

with PW3 Kumaraswamy to the house of the appellant/accused. PW2 Sridhar and PW4 Inspector Santosh Kumar stood outside the said house. The accused was watching T.V. inside the room and on seeing them, he asked PW1 Ramesh as to whether he has brought what he had asked and PW1 Ramesh answered yes and gave the currency notes of Rs.500/- and accused took them by his right hand and kept the same on his table and directed PW1 Ramesh to come on Monday for obtaining copy of the Re-Survey. They came out and PW1 Ramesh gave the signal, immediately PW4 Inspector Santosh Kumar along with PW2 Sridhar went inside the house and in the solution of clean water and sodium carbonate the right hand fingers of the accused was immersed upon which it turned into light pink color and on verification the numbers of the currency notes which were lying on the table were tallied with the numbers of the notes written in Exh.P2 Mahazar. All the formalities were completed and after obtaining sanction charge sheet came to be filed against accused.

3. The Trial Court framed charges under Sections 7, 13(1)(d) read with Section 13(2) of the Act and the accused pleaded not guilty. The prosecution examined four witnesses and marked Exh.P1 to P10 and M.Os. 1 to

10. The Trial Court held that the prosecution has failed to prove the charges against the accused and acquitted him. The State preferred appeal and the High Court in the impugned judgment held that the prosecution has failed to prove the offence under Section 7 of the Act and at the same time it proved the commission of offence under Section 13(1)(d) by the accused and consequently set aside the judgment of acquittal for said offences and convicted the appellant/accused for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act and sentenced him as stated above. The said judgment is under challenge in this appeal.

4. We heard Ms. Kiran Suri, learned senior counsel appearing for the appellant and Mr. V.N. Raghupathy, learned counsel appearing for the respondent State.

5. PW1 Ramesh, the complainant did not support the prosecution case. He disowned making the complaint in Exh.P1 and stated in his examination-in-chief that the accused had not demanded anything from him and he did not know what is written in Exh.P1 and the police have not recorded his statement in respect to this case. He was, therefore, declared hostile. However, PW3 Kumaraswamy, panch witness has testified that after being summoned by PW4 Inspector Santosh Kumar on 18.2.2000, the contents of Exh.P1 were explained to him in the presence of the complainant and he accompanied the complainant to the house of the accused, wherein, the complainant gave the sum of Rs.500/- to the accused as illegal gratification. It is on the aforesaid basis that the liability of appellant/accused for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW1 Ramesh had not supported the prosecution case.

6. In such type of cases the prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. As already seen the complainant PW1 Ramesh did not support the prosecution case insofar as demand by the accused is concerned. No other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant. In this context the recent decision of a three Judge bench of this Court in B. Jayaraj vs. State of Andhra

Pradesh reported in 2014(4) Scale 81 is relevant and it is held as follows :

“8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-

11) before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive in so far as the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.” The above decision is squarely applicable to the facts of the present case.

When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Exh.P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence of PW3 Kumaraswamy and the contents of Exh.P1 complaint cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused. The High Court was not correct in holding the demand alleged to be made by the accused as proved. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1)(d) of the Act and the conviction and sentence imposed on the appellant are liable to be set aside.

7. For the aforesaid reasons the appeal is allowed and the conviction and sentence imposed on the appellant/accused under Section 13(1)(d) read with Section 13(2) of the Act are set aside and he is acquitted of the charges. Bail bond, if any furnished by the appellant, be released.

.....J. (Madan B. Lokur)J. (C. Nagappan) New Delhi;

September 24, 2014