Neeraj Dutta vs State(Govt.Of N.C.T.Of Delhi) on 15 December, 2022

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Bench: B. V. Nagarathna, V. Ramasubramanian, A. S. Bopanna, B. R. Gavai, S. Abdul Nazeer

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1669 OF 2009

NEERAJ DUTTA .... APPELLANT

VS.

STATE (GOVT. OF N.C.T. OF DELHI) .... RESPONDENT

WITH

SLP (Crl.) No. 6497 of 2020

SLP (Crl.) No. 294 of 2022

CRIMINAL APPEAL NO. 1779 OF 2010
CRIMINAL APPEAL NO. 2136 OF 2010
DIARY NO. 27232 OF 2019

SLP (Crl.) NO. 11339 OF 2019

SLP(Crl.) NO. 3828 OF 2020

SLP (Crl.) NO. 5905 OF 2021

SLP(Crl.) NO. 6279 OF 2020

CRIMINAL APPEAL NO. 678 OF 2021

CRIMINAL APPEAL NO. 1490 OF 2021

JUDGMENT

NAGARATHNA, J.

By Order dated 27.08.2019, a Three Judge Bench of this court has referred the question of law framed to be decided by a Bench of appropriate strength. That is how this batch of cases has been referred to the Constitution Bench comprising of five judges by Hon'ble the Chief Justice of India. For easy reference, the Order of Reference dated 27.08.2019 is extracted as under:

> "O R D E R
>
> 1. The present reference, concerning the Prevention of Corruption Act, 1988, arises out of the order dated 28.02.2019, passed by a two-judge bench of this Court, wherein they expressed certain doubts as to the validity of the position of law as expounded by this Court in the case of P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another, (2015) 10 SCC 152. In that case, the Court held that, in the absence of primary evidence of the complainant due to his death, inferential deductions in order to sustain a conviction under Sections 7 and 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 was impermissible in law.

2. However, the Court, vide order dated 28.02.2019, highlighted a number of judgments, such as Kishan Chand Mangal vs. State of Rajasthan, (1982) 3 SCC 466; Hazari Lal vs. State (Delhi Administration), (1980) 2 SCC 390; and M. Narsinga Rao vs. State of A.P., (2001) 1 SCC 691, wherein this Court, despite the absence of primary evidence of the complainant, sustained the conviction of the accused by relying on other evidence, and raising a presumption under the statute.

3. Noting the divergence in the treatment of the evidentiary requirement for proving the offence under Sections 7 and 13(1) (d) read with Section 13(2), Prevention of Corruption Act, 1988, the Court referred the following question of a law for determination by a larger bench:

> "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."

4. Heard learned senior counsels for the parties at length.

5. We note that two three-judge benches of this Court, in the cases of B. Jayaraj vs. State of Andhra Pradesh, (2014) 13 SCC 55; and P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and Another, (2015) 10 SCC 152, are in conflict with an earlier three-judge bench decision of this Court in M. Narsinga Rao vs. State of A.P., (2001) 1 SCC 691, regarding the nature and quality of proof necessary to sustain a conviction for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 when the primary evidence of the complainant is unavailable.

6. We therefore consider it appropriate to refer the question of law framed to be decided by a bench of appropriate strength. The Registry is directed to place the papers before the Chief Justice of India for appropriate orders."

2. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short 'the Act') would not arise. Thus, the proof of demand is a sine qua non for an offence to be established under Sections 7, 13(1)(d)(i) and (ii) of the Act and de hors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning "hostile" or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference. Relevant provisions of the Act

3. Before proceeding further, it would be useful to refer to the relevant provisions of the Act. Sections 7,13(1)(d)(i) and (ii) and 20 of the Act as they stood prior to their amendments are extracted as under:

> 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 six months but which may extend to seven years and shall also be liable to fine.

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.

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Section 13 – Criminal misconduct by a public servant. -

"(1) A public servant is said to commit the offence of criminal misconduct, -

a) …..
b) ….
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;

Explanation.- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant." xxx xxx xxx Section 20 - Presumption where public servant accepts gratification other than legal remuneration. -

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause

(b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub- sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub- sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

4. The following are the ingredients of Section 7 of the Act:

i) the accused must be a public servant or expecting to be a public servant;

ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;

iii) for himself or for any other person;

iv) any gratification other than legal remuneration;

v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

5. Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely, -

(i) the accused must be a public servant;

(ii) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

iii) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.

iv) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).

vi) mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.

vii) therefore, to make out an offence under this provision, there has to be actual obtainment.

viii) since the legislature has used two different expressions namely "obtains" or "accepts", the difference between these two must be noted.

6. In Subash Parbat Sonvane vs. State of Gujarat (2002) 5 SCC 86 ("Subash Parbat Sonvane"), it was observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d). In Sections 7 and 13(1)(a) and (b) of the Act, the legislature has specifically used the word "accepts" or "obtains". As against this, there is departure in the language used in sub-section (1)(d) of Section 13 and it has omitted the word "accepts" and has emphasized on the word "obtains". In sub-clauses (i), (ii) and (iii) of Section 13(1)(d), the emphasis is on the word "obtains". Therefore, there must be evidence on record that the accused "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or that he obtained for any person any valuable thing or pecuniary advantage without any public interest.

It was further observed with reference to Ram Krishan vs. state of Delhi AIR 1956 SC 476 ("Ram Krishan"), that for the purpose of Section 13(1)(a) and (b) of the Act:

> "It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour."

> 7. Moreover, the statutory presumption under Section 20 of the Act is available for the offence punishable under Sections 7 or 11 or clauses (a) and (b) of sub-section (1) of section 13 and not for clause

> (d) of sub-section (1) of Section 13.

> 8. Reliance could also be placed on C.K. Damodaran Nair vs. Government of India (1997) 9 SCC 477 ("C.K. Damodaran Nair").

That was a case under the Prevention of Corruption Act, 1947 ('1947 Act' for the sake of convenience). Speaking of a charge under Section 7 of the Act, it was held that the prosecution was required to prove that:

(i) the appellant was a public servant at the material time;

(ii) the appellant accepted or obtained a gratification other than legal remuneration; and

(iii) the gratification was for illegal purpose.

While discussing the expression "accept", it was observed that "accept" means to take or receive with a "consenting mind". Consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to "acceptance". Therefore, it cannot be said, as an abstract proposition of law, that without a prior demand, there cannot be "acceptance". The position will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Section, the prosecution has to prove that the accused "obtained" the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Section 5(1)(a) and (b) and not under Section 5(1)(c), (d) or (e) of the 1947 Act. According to this Court, "obtain" means to secure or gain (something) as a result of request or effort. In the case of obtainment, the initiative vests in the person who receives and, in that context, a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Indian Penal Code (for short, 'IPC')., which, can be, established by proof of either "acceptance" or "obtainment".

Conflict in the three decisions?

9. On a perusal of the Order of Reference, we find that it has been discerned by a bench of three judges that there is a conflict in the decisions of two three-judge Benches of this Court in the cases of B. Jayaraj vs. State of Andhra Pradesh (2014) 13 SCC 55 ("B. Jayaraj"); P. Satyanarayana Murthy vs. D. Inspector of Police, State of A.P. (2015) 10 SCC 152 ("P. Satyanarayana Murthy") with the decision in M. Narsinga Rao vs. State of A.P. (2001) 1 SCC 691 ("M. Narsinga Rao") with regard to the nature and quality of proof necessary to sustain a conviction under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act when the primary evidence of the complainant is unavailable. Thus, in the absence of primary evidence of the complainant due to his death or non-availability, is it permissible to draw an inferential deduction of culpability/ guilt of a public servant under Section 7 and Section 13(2) read with Section 13(1)(d) of the Act based on other evidence adduced by the prosecution, is the neat question which is under consideration by this Constitution Bench.

