent and he did not demand or accept bribe from the complainant. However, the said cheque was not issued to the complainant and neither any intimation in this regard was sent to the school authorities, till 05.08.2009 nor was the complainant informed that the cheque was already ready. That apart, no plausible reason was adduced on the side of the respondent, as to why, it was retained in the office of the Sub Treasury without being issued to the party concerned. It is a common knowledge that when the bill was submitted to the office of Sub Treasury for sanction, only after issuance of the cheque to the concerned, the work will be treated as completed. In the instant case, no cheque was issued, and it was kept pending as on the date of trap. Therefore, the contention so made on the side of the respondent cannot be countenanced by us.

21. It is settled law that the two basic facts viz., 'demand' and 'acceptance' of gratification have been proved, the presumption under Section 20 can be invoked to the effect that the gratification was demanded and accepted as a motive or reward as contemplated under Section 7 of the Act. However, such presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the same. In the present case, the prosecution proved its case beyond reasonable doubt, in respect of the 'demand' and 'acceptance' of the bribe amount from the complainant and recovery of tainted currency notes from the possession of the respondent. The said operation is preceded by recording of the demand in the tape recorder. In such circumstances, the respondent has to rebut the presumption by disproving the case of the prosecution either in the cross- examination of the prosecution side witnesses or by adducing material evidence that the receipt of Rs.2,000/- was not a bribe amount, but a legal fee or repayment of loan. However, he failed to do so and on the contrary, we find the prosecution to have proved the case beyond any doubt.

22. Though the respondent in his statement recorded under Section 313 Cr.P.C as well as before the Lokayukta Police, stated that there were loan transactions between himself and the complainant; 8 to 10 days prior to the date of incident the complainant borrowed a hand loan of Rs.2,000/- from the respondent; and when the respondent pressurized the complainant to return the loan amount, the present false case was registered against him, there was absolutely no evidence either in oral or documentary adduced to substantiate the same. It is an admitted fact that the complainant was working in a private aided school and the respondent was working as First Division Assistant in the Office of the Sub Treasury, Afzalpur. There was no material evidence produced to the effect that both were related closely to each other so as to grant a hand loan and to prove the grant of loan. In the absence of such material evidence produced, the plea so taken by the respondent, seems to be unbelievable. Therefore, it can safely be inferred that the respondent had received or accepted the currency notes on his own volition and the testimony of P.W.1 to P.W.5 including the testimony of

P.W.10 and P.W.12 would go to show the demand, acceptance and recovery of the bribe amount from the possession of the respondent and the prosecution proved the charges framed against the respondent beyond reasonable doubt.

23. In view of the aforesaid analysis, we find that the trial Court based on the oral and documentary evidence adduced by the parties, rightly found the respondent guilty of the offences punishable under Sections 7 and 13 (1) (d) r/w Section 13 (2) of the Act and sentenced him for the same. However, the High Court by placing reliance on the decision of this Court in A.Subair's case (supra), held that since no work was pending with the respondent as on the date of trap, the ingredient to attract and complete the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Act was not met. The view so taken by the High Court is unsustainable as the decision of this Court in A.Subair's case (supra) did not support the view. It was a case where the complainant was not even examined and there were discrepancies in the evidence of the other witnesses. In the present case, we do not find such infirmities. Insofar as the reference to sub section (3) to Section 20 regarding the triviality of the gratification, the act sought or performed, and the amount demanded cannot be considered in isolation to each other. The value of gratification is to be considered in proportion to the act to be done or not done, to forbear or to not forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. It is also not necessary that only if substantial amount is demanded, the presumption can be drawn. The overall circumstances and the evidence will also have to be looked into. Section 20 would come into operation only when there is no nexus between the demand and the action performed or sought to be performed. But, when the fact of receipt of payment or an agreement to receive the gratification stands proved, there is a clear case of nexus or corroboration and the presumption itself is irrelevant. Section 20 gets attracted when it is proved that the public servant has accepted or agreed to accept any gratification other than legal remuneration and in that case, presumption is that it is the motive or reward for any of the acts covered under Section 7, 11 or 13(1)(b) of the Act. The presumption under Section 20 is similar to Section 118 of the Negotiable Instruments Act, 1881, where the onus is on the accused to prove that he is not guilty of the offences charged. The first two limbs under sub- sections (1) and (2) of Section 13 make it clear that adequacy of consideration is irrelevant to draw the presumption. That apart, sub-section (3) only grants a discretion to Court to decline from drawing any presumption if the amount is so trivial so that such inference of corruption is not fairly possible in the facts of the case. Therefore, it is not a rule but an exception available to the Court to exercise its discretionary power in the facts and circumstances of the case. In the present facts of the case, we are not inclined to exercise such discretion. As such, the judgment of acquittal passed by the High Court is illegal, erroneous and contrary to the materials on record.

24. We are conscious of the fact that in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the appellate Court would not be justified in setting aside the acquittal merely because the other view is also possible. In the present case, the recovery of bribe amount from the respondent having been proved, the explanation offered by the respondent in the absence of any concrete material, is clearly of the wall. Once the aspects of 'demand' and 'acceptance' of the bribe amount having been established beyond doubt, in our opinion, no two views are possible in the matter, and thus the approach adopted by the High Court is perverse and

liable to be interfered with.

25. Accordingly, this Criminal Appeal stands allowed by setting aside the judgment and order passed by the High Court and by restoring the judgment and order passed by the trial Court. The trial Court is directed to take necessary steps to secure the respondent and commit him in prison to undergo the remaining period of sentence and to recover the fine imposed on him.

.....CJI.

[Sanjiv Khanna] .....J. [Sanjay Kumar] .....J. [R. Mahadevan] NEW DELHI;

NOVEMBER 26, 2024.