

## Maixi Kujur Vs State Of Chhattisgarh

**Court:** Chhattisgarh High Court

**Date of Decision:** Aug. 31, 2023

**Acts Referred:** Prevention of Corruption Act, 1988 " Section 7, 13, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20  
Code Of Criminal Procedure, 1973 " Section 313

**Hon'ble Judges:** Arvind Singh Chandel, J

**Bench:** Single Bench

**Advocate:** Prafull N. Bharat, Anil S. Pandey, Alok Nigam

**Final Decision:** Allowed

### Judgement

Conviction,Sentence

Under Section 7 of the Prevention of

Corruption Act, 1988", "Rigorous Imprisonment for 5 years and

fine of Rs.10,000, in default of payment

thereof, additional rigorous imprisonment

for 2 months

Under Section 13(1)(d) read with Section

13(2) of the Prevention of Corruption Act,

1988", "Rigorous Imprisonment for 5 years and

fine of Rs.10,000, in default of payment

thereof, additional rigorous imprisonment

for 2 months

The jail sentences are directed to run concurrently,

fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on",

the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or",

circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section",

7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if",

any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the",

accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the",

prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same,

way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person.",

(Vide Ram Prakash Arora v. State of Punjab, (1972) 3 SCC 652, T. Subramanian v. State of T.N., (2006) 1 SCC 401, State of Kerala v. C.P. Rao, ",

(2011) 6 SCC 450, Mukut Bihari v. State of Rajasthan, (2012) 11 SCC 642)Ã¢â¬â",

8. In 2015 (4) Crimes 308 (SC) (N. Sunkanna v. State of Andhra Pradesh), it was held that unless demand of illegal gratification is established,"

offence under Section 7 of the PC Act is not proved. Therefore, question of its acceptance will not arise. Mere recovery of tainted money from the",

possession of the Appellant is not enough.,

9. In 2015 CriLJ 3928 (Dashrathbhai Vadilal Nayak v. State of Gujarat), it was observed by the Gujarat High Court thus:"

Ã¢â¬â11. This Court in Ã¢â¬âKanubhai Kantibhai Patel v. The State of GujaratÃ¢â¬â, 1998 (1) GLH 924 (H.R. Shelat, J.), held that the Ã¢â¬âdemandÃ¢â¬â and",

Ã¢â¬âacceptanceÃ¢â¬â being vital ingredients, they must be proved by the prosecution. In Ã¢â¬âB. Jayraj v. State of Andhra PradeshÃ¢â¬â (2014) 13 SCC 55,"

the original accused-appellant came to be prosecuted on the basis of a complaint filed by PW-2. Later on, PW-2 turned hostile and despite that trial",

Court convicted the accused-appellant on the basis of the evidence of panch witness (PW-1) and recovery of tainted currency notes from appellant-

accused. The Apex Court, hence, hold that once the original complainant (PW-2) turned hostile and no other person, who had witnessed the",

transaction between the complainant and the accused-appellant, was examined, the contents of the complaint cannot be relied on and in absence of",

proof of demand for illegal gratification, mere recovery of tainted currency notes from the accused-appellant did not establish commission of offence,"

and thereby, set aside the conviction of the accused -appellant. In the case on hand also, from the material on record, the demand on the part of the",

accused is not clearly coming out. If, we go by the omissions and contradictions in the complaint, then, there is not demand of Rs.500/-. On the",

contrary, it is the complainant, who, himself, stated that he had come with money. However, why he had come with money, for what purpose, nothing",

is coming on record. Further, the complaint, himself, does not possess a sterling personality, and therefore, his evidence cannot be believed in the",

absence of corroboration. Therefore, the submission of Ms. Mehta that there are no omissions or contradictions in the evidence of the witnesses and",

that the learned trial Court rightly convicted the accused and that the demand, acceptance and recovery are proved cannot be accepted, as from the",

record it is clear that the apron was not put on by the accused-doctor, but, it was hanging on the peg. Thus, the case put forward by the prosecution",

cannot be accepted. Once, the edifice is gone, the entire case of the prosecution falls on the ground. Hence, the accused is entitled to be given him the",

benefit of doubt and the appeal requires to be allowed.Ã¢â¬â¢,

10. In (2015) 10 SCC 152 (P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh), the Supreme Court observed and held",

as under:

