(2025) 10 KH CK 0043

Kerala HC

Case No: Criminal Appeal No. 244 of 2011

Sam David Formerly Assistant Engineer		APPELLANT
	Vs	
State Of Kerala		RESPONDENT

Date of Decision: Oct. 10, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 — Section 154, 164
- Prevention of Corruption Act, 1988 — Section 7, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: Rajesh .A, Rekha.S

Final Decision: Partly Allowed

Judgement

A. Badharudeen, J

1. The sole accused in C.C.No. 12 of 2007 on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram is the appellant and he assails the conviction and sentence imposed against him in the above case dated 31.01.2011. The State of Kerala representing the Vigilance and Anti-Corruption Bureau (for short, â€˜VACBâ€™) is the respondent herein.

2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor appearing for the VACB in detail. Perused the verdict under challenge as well as the records of the special court in detail.

3. The prosecution alleges commission of offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, â€˜the PC Act, 1988â€™ hereafter) by the appellant/accused. The specific allegation is that the appellant/accused while working as an Assistant Engineer in the Perumkadavila Block during March 2003 as such being a public servant abused his official position and demanded gratification, other than legal remuneration, from Sri

Alosious @ Sathi, S/o Sathyanesan, Kandamthitta Kuzhivila Veedu, Mukundara Desom, Vazhichal Village, Neyyattinkara Taluk, on 26.03.2003 at the Block Office, Perumkadavila. The amount demanded by the appellant/accused was 10% of the bill amount of ■63,500/-, which was due to the said Sri.Alosious for the construction of an Anganwadi building carried out by him at Neyyar Dam. The appellant/accused demanded the said amount as an inducement for preparing the bill for ■63,500/-. He repeated the demand to Sri Alosious on 29.03.2003 at his office and, when Sri Alosious expressed his financial difficulties, he reduced the demand to ■6,000/- and directed him to pay this amount on 31.03.2003. Pursuant to the earlier demand at about 6.45 p.m on 31.03.2003 the appellant/accused again repeated the demand at his office and as a sequel thereof, he accepted ■6,000/- from Sri Alosious.

4. On filing of the final report, the Special Judge took cognizance of the matter and proceeded with trial. During trial, PWs 1 to 8 were examined and Exts.P1 to P16 along with MOs1 to 7 were marked on the side of the prosecution. Ext.D1 was marked on the side of defence as one contradiction.

5. The learned counsel for the appellant/accused argued that there are lapses in the prosecution evidence and the learned Special Judge found that the appellant/accused had committed the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the PC Act, 1988, ignoring the laches in the prosecution evidence. It is argued by the learned counsel for the appellant/accused that this case was foisted at the instance of PW1, the complainant, who was a member of the Youth Congress, in collusion with PW3, who was working as an overseer in the Block Panchayat Office, to trap the appellant/accused since he was not willing to heed the illegal demands of PWs 1 and 3. In this connection, the learned counsel read out the deposition of PW3. It is further argued that, according to the prosecution, the appellant/accused demanded illegal gratification of ■6,000/- from PW1 in connection with the construction of an Anganwadi. However, no material was collected or produced by the prosecution to prove that the appellant/accused had any supervisory role in this work. In addition, he argued that although the trap party reached the office of the appellant/accused in the morning, the trap was carried out only at about 6.45 p.m. on 31.03.2003. In the meantime, it has come out in evidence that PW1 entered the accusedâ€™s office two or three times. The specific case of the appellant/accused is that, in order to wreak vengeance, PW1-a contract worker-placed the MO2 currency notes inside the MO3 book and left at the office of the appellant/accused without his knowledge, thereby enabling the Vigilance to trap him. It is also pointed out that, in this case, phenolphthalein examination of the hands of the appellant/accused was not conducted, since the prosecution has no case that the appellant/accused directly accepted the notes. However, the prosecution alleges that the notes produced were placed by PW1, as directed by the appellant/accused in a notebook marked as MO3. In such circumstances phenolphthalein test should have been conducted on the notebook to substantiate the prosecution case.