Trilogy Of Cases:

> 10. Before proceeding further, it would be useful to consider in detail the judgments referred to in the Order of Reference.

(A) B. Jayaraj

(i) In B.Jayaraj, PW-2 the complainant therein did not support the prosecution case under Section 7 and Section 13(1)(d) (i) and (ii) of the Act. The complainant therein disowned making the complaint and had stated in his deposition that the amount of Rs.250/- was paid to the accused with a request that the same may be deposited in the bank as fee for the renewal of his licence. The complainant was not willing to support the case of the prosecution. The complainant was therefore declared "hostile". This Court observed that the complainant did not support the case of the prosecution insofar as demand made by the accused for the bribe is concerned and the prosecution did not examine 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 had disowned what he had stated in the initial complaint and in the absence of any other evidence to prove that the accused had made any demand, the evidence of the complainant therein and the complaint (Exh. P-11) could not be relied upon to come to the conclusion that the above material furnished proof of the demand allegedly made by the accused. The only other material available was the recovery of the tainted currency notes from the possession of the accused therein. It was observed that mere possession and recovery of the currency notes from the accused without proof of demand would not bring home the offence under Section 7. Therefore, the use of illegal means or abuse of position by a public servant to obtain any valuable thing or pecuniary advantage was not held to be established insofar as the offence under Sections 13(1)(d)(i) and (ii) of the Act is concerned.

(ii) It was further observed that the presumption under Section 20 of the Act could not also be drawn in respect of an offence under Section 7 of the Act. That such a presumption could have been drawn only if there was proof of acceptance of illegal gratification for which proof of demand was a sine qua non and as the same was lacking in the said case, the primary facts on the basis of which the legal presumption under Section 20 could be drawn were wholly absent. Consequently, the conviction was set aside and appeal was allowed.

(B) P. Satyanarayana Murthy

(i) In P. Satyanarayana Murthy, the fact was that during the trial of charges under Sections 7 and 13 (1)(d)(i) and (ii) and Section 13(2) of the Act, the prosecution examined seven witnesses and also adduced documentary evidence in support of the charges. But the complainant therein had died prior thereto and therefore, could not be examined by the prosecution. According to the complainant, he was disinclined to pay the illegal gratification as demanded by the public servant and hence had filed the complaint with the Deputy Superintendent of Police, Anti-Corruption Bureau, Kurnool and sought action against the appellant in the said case.

(ii) This Court by placing reliance on B. Jayaraj observed that mere possession and recovery of currency notes from the accused without proof of demand would not establish an offence under Sections 7 as well as 13 (1)(d)(i) and (ii) of the Act. This is because proof of demand is a sine qua non or an indispensable essentiality and a mandate for an offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act. That proof of acceptance of illegal gratification could follow only if there was proof of demand. That proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in the absence thereof, the charge would thereby fail. In other words, mere acceptance of any amount by way of illegal gratification or recovery thereof dehors the proof of demand, ipso facto would not be sufficient to bring home the charge under the said Sections of the Act. It was observed that in the absence of proof of demand, a legal presumption under Section 20 the Act would also not arise.

(iii) It was further observed that the material on record in the said case when judged on the touchstone of the legal principle discussed, left no doubt that the prosecution in the said case had failed to prove unequivocally the demand of illegal gratification and thus, the prosecution and the conviction of the appellant under Section 13(1)(d)(i) and (ii) read with section 13(2) of the Act was not sustainable.

(iv) In P. Satyanarayana Murthy, reference was made to two cases, namely, A. Subair vs. State of Kerala (2009) 6 SCC 587 (“A. Subair”) and State of Kerala vs. C.P.Rao (2011) 6 SCC 450 (“C.P.Rao”). In the first of the aforesaid two cases, it was observed that the prosecution has to prove the charge under Sections 7 and 13(1)(d) of the Act like in any criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification which are vital ingredients necessary to be proved to record a conviction. In C.P. Rao, which is the second of the two cases referred to in P. Satyanarayana Murthy, it was observed by this Court that mere recovery by itself would not prove the charge against the accused. In the absence of any evidence to prove the payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, the conviction could not be sustained.

(v) Both the above judgments in B.Jayaraj and P. Satyanarayana Murthy are rendered by Benches of Three Judges and in the Order of Reference, it is stated that the same are in conflict with M. Narasinga Rao which is also a judgment by a Bench of three judges of this Court. (C) M. Narasinga Rao

(i) In M. Narasinga Rao, K.T. Thomas, J. writing the judgment for the Bench raised the question as to, whether, a legal presumption can be based on a factual presumption. It was observed that a factual presumption is discretionary and depends upon the exercise of discretion by the Court whereas a legal presumption has to be compulsorily raised. It was further observed that Section 20 of the Act envisaged a legal presumption which means that on the proof of certain facts, the court “shall presume” other facts. But when there is no direct evidence for establishing the primary fact or the fact in issue, the Court has to depend upon the process of inference drawn from other facts to reach the said primary fact. The crux of the question involved therefore was whether an inference made could be used as a premise for the compulsory presumption envisaged in Section 20 of the Act.

(ii) In the said case, during the trial before the Special Judge, two witnesses of the prosecution namely, PW-1 and PW-2 made a volte-face during the trial and denied having paid any bribe to the appellant therein and also denied that the appellant had demanded the bribe amount. Both the witnesses were thus declared as "hostile". According to the appellant therein, the tainted currency notes were forcibly stuffed into his pocket and in support of this, he had examined two witnesses on the defence side. Both the trial court and the High Court disbelieved the defence witnesses in toto and found that PW 1 and PW 2 were won over by the appellant and that is why they turned against their own version recorded by the investigating officer and subsequently by a Magistrate under Section 164 of the CrPC.

(iii) In the said case, this Court made a detailed discussion of the expressions "may presume" and "shall presume" as defined in Section 4 of the Evidence Act. This Court observed that the word "proof" means such evidence as would induce a reasonable man to come to a particular conclusion. It was further observed that a presumption is an inference of a certain fact drawn from other proved facts. The Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. A presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in the law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts, the court can draw an inference and that would remain until such inference is either disproved or dispelled. It was held that, for the purpose of reaching one conclusion, the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the Court can treat the presumption as tantamounting to proof. However, this Court sounded a note of caution by stating that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. Reliance was placed on Suresh Budharmal Kalani vs. State of Maharashtra (1998) 7 SCC 337 ("Suresh Budharmal Kalani"), wherein it was observed that a presumption can be drawn only from facts — by a process of probable and logical reasoning and not from other presumptions.

(iv) This Court on the facts established in said case observed that the circumstances preceding and succeeding the discovery of tainted currency notes in the appellant's pocket helped the Court to draw a factual presumption that the appellant therein had willingly received the tainted currency notes.