Ã¢â¬â¢20. This Court in A. Subair v. State of Kerala, (2009) 6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and",

13(1)(d) of the Act ruled that (at SCC p. 593, para 28) the prosecution has to prove the charge thereunder beyond reasonable doubt like any other",

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.",

21. In State of Kerala v. C.P. Rao, (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-a-vis the same offences, held that mere recovery by",

itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had",

voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.",

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj v.",

State of A.P., (2014) 13 SCC 55 in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of",

demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence,

of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing",

or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating",

mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been",

held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well",

on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was",

emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption",

under Section 20 of the Act would also not arise.,

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in",

absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery",

thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a",

corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person",

accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.Ã¢â€â€,

11. Recently, in 2023 SCC OnLine SC 424 (Soundarajan v. State Represented by the Inspector of Police Vigilance Anticorruption Dindigul), the",

Supreme Court observed and held thus:,

Ã¢â€â€9. We have considered the submissions. It is well settled that for establishing the commission of an offence punishable under Section 7 of the PC,

Act, proof of demand of gratification and acceptance of the gratification is a sine qua non. Moreover, the Constitution Bench in the case of Neeraj",

Dutta 2022 SCC OnLine SC 1724 has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue,",

namely, the demand of gratification by the accused and the acceptance thereof.Ã¢â€â€",

12. It is not in dispute that at the relevant time the Appellant was posted as an Executive Engineer in the Water Resources Department at,

Chhuikhadan. It is also not in dispute that Complainant Laxmikant (PW2) was earlier working with one Vineet Singh Construction Company, which",

was executing a construction work, namely, Pradhan Path Bairaj at Chhuikhadan. It is also not in dispute that 20% of the construction work had",

already been completed and the last running bill of Rs.11,35,000 had also been paid.",

13. According to the contents of the written complaint dated 22.12.2014 (Ex.P1) made by Laxmikant (PW2) and as per the Court statement of,

Laxmikant (PW2), the escalation bill of Rs.8,60,000 of the said Vineet Singh Construction Company was pending and allegedly for releasing the said",

bill amount the Appellant made a demand of 4.75% of the amount of running bill of Rs.11,35,000, which had already been passed.",

14. The first contention raised by the Learned Senior Counsel for the Appellant was that on the date of making the written complaint (Ex.P1) and on,

the date of trap also, no escalation bill was pending before the Appellant and the said bill was submitted on 13.2.2015. Therefore, there was no",

occasion for the Appellant to make any demand on 22.12.2014. From a careful perusal of the statement of Complainant Laxmikant (PW2) and the,

admission made by him during his cross-examination, it reveals that the escalation bill (Ex.D1) was submitted before the Appellant on 13.2.2015 and",

the relevant cheque was issued and amount was also paid on 13.2.2015. Therefore, it is well established that on 22.12.2014 when the complaint was",

made by the Complainant and on the date of trap, i.e., 30.12.2014, no escalation bill of the construction company was pending before the Appellant.",

15. It was also contended by the Learned Senior Counsel for the Appellant that on the date of complaint as also on the date of trap, the Complainant",

was not an employee of the said Vineet Singh Construction Company and one Sanjeev Kumar Nirmalkar had been given authority to deal with the,

Appellant and his department. A perusal of general power of attorney (Ex.D4) corroborates the above contention of the Learned Senior Counsel for,

the Appellant. A careful perusal of Ex.D4 clearly shows that vide a general power of attorney Vineet Singh Construction Company had authorised,

one Sanjeev Kumar Nirmalkar for doing the entire work of management, correspondence, taking cheques, depositing them into bank and all other",

related works towards the contract of Pradhan Path Bairaj. Complainant Laxmikant (PW2) in paragraph 48 of his cross-examination also admitted,

this fact. Laxmikant (PW2) also admitted that the amount of cheque of Rs.11,35,000, i.e., the amount of running bill was received by Sanjeev Kumar",