6. It is pointed out further that as per the evidence of PW6, who was the Secretary of the Kallikkad panchayat during 2003, the documents pertaining to the works undertaken by the panchayat including measurement book would be in the custody of the Panchayat and the same could not be given to anybody. According to him, when the works pertain to an amount above ■1 lakh, the

measurement would be done by the Assistant Executive Engineer, and when the works pertain to an amount above ■50,000/- the same would be measured by the Assistant Engineer. He further stated that the completion certificate for the work would be issued by the Panchayat President. However, as deposed by PW1 in this case, the completion certificate was issued by the Ward Member. Highlighting these anomalies the learned counsel pressed for interference in the verdict of the trial court by giving benefit of doubt to the appellant/accused. The learned counsel placed decision of this Court reported in 2022 (5) KLT 433 *Ajith Kumar v. State of Kerala* with reference to paragraphs 33-35 and 50-54 to contend that failure to conduct phenolphthalein test on MO3 notebook is fatal to the prosecution case.

7. In addition to that another decision of the Apex Court reported in (2007) 8 SCC 246 *K Subba Reddy v. State of Andhra Pradesh* to contend that while acquitting the 2nd appellant/accused in the crime in a case where conviction and sentence of the 1st appellant/accused were confirmed earlier, the Apex Court held that when the allegation is the return of the stock register when it is proved that the appellant/accused had no role to play in the return of the stock register the same would give benefit to the appellant/accused and accordingly the 2nd appellant/accused was acquitted. This decision has been pointed out to buttress his point that in the instant case the appellant has no role in the work involved.

8. Another decision reported in 2015 (3) KLT 989 *Prakash Pai v. State of Kerala* has been placed with reference to paragraph No.17 wherein this Court held as under:-

â€œ17. The learned trial Judge relied on some decisions of the Hon'ble Supreme Court to apply the presumption under S.20(1) of the P.C. Act. The Hon'ble Supreme Court has explained in so many decisions that the pre-requisite to apply the said presumption is that there must be evidence to show acceptance of illegal gratifcation by the accused. Even when such demand and acceptance is proved, what is presumed under S.20(1) of the P.C. Act is not the guilt of the accused. What is presumed is only the purpose for which the gratifcation was received by the accused. But here, even the purpose cannot be presumed, because the whole prosecution case is doubtful. Lakshmi underwent the pre-requisite tests only on 28.7.1998 and 3.8.1998. PW6 is defnite in evidence that there is no question of scheduling an operation or deciding an operation in such cases, without and before conducting the pre-requisite anesthetic test and gynaecological test. In such a situation, where the Doctor had no occasion to demand gratifcation or receive gratifcation before and without conducting the pre-requisite tests for scheduling the operation, or without identifying Lakshmi as a case of ovarian cyst requiring an operation, the court cannot presume that anything was received or demanded by the accused as a motive or reward for conducting an operation. The prosecution case is really doubtful. The evidence of PW1 assumes importance that one Bhaskaran was in fact behind the complaint, that he had not brought any amount for payment to the Doctor, and that the amount he actually placed on the table of the Doctor was arranged by somebody. A vicious trap will have to be doubted in the above circumstances. When the prosecution is based on a trap, it must be the concern of the court to examine the whole materials, and fnd whether the trap is a genuine trap arranged by the police on a genuine complaint or whether it is a vicious trap which the police happened to make on a mischievous complaint by somebody to trap the public servant.â€■

9. Repelling this argument, the learned Special Public Prosecutor submitted that, in this case, the case of the prosecution is not as argued by the learned counsel for the appellant/accused. The prosecution case is that the appellant/accused demanded 10% of the bill amount, totaling

■63,500/-, from the complainant in order to prepare and encash the bill for the work executed by him. According to the learned Special Public Prosecutor, PW8, the investigating officer had given categorical evidence that the appellant/accused was the only officer available to handle the work and to pass the bill. That apart, PW1 gave evidence that when he inquired at the Panchayat after the earlier Assistant Engineer was relieved, he was advised to meet the appellant/accused on the assurance that the appellant/accused would look after the work thereafter. It is also pointed out that, in this case, the evidence of PW1 supported by PW5 regarding the demand and acceptance of bribe by the appellant/accused, is well-established by substantive evidence. In such a situation, the mere non-conduct of phenolphthalein test on the notebook is of no significance. It is further pointed out that, on scrutinizing the evidence of PW3, it has been revealed that he was authorized by the appellant/accused to check and measure the work, even though he was not properly authorized to do so, as such work should have been carried out by the Assistant Executive Engineer. That apart from the evidence of PW3, the argument advanced by the learned counsel for the appellant/accused that he had colluded with PW1 and manipulated the case could not be established and this contention was raised to disbelieve the reliable evidence of PW3, the official witness, since his evidence which is totally against the accused/appellant. It is also submitted that, in the prosecution evidence, there is no iota of doubt to be adjudged in favour of the appellant/accused, since the prosecution case stood proved beyond reasonable doubts.