(v) Relying upon Hazari Lal vs. State (Delhi Admn.) (1980) 2 SCC 390 ("Hazari Lal"), this Court reasoned on the facts of that case that in the absence of direct evidence to show that the public servant had demanded or accepted the bribe, no presumption under Section 4 of the 1947 Act (Section 20 of the Act) could be drawn merely based on the recovery of the marked currency notes. Speaking for a Bench of two judges, O.Chinnappa Reddy, J. in Hazari Lal further observed that it was not necessary that the passing of money should be proved by direct evidence as it could also be proved by circumstantial evidence. Also, under Section 114 of the Evidence Act, the Court may presume the existence of any fact which happened in the common course of natural events, human conduct and public and private business. The accused in Hazari Lal had taken the currency notes from his pocket and flung them across the wall and the said notes had been obtained from PW-3 therein a few minutes earlier who was shown to be in possession of the notes. Hence, presumption

under Section 4(1) of the 1947 Act was immediately attracted. Although it was a rebuttable presumption, in the said case, there was no material to rebut the presumption. The accused was, therefore held guilty of the offence.

(vi) Thus, in M. Narsinga Rao, a three-judge bench of this Court approved the reasoning of the two-judge bench in Hazari Lal. In M. Narsinga Rao, this Court observed that once it was established that there was a demand or payment or acceptance of gratification and once the foundational facts were proved the presumption for payment or acceptance of illegal gratification was applicable. As the said presumption of fact was not rebutted by the accused the fact of demand was proved. Consequently, the legal presumption was to be drawn that the said gratification was accepted as a "motive or reward" for doing or forbearing to do any act as per Section 20 of the Act.

(vii) It was further observed in the said case that the prosecution had proved that the appellant therein had accepted gratification. Therefore, the Court was under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty. It was further observed that the two witnesses examined on the defence side were unable to rebut the presumptions raised and hence, this Court dismissed the appeal and held the accused to be guilty.

11. Another judgment referred to in the Reference Order which is a case which arises under the 1947 Act is Kishan Chand Mangal vs. State of Rajasthan (1982) 3 SCC 466 ("Kishan Chand Mangal"). In the said case, it was observed that it was a case of entrapment where the complainant had given a bribe and the demand of the said bribe was also present. It was observed that the evidence on record, for instance, the complainant's visit to the Anti-Corruption Bureau, his producing currency notes and the superior officer of the department making a trap arrangement, and the raiding party going to the house of the accused indicated that a prior demand for payment was made by the accused and the same was circumstantial evidence.

12. In the aforesaid cases, the common thread which runs through is that the complainant was not available to let in evidence and hence, there was absence of direct evidence. In B. Jayaraj the complainant did not support the prosecution and hence was declared "hostile"; in P. Satyanarayana Murthy, the complainant had died prior to the examination of seven witnesses while in M. Narasinga Rao the prosecution witnesses had turned "hostile". Therefore, in B. Jayaraj and in P. Satyanarayana Murthy the Court acquitted the accused while in M. Narasinga Rao despite two witnesses being declared as "hostile", on facts, it was found that the accused therein had willingly received the tainted currency notes and hence, this Court sustained the conviction of the accused. It was observed that despite two prosecution witnesses turning "hostile", it was established by other evidence that there was a demand of illegal gratification. Since the foundational facts were proved, the presumption for payment or acceptance of the same was applicable, which was not rebutted. Consequently, the legal presumption under Section 20 of the Act was also raised and remained unrebutted. In the above said backdrop the reference was made to the larger Bench and ultimately to the Constitution Bench.

Submissions:

13. We have heard the learned senior counsel and learned counsel for the appellants and learned ASG and other counsel for the respondents.

14. Shri S.Nagamuthu, learned senior counsel, during the course of his submission contended as follows:

> (i) That the question for consideration has not been appropriately framed and hence, the appropriate question may have to be reframed by this Court. He submitted that normally, in a case under Sections 7, 13(1)(d)(i) and (ii), the complainant is expected to speak about prior demand and subsequent receipt or acceptance of illegal gratification by a public servant. But, if his evidence is not available, it would imply that there is no direct oral evidence of the said witness to prove the aforesaid two facts.

The issue before the Constitution Bench is, whether, the aforesaid two facts could be proved by any other mode in the absence of direct evidence so that the guilt of the public servant could be brought home. In this regard, our attention was drawn to Sections 7, 13(1)(d)(i) and (ii) and 20 of the Act as they stood prior to the amendment of the Act. Much emphasis was laid on the expression “accept” or “obtain” or “agrees to accept” or “attempt to obtain”.

(ii) In the context of Section 20 of the Act which deals with raising the legal presumption with regard to motive or reward, elaborate arguments were made on the difference between acceptance or obtainment. It was submitted that, in both cases, there is an offer and acceptance of the offer. If the offer emanates from 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 the case of acceptance, as dealt with in Section 7 of the Act, there need not be any prior demand by the public servant.

(iii) On the other hand, in the case of obtainment the offer emanates from the public servant, i.e., he makes a demand and the bribe giver accepts the offer and pays the demanded gratification which is, in turn, received by the public servant. Thus in the case of obtainment, there is a prior demand for illegal gratification made by the public servant and in such a case also, both the demand and receipt of illegal gratification have to be proved. This act of a public servant is an offence under Section 13(1)(d)(i) and (ii) and therefore, a prior demand by the public servant is a sine qua non for an offence under Section 13(1)(d)(i) and (ii). In this regard, reliance was placed on the judgment of this Court in B. Jayaraj; P. Satyanarayana Murthy; Kishan Chand Mangal; C.K. Damodaran Nair and Kishan Chander.

(iv) Thus, if there is a demand followed by a receipt by the public servant, the act of obtainment under Section 13(1)(d)(i) and (ii) is complete. It is then not necessary to prove “motive or reward” as the same is foreign to Section 13(1)(d)(i) and (ii). Therefore, Section 20 of the Act does not pertain to a legal presumption to be raised for an offence under Section 13(1)(d)(i) and (ii).

(v) It was further submitted that in the case of obtainment, receipt of gratification in pursuance of the demand must also be proved as a fact in issue. That in the absence of proof of receipt of gratification, mere demand does not constitute an offence under Section 13(1)(d)(i) and (ii). But if demand is construed as an attempt, then such an attempt to obtain is an offence under Section 7 of the Act.

(vi) Further under Section 13(1)(d)(i) and (ii), obtainment could be proved by (i) oral evidence; (ii) documentary evidence; (iii) statutory presumption; and (iv) circumstantial evidence. That the person to whom the demand was made could let in oral evidence and the same is direct evidence under Sections 59 and 60 of the Evidence Act. Further, if anybody else was present at the time of making of the demand, his oral evidence would also be direct evidence and the same may be sufficient to prove the demand. In case the person to whom the demand was made is either dead or unavailable for letting in evidence or turns "hostile" and there is no direct eye witness account of the fact of demand, then, in the absence of any other evidence, the accused is entitled to acquittal. However, if the demand is evidenced by any document such as demand being made through email, letter or any other communication, the said fact could be proved by documentary evidence in the absence of any direct or oral evidence although the complainant or the person to whom the demand has been made is not available to let in evidence.

(vii) It was further submitted by Shri. Nagamuthu, learned senior counsel that Section 20 of the Act mandates a presumption to be made by the court which is in the nature of a legal presumption. The presumption in relation to any illegal gratification accepted or obtained or agreed to be accepted or deemed to be obtained "as motive or reward", as per Section 7 of the Act, is a restricted and conditional presumption. The said presumption can be raised only on a proof of acceptance or obtainment or agreement to accept or attempt to obtain the illegal gratification and is not a presumption of guilt of an offence.