Nirmalkar. Therefore, it is established that on the date of complaint as also on the date of trap, Complainant Laxmikant neither received the cheque of",

the amount of running bill nor was the escalation bill pending before the Appellant. Therefore, from the above admission made by Complainant",

Laxmikant (PW2) and as contained in Ex.D4, it is also established that on the date of complaint as also on the date of trap, Complainant Laxmikant",

was not authorised by Vineet Singh Construction Company for submitting the escalation bill before the Appellant or for doing any work on behalf of,

Vineet Singh Construction Company. Rather, Sanjeev Kumar Nirmalkar was authorised vide the general power of attorney (Ex.D4) for doing those",

things.,

16. As regards demand of bribe, according to the case of prosecution and as per the Court statement of Laxmikant (PW2), after filing of the written",

complaint (Ex.P1) by him on 22.12.2014 he was given a digital voice recorder on 22.12.2014 itself and he had gone to the office of the Appellant with,

the said voice recorder on 22.12.2014 itself. On 30.12.2014, he came back to the office of the Anti Corruption Bureau with that voice recorder and",

made a second written complaint (Ex.P4) and on 30.12.2014 itself a transcription of the conversation recorded in the voice recorder was prepared,

vide Ex.P3. On 30.12.2014 itself, trap was conducted. Further case of the prosecution is that on 30.12.2014 also, the Complainant recorded the",

conversation took place between him and the Appellant, whose transcription is Ex.P14. A careful perusal of the transcription (Ex.P3) shows that there",

was no demand of bribe by the Appellant as alleged by the Complainant, that is to say, there was no demand of 4.75% of the amount of running bill.",

Relevant part of the transcription (Ex.P14) reads thus:,

In this transcription (Ex.P14) also, it is nowhere mentioned that the Appellant made demand of Rs.54,000 or 4.75% of the running bill from the",

Complainant. This transcription only contains discussion regarding amount of Rs.54,000 and 4.75, but, as per the complaint made by the Complainant,",

this amount of Rs.54,000 or 4.75% was related to the aforesaid running bill of Rs.11,35,000, is not established. Further, both panch witnesses, namely,",

PW3 Shivsaran Sahu and PW4 Yogesh Sahu as well as Investigating Officer PW9 R.K. Sahu admitted the fact that they were not aware of the voice,

of the Appellant. Investigating Officer PW9 R.K. Sahu further admitted that he did not make any inquiry into the fact whether the voice recorded in,

the digital voice recorder was of the Appellant or not.,

17. As regards the trap, according to the case of prosecution and as per the statement of Investigating Officer PW9 R.K. Sahu, the trap was",

conducted in front of one Hari Raj Hotel situated at Civic Centre, Bhilai. Further case of the prosecution is that after the trap and seizure of bribe",

money from the Appellant, phenolphthalein test was conducted at Civic Centre, Bhilai. There, relevant documents Ex.P19, P20 and P27 were also",

prepared. Thereafter, the trap party along with the Appellant went to the house of the Appellant situated at Risali. Then they went to the house of the",

Appellant situated at Chhuikhadan. Then they went to the office of the Appellant situated at Chhuikhadan. They made search there also. Complainant,

Laxmikant (PW2) in paragraphs 63 and 64 of cross-examination categorically admitted the fact that though trap was conducted at Civic Centre Bhilai,",

the entire proceedings were done at Risali at the house of the Appellant. Panch witnesses PW3 Shivsaran Sahu and PW4 Yogesh Sahu and shadow,

witness PW7 Vinod Mishra also deposed that no proceeding was done at Civic Centre, Bhilai. All the proceedings were done at the house of the",