(viii) That the legal presumption that could be raised under Section 20 of the Act is in contradiction to a presumption that could be raised under Section 114 of the Evidence Act. By citing an example, it was sought to be contended that, if tainted currency notes are found in the possession of a public servant in a trap case, there can be a presumption under Section 114 of the Act that he might have received it. But this is a rebuttable presumption and the accused can rebut this presumption by offering his explanation for the possession of the tainted notes. The said presumption is a presumption of fact. However, there can be no presumption of demand as such. In other words, the demand as a matter of fact cannot be presumed under Section 114 of the Evidence Act, unless for such a presumption to be made, the foundational facts are proved and such foundational facts unerringly point to the irresistible and only conclusion of proof of demand. This would imply that mere recovery of the tainted notes from the possession of the accused would not give rise to a presumption of demand. In this regard reference was made to B. Jayaraj and a recent judgment of this Court in K. Shanthamma vs. State of Karnataka (2022) 4 SCC 574 ("K. Shanthamma").

(ix) It was next submitted that Section 7 of the Act speaks of acceptance or obtainment or an agreement to accept or an attempt to obtain. Further, the expression "acceptance" must be differentiated from the expression "receipt" as they convey different meanings in the context of

Section 7 of the Act. That Section 7 of the Act does not speak of receipt but only of acceptance. In order to convert receipt into acceptance, it should be proved that a demand is made from the bribe giver. In other words, the bribe giver should have offered the gratification while demanding a favour from the public servant.

(x) Therefore, the mere receipt of any property or valuable security would not tantamount to acceptance unless the bribe giver had made an offer demanding favour from the public servant. This fact in issue should be proved by direct evidence. However, if the bribe giver or the complainant dies or turns "hostile" and the fact cannot be proved by direct evidence, then it could be proved by the evidence of another witness who has direct knowledge of the said fact or even by circumstantial evidence. In the event the fact of acceptance is proved, Section 20 would apply and a presumption has to be raised that the acceptance was the reward of an act. Further, no presumption of acceptance can be raised under Section 114 of the Evidence Act in the absence of foundational facts being proved.

(xi) It was submitted by Shri Nagamuthu, learned senior counsel that once acceptance or obtainment or agreement to accept or attempt to obtain is proved, then the presumption under Section 20 vis-a- vis "motive or reward" could be raised in the context of Section 7 of the Act. But, acceptance or obtainment or an agreement to accept or an attempt to obtain cannot be established by means of a presumption in the absence of foundational facts. The reason why Section 20 raises a legal presumption is in order to prove mens rea of the accused, namely, that the public servant knew that he had received illegal gratification as a "motive or reward". Since, this fact is difficult to be proved by direct oral evidence or documentary evidence, the Parliament in its wisdom has incorporated Section 20 of the Act with a mandate to the Court to presume the illegal gratification as only a "motive or reward". Of course, such legal presumption is also rebuttable.

(xii) Coming to the actual question raised before the Constitution Bench, it was submitted by the learned senior counsel Shri Nagamuthu that the act of obtainment contains two facets, namely, prior demand and receipt of illegal gratification by the public servant and both these facts should be proved beyond reasonable doubt. The fact of demand could be proved by oral evidence. However, in the absence of complainant's evidence to prove obtainment or an attempt to obtain, the presumption under Section 20 cannot arise. Further, if such obtainment or attempt was witnessed by some other witness, then that witness can prove the said fact even in the absence of the bribe giver being available to be let in as evidence.

(xiii) On the other hand, in the case of acceptance or agreement to accept the gratification, the offer should have been made by the de facto complainant and the accused-public servant should have accepted the offer. In this case, there is no prior demand by the public servant. Therefore, even if there is proof through other evidence that the public servant received some property from the de facto complainant, that will not automatically go to prove acceptance in terms of Section 7 of the Act. In other words, mere receipt of a property by a public servant does not amount to either acceptance or obtainment. To convert the receipt to acceptance in terms of Section 7 of the Act, it should be proved that an offer preceded the receipt; and in the case of obtainment, the receipt should be preceded by a demand by the public servant.

(xiv) With reference to M. Narasinga Rao, it was contended that this Court has not dealt with the difference between Section 7 and Section 13(1)(d) of the Act and with regard to the difference between acceptance and obtainment and also the non- applicability of the presumption under Section 20 in a case which falls under Section 13(1)(d) of the Act.

(xv) According to learned senior counsel Shri Nagamuthu, M. Narasinga Rao does not lay down any proposition of law. Further, with reference to M. Narasinga Rao it was submitted that demand being a sine qua non for subsequent receipt of illegal gratification could be proved by circumstantial evidence subject to the principle that the change of proved circumstances should unerringly point towards the guilt of the accused and there should not be any other hypothesis that could apply. It was contended that in the absence of the bribe giver, the proof of demand could be presumed from circumstances. With reference to P. Satyanarayana Murthy, learned senior counsel contended that only a presumption of fact of conduct can be raised as per Section 4 of the Evidence Act. That in the said case, the complainant turned "hostile" and there was no other direct evidence to prove the demand but that the tainted currency notes were recovered from the accused. That in the absence of proof of demand for illegal gratification, the use of corrupt or illegal means by public servants to obtain a valuable thing or pecuniary advantage was not established at all.

(xvi) Learned senior counsel placed reliance on Kishan Chand Mangal to submit that as per the Woolmington principle, there should be proof beyond reasonable doubt and the said principle would apply under the Act under consideration. That there cannot be any inference of guilt and that only presumptions could be raised, as per Section 4 of the Evidence Act, based on the foundational facts being proved beyond reasonable doubt and in the absence of rebuttal evidence. In view of the aforesaid submissions, Shri Nagamuthu submitted that the question raised for consideration must be answered in the negative.

15. Shri M. Karpaga Vinayagam, learned senior counsel submitted that the proof of demand of public servant alleged by the prosecution is a sine qua non in order to establish the guilt of the accused public servant. That mere acceptance of or the recovery of tainted notes is not sufficient to bring home the guilt of the accused as the prosecution has to first prove that demand of illegal gratification was made by the accused. Thereafter, the subsequent acceptance and recovery of the tainted notes would complete the chain of circumstances to bring home the guilt of the accused. In this regard, learned senior counsel placed reliance on State of U.P. vs. Ram Asrey 1990 Supp SCC 12 ("Ram Asrey"); Mukhtiar Singh vs. State of Punjab; (2017) 8 SCC 136 ("Mukhtiar Singh"); M.R. Purushotam vs. State of Karnataka (2015) 3 SCC 247 ("M.R. Purushotam"); C.M. Sharma vs. State of Andhra Pradesh (2010) 15 SCC 1 ("C.M. Sharma"); State of Maharashtra vs. Dhyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200 ("Dnyaneshwar Laxman Rao");

Sukumaran vs. State of Kerala (2015) 11 SCC 314 ("Sukumaran") and Sunkanna vs. State of Andhra Pradesh (2016) 1 SCC 713 ("Sunkanna").

16. Learned Counsel Shri Raghenth Basant contended that in P. Satyanarayana Murthy, it has not been laid as a principle of law that in every case where the complainant is dead, demand cannot be proved at all. That other evidence adduced by the prosecution can be considered to come to a

conclusion, where there is proof beyond reasonable doubt.

17. It was contended that there was an erroneous assumption in P. Satyanarayana Murthy, wherein it was observed that only direct evidence is a sine qua non for proving a case under Sections 7, 13(1)(d)(i) and (ii) of the Act. The Division Bench as well as the three judge Bench therefore, referred the matter to the larger bench. But that is not the position. In fact, in B. Jayaraj, the complainant turned "hostile" at the time of trial and this Court examined the evidence of other witnesses on behalf of the prosecution and held that the prosecution had not been able to prove that any demand had been made by the accused beyond reasonable doubt. It was further held in the said case that the presumption in Section 20 of the Act can be drawn only on proof of acceptance of illegal gratification.

18. According to Shri Basant, in M. Narasinga Rao, the complainant turned "hostile". But, on the basis of the evidence adduced by the prosecution, this Court concluded that even in the absence of direct evidence, the rest of the evidence adduced and the circumstances were sufficient to bring home the guilt of the accused. Reliance was placed on the following observation in support of the submission:

> "But the other circumstance which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that the appellant had willingly received the currency notes."

19. In M. Narasinga Rao, this Court held that the prosecution has proved the case beyond reasonable doubt whereas in B. Jayaraj the prosecution was unsuccessful in proving so. Therefore, there is no conflict between the judgment in M. Narasinga Rao on the one hand and B. Jayaraj and P. Satyanarayana Murthy on the other.

20. That the presumption under Section 20 of the Act would apply only if the fact of demand and acceptance or of illegal gratification, as the case may be, is proved. Such a proof can be adduced even by way of circumstantial evidence in the absence of direct evidence. This would be so particularly in trap cases as the prosecution has to prove that the accused had demanded a bribe from the complainant. The factum of demand can be either proved by direct evidence or through circumstantial evidence.

21. Shri Sushil Kumar Jain, learned senior counsel also submitted that the demand of a valuable thing or pecuniary advantage either for himself or for some other person is a necessary ingredient or a sine qua non to bring home a conviction under Sections 7 and 13(1)(d). The demand can be proved either by direct oral evidence or documentary evidence. That the presumption under Section 20 is applicable only in respect of offences under Sections 7, 11 and Section 13(1)(a) and (b) since the demand is a part of the word "obtain". However, this foundational fact has to be proved and cannot be presumed. So also, with regard to the word "accepted", the demand must be proved. That Section 20 is akin to Section 4 of the 1947 Act and prior to the Act coming into force, the offences against corrupt public servants were also covered under Sections 161 and 165 A of the IPC. Section 4 of the

1947 Act prescribed the statutory presumptions for offences under Sections 161 and 165 of the IPC. By Section 31 of the Act, Sections 161 to 165 (A) were repealed and are now covered by Sections 7 and 11 of the Act. The Act is a special statute and a complete code by itself.

22. Learned senior counsel further urged that under the criminal jurisprudence in India, there is always a presumption of innocence until the guilt is proved and there is no presumption of guilt. Therefore, there has to be proof beyond reasonable doubt of a demand and its acceptance so as to bring home the guilt of the accused. In this regard, reliance was placed on para 18 of M. Narasinga Rao.

23. Ms. Aishwarya Bhati, learned ASG drew our attention to the report of the Committee on the Prevention of Corruption Act submitted by the K.Santanam Committee and contended that it has been stated therein that corruption has increased to a large extent and people have started losing faith in the integrity of public administration. Reliance was placed on State of Madhya Pradesh vs. Ram Singh (2000) 5 SCC 88 ("Ram Singh") to draw our attention to the fact that the Act has been intended to make effective provisions for the prevention of bribery and corruption which has been rampant amongst the public servants. The Act is a social legislation intended to curb the illegal activities of public servants and is designed to be liberally construed so as to advance its object. Procedural delays and technicalities of law should not be permitted to defeat the objects sought to be achieved by the Act while interpreting various provisions of the Act and deciding cases under it. She further drew our attention to various decisions of this Court wherein despite the complainant having died or having turned "hostile" or not being available for letting in evidence, on the basis of the other evidence on record, conviction has been ordered. Many of the decisions referred to by her have been cited above. She submitted that even if the complainant turns "hostile" with regard to certain aspects of the evidence referred by him, his entire evidence cannot be discarded.

24. Learned ASG submitted that the judgments of this Court in B.Jayaraj and P. Satyanarayana Murthy have been correctly decided and the questions raised may accordingly be answered.

25. Learned ASG Shri J.K. Sud submitted that the issue before the Constitution Bench pertains to the proof of guilt of a public servant under Sections 7, 13(1)(d) read with Section 13(2) of the Act in a case where the complainant's evidence is unavailable. He submitted that proof does not mean proof in the sense of a rigid and mathematical demonstration, as that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion. In reaching the conclusion, the court can use the process of inferences to be drawn from the facts produced or proved and such inferences are akin to presumptions in law. That a presumption of fact can be made by a court of law by exercise of discretion, having regard to the common course of natural events, human conduct, public or private business in relation to the facts of the particular case. This discretion is envisaged in Section 114 of the Evidence Act. A presumption can thus be drawn on proof of certain facts. Also, a presumption is not a final conclusion to be drawn from other facts. A presumption of certain facts would remain until such inference is either disproved or dispelled. Unless the presumption is disproved or dispelled or rebutted the court can treat the presumption as tantamounting to proof. However, a presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning. As opposed to presumptions on facts,

there is what is known as legal presumption which is a compulsory presumption such as under

> Section 20 (1) of the Act. That under Section 20 of the Act, it could be a presumption that the accused accepted or agreed to accept any gratification as a motive or reward for doing or forbearing to do any official act. Hence, the conditions envisaged under Section 20 have to be satisfied before raising a presumption against the accused, namely that the accused has accepted or agreed to accept any illegal gratification. This proof need not be through direct evidence which is only one of the basis for proving a fact.

26. Learned ASG further submitted that the word "obtain" means to secure or gain something as a result of a request to "obtain" and "accept", i.e., means to take or receive with a consenting mind. Consent can be established by not only leading evidence but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant with a hope that in the future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification, it would "amount to acceptance" within the meaning of Section 161 of the IPC.

27. Dr. Joseph Aristotle, learned counsel submitted on behalf of the State of Tamil Nadu that the death or the non-availability of complainant or the complainant turning "hostile" are three instances when there would not be availability of complainant's direct evidence to bring home the guilt of the accused-public servant. That death or non-availability of the complainant would not vitiate the case of the prosecution as the incriminating circumstance of demand can be proved by circumstances even in the absence of the complainant. The quality of the evidence let in by the prosecution is more significant than the sole direct evidence of demand being spoken to. In the case of a trap, the court has to consider the ingredients of the factum of offences namely, acceptance of demand and recovery of tainted money in its entirety. Hence, the case of the prosecution does not come to an end with the death of the complainant, as even in the absence of a complainant, it is possible to prove the factum of demand and recovery of tainted money by an independent witness whose evidence can be the basis for passing an order of conviction. Question for consideration:

28. On consideration of the aforesaid cases, the question framed for determination by the larger Bench is as under:

> "1) Whether, in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not 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 Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?" In order to answer the aforesaid question, it would be useful to recapitulate the relevant provisions of the law of evidence vis-à-vis tendering of oral and documentary evidence; presumptions and circumstantial evidence. Thereafter to analyse the three cases and also other cases cited at the Bar in the background of the question raised and to derive a conclusion from the said discussion. Relevant provisions of Law of Evidence - A discussion:

29. Since the main thrust of this case is on the quality of evidence for proof of demand and acceptance of an illegal gratification before a public servant can be held guilty of an offence under Section 7 and/or Section 13(1)(d) of the Act, it would be appropriate to discuss the salient principles of law of evidence relevant to the question under consideration.