Appellant situated at Risali and there itself the entire written work was done. PW7 Vinod Mishra in paragraph 17 again deposed that he did not even,

see the Appellant on the spot, i.e., Civic Centre, Bhilai. Both panch witnesses PW3 Shivsaran Sahu and PW4 Yogesh Sahu further admitted that they",

also did not see the Appellant receiving any amount from the Complainant on the spot, i.e., Civic Centre, Bhilai nor did they hear their any",

conversation there.,

18. PW4 Yogesh Sahu, who was an Assistant Constable of E.O.W., in his examination-in-chief in paragraph 2, stated that when the trap team",

reached Civic Centre, Bhilai, there the Appellant reached on a motorcycle. Thereafter, the Complainant and the Appellant started talking to each other",

and they also shook their hands with each other. As per the case of the prosecution, before that, hands of the Complainant were smeared with",

phenolphthalein powder and, therefore, while shaking hands with the Appellant by the Complainant possibility of passing of the phenolphthalein powder",

from the hands of the Complainant to the hands of the Appellant cannot be ruled out. Therefore, I find some substance in the argument raised by",

Learned Senior Counsel for the Appellant in this regard.,

19. A minute examination of the entire evidence available on record clearly shows that tender of Vineet Singh Construction Company was cancelled,

on 7.7.2014 and later on the work under the tender was again allotted to the company on 12.11.2014. At that time, as admitted by the Complainant and",

as contained in the general power of attorney (Ex.D4), Sanjeev Kumar Nirmalkar was authorised for doing the entire work of management,"

correspondence, taking cheques, depositing them into bank and all other related works towards the contract of Pradhan Path Bairaj. Therefore, on the",

date of making complaint (Ex.P1) as also on the date of trap, the Complainant was not the authorised person by the construction company to deal with",

the Appellant or his office. It is also established that prior to the making of the complaint (Ex.P1) amount of the running bill of Rs.11,35,000 was",

already paid to the construction company and on the date of the complaint as well as on the date of trap, no escalation bill of the company was",

pending with the Appellant and the escalation bill was submitted on 13.2.2015 vide Ex.D1. Thus, it is well established that on the date of complaint",

Ex.P1 (22.12.2014) or on the date of trap (30.12.2014) neither the Complainant was authorised person of the construction company to deal with the,

Appellant or his office regarding the matters of the construction company nor was any escalation bill submitted or pending with the Appellant.,

Therefore, the Appellant had no occasion to demand bribe of Rs.54,000 or 4.75% of the amount of running bill for clearance of the escalation bill.",

With regard to the demand and acceptance also, in this case, except the oral statement of the Complainant, no material is available on record. Both the",

transcriptions (Ex.P3 and P14) do not contain anything to show that the Appellant demanded 4.75% of the running bill as bribe for clearance of the,

escalation bill. Moreover, none of the panch witnesses (PW3 or PW4) or the shadow witness (PW7) heard the conversation took place between the",

Complainant and the Appellant nor did any of them witness giving or receiving of any amount between the Complainant and the Appellant. From the,

statement of panch witness Yogesh Sahu (PW4), it also appears that a hand shake had taken place between the Complainant and the Appellant",

before taking place of the trap and, therefore, there is a possibility that the phenolphthalein powder which was smeared in the hands of the",

Complainant would have passed to the hands of the Appellant. From the admission made by Complainant Laxmikant (PW2) as well as by Shivsaran,

Sahu (PW3), Yogesh Sahu (PW4) and Vinod Mishra (PW7), it also reveals that though trap was conducted at Civic Centre, Bhilai, the written work",

of the documents was done at the house of the Appellant situated at Risali. If it was so then mentioning in the documents (Ex.P19, P20 and P27) that",

the entire work was done at Civic Centre, Bhilai is incorrect. Hence, again a serious doubt arises whether any trap was conducted at Civic Centre,"

Bhilai. Considering the entire evidence as discussed above, I am of the view that the prosecution has failed to establish the demand and acceptance of",

bribe by the Appellant. Therefore, the conviction of the Appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act is not",

sustainable.,

20. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges",

framed against him.,