In this context, it would be necessary to refer to Sections 3, 4, 59, 60, 61, 62, 63, 64, 65 and 154 of the Evidence Act.

30. Congruent to the principle of res gestae, a fact includes a state of things or events as well as the mental state i.e. intention or animus. A fact in law of evidence includes the factum probandum i.e., the principal fact to be proved and the factum probans, i.e., the evidentiary fact from which the principal fact follows immediately or by inference. On the other hand, the expression "fact in issue" means the matters which are in dispute or which form the subject of investigation. (vide Section 3 of Evidence Act).

31. It is well settled that evidence is upon facts pleaded in a case and hence, the principal facts are sometimes the facts in issue. Facts relevant to the issue are evidentiary facts which render probable the existence or non-existence of a fact in issue or some relevant fact.

32. In criminal cases, the facts in issue are constituted in the charge, or acquisition, in cases of warrant or summon cases. The proof of facts in issue could be oral and documentary evidence. Evidence is the medium through which the court is convinced of the truth or otherwise of the matter under enquiry, i.e., the actual words of witnesses, or documents produced and not the facts which have to be proved by oral and documentary evidence. Of course, the term evidence is not restricted to only oral and documentary evidence but also to other things like material objects, the demeanour of the witnesses, facts of which judicial notice could be taken, admissions of parties, local inspection made and answers given by the accused to questions put forth by the Magistrate or Judge under Section 313 of the Criminal Procedure Code (CrPC).

33. Further, according to Sarkar on Law of Evidence, 20 th Edition, Volume 1, "direct" or "original" evidence means that evidence which establishes the existence of a thing or fact either by actual production or by testimony or demonstrable declaration of someone who has himself perceived it, and believed that it established a fact in issue. Direct evidence proves the existence of a fact in issue without any inference of presumption. On the other hand, "indirect evidence" or "substantial evidence" gives rise to the logical inference that such a fact exists, either conclusively or presumptively. The effect of substantial evidence under consideration must be such as not to admit more than one solution and must be inconsistent with any explanation that the fact is not proved. By direct or presumptive evidence (circumstantial evidence), one may say that other facts are proved from which, existence of a given fact may be logically inferred.

34. Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate

observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible vide Mukhtiar Singh.

35. Evidence that does not establish the fact in issue directly but throws light on the circumstances in which the fact in issue did not occur is circumstantial evidence (also called inferential or presumptive evidence). Circumstantial evidence means facts from which another fact is inferred. Although circumstantial evidence does not go to prove directly the fact in issue, it is equally direct. Circumstantial evidence has also to be proved by direct evidence of the circumstances.

Further, letting in evidence should be in accordance with the provision of the Evidence Act by the examination of witnesses, i.e., examination-in-chief, cross-examination, and re-examination.

36. Section 59 of the Evidence Act states that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Oral evidence means the testimony of living persons examined in the presence of the court or commissioners appointed by the court, deaf and dumb persons may also adduce evidence by signs or through interpretation or by writing, if they are literate.

37. Documentary evidences, on the other hand, are to be proved by the production of the documents themselves or, in their absence, by secondary evidence under Section 65 of the Act. Further, facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, or ill will need not be proved by direct testimony. It may be proved inferentially from conduct, surrounding circumstances, etc. (See Sections 8 and 14 of Evidence Act).

38. Insofar as oral evidence is concerned, this Court in State of Rajasthan vs. Babu Meena (2013) 4 SCC 206 (“Babu Meena”) has classified the same into three categories :–(i) wholly reliable; (ii) wholly unreliable, and; (iii) neither wholly reliable nor wholly unreliable. While an accused can be convicted on the sole testimony of a wholly reliable witness, the uncorroborated evidence of a wholly unreliable testimony of a witness must result in an acquittal.

39. Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word “direct” is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or inferential evidence or presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression “circumstantial evidence” is used in a loose sense as, sometimes, circumstantial evidence may also be direct.

40. Although the expression “hearsay evidence” is not defined under the Evidence Act, it is, nevertheless, in constant use in the courts. However, hearsay evidence is inadmissible to prove a fact

which is deposed to on hearsay, but it does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed such as evidence of an informant of the crime.

41. At this stage, it must be distinguished that even with regard to oral evidence, there are sub-categories – primary evidence and secondary evidence. Primary evidence is an oral account of the original evidence i.e., of a person who saw what happened and gives an account of it recorded by the court, or the original document itself, or the original thing when produced in court. Secondary evidence is a report or an oral account of the original evidence or a copy of a document or a model of the original thing.

42. Section 61 deals with proof of contents of documents which is by either primary or by secondary evidence. When a document is produced as primary evidence, it will have to be proved in the manner laid down in Sections 67 to 73 of the Evidence Act. Mere production and marking of a document as an exhibit by the court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence. On the other hand, when a document is produced and admitted by the opposite party and is marked as an exhibit by the court, the contents of the document must be proved either by the production of the original document i.e., primary evidence or by copies of the same as per Section 65 as secondary evidence. So long as an original document is in existence and is available, its contents must be proved by primary evidence. It is only when the primary evidence is lost, in the interest of justice, the secondary evidence must be allowed. Primary evidence is the best evidence and it affords the greatest certainty of the fact in question. Thus, when a particular fact is to be established by production of documentary evidence, there is no scope for leading oral evidence. What is to be produced is the primary evidence i.e., document itself. It is only when the absence of the primary source has been satisfactorily explained that secondary evidence is permissible to prove the contents of documents. Secondary evidence, therefore, should not be accepted without a sufficient reason being given for non-production of the original.

43. Section 62 of the Evidence Act defines primary evidence to mean the documents itself produced for the inspection of the court. If primary evidence is available, it would exclude secondary evidence. Section 63 of the Evidence Act deals with secondary evidence and defines what it means and includes. Section 63 mentions five kinds of secondary evidence, namely, -

(i) Certified copies given under the provisions hereinafter contained;

(ii) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(iii) Copies made from or compared with the original;

(iv) Counterparts of documents as against the parties who did not execute them;

(v) Oral accounts of the contents of a document given by some person who has himself seen it.

44. Section 64 of the Evidence Act states that documents must be proved by primary evidence except in certain cases mentioned above. Once a document is admitted, the contents of that document are also admitted in evidence, though those contents may not be conclusive evidence. Moreover, once certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. There is a prohibition for any other evidence to be led which may detract from the conclusiveness of that evidence and the court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Thus, once a document has been properly admitted, the contents of the documents would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence of such a document, no such objection could be allowed to be raised at any later stage of the case or in appeal vide Amarjit Singh vs. State (Delhi Admn.) 1995 Cr LJ 1623 (Del) ("Amarjit Singh"). But the documents can be impeached in any other manner, though the admissibility cannot be challenged subsequently when the document is bound in evidence.

45. The cases in which secondary evidence relating to documents may be given are stated in Section 65 of the Evidence Act read with Section 66, Section 67(2), Section 78. Proof of documents, whether public or private, including execution of such documents etc. Presumptions:

46. Courts are authorised to draw a particular inference from a particular fact, unless and until the truth of such inference is disproved by other facts. The court can, under Section 4 of the Evidence Act, raise a presumption for purposes of proof of a fact. It is well settled that a presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. As per English Law, there are three categories of presumptions, namely, (i) presumptions of fact or natural presumption; (ii) presumption of law (rebuttable and irrebuttable); and (iii) mixed presumptions i.e., "presumptions of mixed law and fact" or "presumptions of fact recognised by law". The expression "may presume" and "shall presume" in Section 4 of the Evidence Act are also categories of presumptions. Factual presumptions or discretionary presumptions come under the division of "may presume" while legal presumptions or compulsory presumptions come under the division of "shall presume". "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case but "shall presume" leaves no option with the court, and it is bound to presume the fact as proved until evidence is given to disprove it, for instance, the genuineness of a document purporting to be the Gazette of India. The expression "shall presume" is found in Sections 79, 80, 81, 83, 85, 89 and 105 of the Evidence Act.

47. Similarly in a trial under Section 138 of the Negotiable Instruments Act, a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted vide Kumar Exports vs. Sharma Carpets (2009) 2 SCC 513 ("Kumar Exports"). Further, the question as to whether the presumption stood rebutted or not must, therefore, be determined keeping in view the other evidence on record. [Krishna Janardhan Bhat vs. Dattatraya G Hegde (2008) 4 SCC 54 ("Krishna Janardhan Bhat")].

48. Section 20 of the Act deals with presumption where public servant accepts gratification other than legal remuneration. It uses the expression "shall be presumed" in sub-section (1) and

sub-section (2) unless the contrary is proved. The said provision deals with a legal presumption which is in the nature of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the Section is satisfied. The only condition for drawing a legal presumption under Section 20 of the Act is that during trial, it should be proved that the accused had accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification.

49. In State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC 61 ("A. Vaidyanatha Iyer"), it was observed that the presumption under Section 4(1) of the 1947 Act which is similar to Section 20 of the Act under consideration would arise where illegal gratification has been accepted, then the presumption introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. The legislature has used the words "shall presume" and not "may presume" which means that the presumption has to be raised as it is a presumption of law and therefore it is obligatory on the court to raise this presumption. Further, the presumptions of law constitute a branch of jurisprudence unlike a case of presumption of fact which is discretionary.

50. Distinguishing a presumption under Section 4(1) of the 1947 Act with a presumption under Section 114 of the Evidence Act, it was observed in Dhanvantrai Balwantrai Desai vs. State of Maharashtra AIR 1964 SC 575 ("Dhanvantrai Balwantrai Desai") that a presumption under Section 114 of the Evidence Act is discretionary in nature inasmuch as it is open to the court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact. This is unlike a presumption under Section 4(1) of the 1947 Act or Section 20 of the Act where the court has to draw such presumption, if a certain fact is proved, that is, where any illegal gratification has been received by an accused. In such a case the presumption that has to be drawn that the person received that thing as a motive of reward. Therefore, the court has no choice in the matter, once it is established that the accused has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to the accused to show that though that money was not due to him as a legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which is lawful. The burden resting on the accused in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in this provision make it clear that the presumption has to be rebutted by "proof" and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material brought before it, the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

51. One of the modes through which a fact can be proved. But, that is not the only mode envisaged under the Evidence Act. Proof of the fact depends upon the degree of probability of it having existed. The standard required for reaching the supposition is that of a prudent man acting in any important

matter concerning him.

52. As opposed to the expressions "may presume" and "shall presume", the expression "conclusive proof" is also used in Section 4 of the Evidence Act. When the law says that a particular kind of evidence would be conclusive, that fact can be proved either by that evidence or by some other evidence that the court permits or requires. When evidence which is made conclusive is adduced, the court has no option but to hold that the fact exists. For instance, the statement in an order of the court is conclusive of what happened before the presiding officer of the court. Thus, conclusive proof gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combat that effect. When a statute makes certain facts final and conclusive, evidence to disprove such facts is not to be allowed.

Circumstantial Evidence

53. As already noted, all evidence let in before the court of law are classified either as direct or circumstantial evidence. "Direct evidence" means when the principal fact is attested directly by witnesses, things or documents. For all other forms, the term "circumstantial evidence" which is "indirect evidence" is referred, whether by witnesses, things or documents, which can be received as evidence. This is also of two kinds namely, conclusive and presumptive. Conclusive is when the connection between the principal and evidentiary facts – the factum probandum and factum probans - is a necessary consequence of the laws of nature; "presumptive" is when the inference of the principal fact from the evidence is only probable, whatever be the degree of persuasion which it may generate (Best, 11th Edition, Section 293). Thus, circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence. The prosecution must take place and prove all necessary circumstances constituting a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence vide Navaneethakrishnan vs. State by Inspector of Police AIR 2018 SC 2027 ("Navaneethakrishnan").

54. The principal fact can be proved indirectly by means of certain inferences drawn from its existence or its connection with other circumstantial evidence. It is often said that witnesses may lie but not the circumstances. However, the court must adopt a cautious approach while basing its conviction purely on circumstantial evidence. Inference of guilt can be drawn only when all incriminating facts and circumstances are found to be incompatible with the innocence of an accused. In other words, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that, taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

55. It is trite law that in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypotheses than that of his guilt, and provide a cogent and complete chain of events which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in

the chain of circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified even though any one or more of those facts by itself is not decisive. (Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116 ("Sharad Birdhichand Sarda") as reiterated in Prakash vs. State of Rajasthan (2013) 4 SCC 668 ("Prakash")).

56. In Kundan Lal Rallaram vs. The Custodian, Evacuee Property Bombay AIR 1961 SC 1316 ("Kundan Lal Rallaram"), this Court speaking though K. Subba Rao, J. observed that the rules of evidence pertaining to burden of proof are embodied in Chapter 7 of the Evidence Act. The phrase "burden of proof" has two meanings :-

> one, the burden of proof as a matter of law and pleading and the other, the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by opposite party; it may comprise of circumstantial evidence or presumptions of law or fact.

Analysis:

57. In the case of B. Jayaraj, the complainant did not support the prosecution case. In P. Satyanarayana Murthy, the complainant had died prior to letting in his evidence in the case. In M. Narasinga Rao, the question was whether a legal presumption could be based on a factual presumption. In Hazari Lal, this Court through O. Chinnappa Reddy, J. observed that it is not necessary that the passing of money should be proved by direct evidence, it could also be proved by circumstantial evidence. Furthermore, in Madhukar Bhaskarrao Joshi vs. State of Maharashtra (2000) 8 SCC 571 ("Madhukar Bhaskarrao Joshi"), it was observed that in order to draw a presumption under Section 20 of the Act, the premise is that there was payment or acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted as a "motive or reward" for doing or forbearing to do any official act.

58. P. Satyanaratana Murthy has been referred to in State vs. Dr. Anup Kumar Srivastava (2017) 15 SCC 560 ("Dr. Anup Kumar Srivastava") by observing that what constitutes illegal gratification is a question of law; whether on the evidence let in, crime has been committed or not is a question of fact. If, therefore, the evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly, the presumption of innocence, the charge cannot be said to have been established. The court also made observations regarding framing of charge in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. It was also held that proof of demand is an indispensable mandate for the offence under Sections 7 and 13 of the Act. On the facts of the said case, it was held that the same was absent and the accused was liable to be acquitted.

59. In all the cases leading to the reference, it is either the death or the refusal to support the prosecution case that has led to the legal presumption under Section 20 of the Act not being raised and not bringing home the guilt of the accused.

60. Learned ASG and counsel also drew our attention to the following precedents:

> (i) In the case of State of Andhra Pradesh vs. V. Vasudeva Rao (2004) 9 SCC 319 ("V. Vasudeva Rao"), this Court, in the absence of the complainant due to his death proceeded to convict the accused based on the evidence available on record and further held that for the purpose of reaching a conclusion, the court can rely on factual presumption under section 114 of the Evidence Act. A fact may also be proved by direct testimony or by circumstantial evidence.
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> (ii) In Kishan Chand Mangal, this Court upheld the conviction based on the evidence of the shadow witnesses. Similarly in State of Andhra Pradesh vs. P. Venkateshwarlu (2015) 7 SCC 283 ("P. Venkateshwarlu"), when the complainant died during the pendency of the trial, this Court convicted the accused by relying upon the evidence of the other witnesses, as the factum of demand, acceptance and recovery of the tainted money was proved by the prosecution.
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> (iii) In contradiction to the aforesaid cases, our attention was drawn to Selvaraj vs. State of Karnataka (2015) 10 SCC 230 ("Selvaraj"), wherein on the death of the complainant, acquittal was ordered as the accused was relieved from his duty and was not competent to transact any official business apart from the fact that there was contradiction in the version of witnesses.
>
> (iv) In A. Subair, the acquittal was based on the ground that there was no other evidence to fall back upon in the absence of the complainant letting in evidence.

61. Learned senior counsel Shri Aristotle, further contended that in those cases, where the complainant becomes "hostile", his evidence does not get effaced as the court must consciously ascertain as to what extent he has supported the case of the prosecution. The evidence of a "hostile" witness "complainant" stands on a different footing than the death of the complainant or the non-availability of the complainant. It was submitted that when the complainant turns "hostile", the evidence of the shadow witness would play a vital role as he can also tender primary evidence with regard to the demand of illegal gratification. Similarly, Nayan Kumar Shivappa Waghmare vs. State of Maharashtra (2015) 11 SCC 213 ("Nayan Kumar Shivappa Waghmare"), was relied upon to buttress the fact that if the complainant turns "hostile", the conviction is permissible on the basis of presumption and other evidence. On the other hand, in B. Jayaraj the acquittal was based on the fact that the complainant had turned "hostile" and there was no other witness to support the case of the prosecution and hence, there was lack of evidence against the accused. In C.P. Rao, the acquittal was based not merely on the non- availability of the complainant but the fact that there was previous animosity between the complainant and the accused and also on the ground that money was thrust into the hands of the accused. Similarly, in N. Sunkanna, the accused was acquitted on the ground

that the witness had turned "hostile" and the demand was not proved. So also, in the case of M.R. Purushotam.

62. Learned counsel Shri Aristotle also made reference to C.M. Sharma wherein the conviction was upheld even though the shadow witness was not present when the demand for illegal gratification was made and the amount was paid and there was recovery of tainted money. So also, in Prakash Chand vs. State (Delhi Admn.) (1979) 3 SCC 90 ("Prakash Chand") when the shadow witness turned "hostile", the conviction was based on the evidence of other witnesses. Therefore, even in the absence of a complainant letting in his evidence or the complainant turning "hostile", the case of the prosecution would not collapse and the prosecution can only prove the case beyond reasonable doubt if there is other evidence to prove the case.

63. Before answering the question under reference, we deem it necessary to clarify on one aspect of the matter and that is with regard to "hostile witness".

64. Learned senior counsel Shri Nagamuthu submitted that the expression "hostile witness" must be read in the context of Section 154 of the Evidence Act. Section 154 of the Evidence Act states that the court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. It further states that the Section does not disentitle the person so permitted to rely on any part of the evidence of such witness. For immediate reference, Section 154 of the Evidence Act is extracted as under:

> "154. Question by party to his own witness.— (1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.
>
> (2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness." The said Section was amended with effect from 16.04.2006 and sub-section (2) of Section 154 was added from the said date while the original Section was renumbered as sub-section (1) of Section 154.

65. Learned senior counsel Shri Nagamuthu submitted that when the prosecution examines a witness who does not support the case of the prosecution he cannot be "declared" to be a "hostile witness" and his evidence cannot be discarded as a whole. Although, permission may be given by the Court to such a witness to be cross-examined by the prosecution as per sub-section (2) of Section 154 of the Evidence Act, it is not necessary to declare such a witness as a "hostile witness". This is because a statement of a "hostile witness" can be examined to the extent that it supports the case of prosecutor.

66. In this regard, our attention was drawn to Sat Paul vs. Delhi Administration (1976) 1 SCC 727 ("Sat Paul") which is a case arising under the 1947 Act wherein this Court speaking through Sarkaria, J. has made pertinent observations regarding the credibility of a hostile witness. It was observed in paragraph 30 of the judgment that the terms "hostile witness", "adverse witness",

"unfavourable witness", "unwilling witness" are all terms of English law. At Common law, if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not, as a general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. It was observed in paragraph 33 that the rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms "hostile witness" and "unfavourable witness" and by attempting to draw a distinction between the two categories. A "hostile witness" is described as one who is not desirous of telling the truth at the instance of the party calling him, and an "unfavourable witness" is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact. In the context of Sections 142 and 154 of the Evidence Act, this Court observed in paragraphs 38 and 52 as under:

> "38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath vs. Prasannamoyi AIR 1922 PC 409. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.
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> 52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-

examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care,

accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

67. Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence.

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.
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> (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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> (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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> (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 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 inturn 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)

(i) 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.

69. In view of the aforesaid discussion and conclusions, we find 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 Sections 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, we hold that there is no conflict between the judgments in the aforesaid three cases.

70. Accordingly, the question referred 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.

71. We direct that individual cases may be considered before the appropriate Bench after seeking orders of Hon'ble the Chief Justice of India.

Before we conclude, we hope and trust that the complainants as well as the prosecution make sincere efforts to ensure that the corrupt public servants are brought to book and convicted so that the administration and governance becomes unpolluted and free from corruption.

In this regard, we would like to reiterate what has been stated by this Court in Swatantar Singh vs. State of Haryana (1997) 4 SCC 14:

> "6. .....Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralising 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 corruption would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke". The above has been reiterated in A.B. Bhaskara Rao vs. CBI (2011) 10 SCC 259 by quoting as under from the case of State of M.P. vs. Shambhu Dayal (2006) 8 SCC 693:
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> "32. It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation-building activities and everyone has to suffer on that count." We place on record our appreciation of all learned senior counsel as well as counsel and instructing counsel including learned ASGs who have assisted the Court.
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> .....J. [S. ABDUL NAZEER] .....J. [B. R. GAVAI] .....J. [A. S. BOPANNA] .....J. [V. RAMASUBRAMANIAN] .....J. [B. V. NAGARATHNA] NEW

DELHI, 15 DECEMBER, 2022.