10. On appraisal of the rival contentions, the following questions arise for consideration.

1. Whether the special court rightly entered into the conviction and sentence on the finding that the appellant/accused committed offence punishable under Section 7 of the PC Act, 1988?

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

3. Whether the verdict under challenge would require interference?

4. The order to be passed?

Points Nos. 1 to 4:-

11. While addressing these points the relevant evidence to be gone through. PW1 examined in this case is the complainant. He deposed that he was the beneficiary-convener for the construction of Anganwadi Building No. 51 in Ward No. 5 (Neyyar Dam Ward) of Kallikkadu Grama Panchayat. According to him, as per the terms of the work, an amount of ■22,500/- and rice worth ■14,000/- were paid as advance. PW1 stated that he had started the work when another person was serving as the Assistant Engineer. That person was either transferred or had retired from service, and in such contingency in the absence of an Assistant Engineer the work was delayed for some time. He contacted the Panchayat authorities and was informed that the appellant/accused, the Assistant Engineer of Perumkadavila Block Panchayat, was in charge of this particular work and he would take measurements of the work already done by PW1. He immediately contacted the

appellant/accused at his office at the Perumkadavila Block Panchayat Office. When he first met the appellant/accused, the construction of the building was not yet completed. Later, after completing the construction, he again contacted the appellant/accused-Assistant Engineer. Then the appellant/accused informed him that the measurement would be taken by him through the overseer of his office, who was none other than PW3 in this case. According to PW1 then the measurements of the work were taken by PW3, the Overseer of the Perumkadavila Block Panchayat Office, as directed by the appellant/accused . PW1 deposed that after the measurements were taken through PW3, he contacted the appellant/accused for passing his bill, whereupon the appellant/accused demanded 10% of the bill amount as commission. Even though PW1 expressed his inability to pay the bribe and explained his financial constraints, the appellant/accused was not willing to pass the bill without receiving the 10% commission. PW1 testified that, despite contacting the appellant/accused continuously for three days, the appellant/accused did not yield to his request. Thereafter, the appellant/accused reduced the demand to Rs.6,000/- (Rupees Six Thousand only) and insisted PW1 pay this amount for getting the bill passed. PW1 further stated that on the next day, or at the latest the third day after this demand, he approached the office of PW8, the Dy.S.P., VACB, Thiruvananthapuram, and lodged Ext.P2 First Information Statement. He also submitted Ext.P1 complaint before PW8 on 30.03.2003. According to PW1, the appellant/accused had directed him to pay the amount of Rs.6,000/- (Rupees Six Thousand only) before 31.03.2003. He further stated that he obtained Ext.P3 completion certificate from the ward member, as instructed by the appellant/accused. He also deposed about entrustment of Rs.6,000/-(Rupees Six Thousand only) marked as MO2 by him to PW8, the DySP and entrusted back to him after smearing phenolphthalein over the same. According to PW1, he alighted from the jeep at Perumkadavila and proceeded to the office of the appellant/accused by bus, alighting in front of the accusedâ€™s office. He further stated that he entered the office of the appellant/accused and spoke with another person, after which the appellant/accused directed him to wait outside. PW1 deposed that when the stranger inside the office left, he again entered the office, and the appellant/accused informed him that there was heavy rush in the office and that he would attend to him shortly. At that juncture, according to PW1, the appellant/accused asked him whether he had brought the money demanded. PW1 further stated that there was heavy rush outside the office, and those standing outside could watch the proceedings through the window. The appellant/accused therefore informed him that he would attend to him after the ease of rush. By that time, it was around 11:00 a.m., and PW1 went outside and waited in the verandah in a position from which the appellant/accused could clearly see him from inside the office. PW1 further stated that the appellant/accused left the office after closing the doors and returned within five to ten minutes. PW1 again entered the office, but the appellant/accused directed him to come after the lunch break. PW1 returned at about 1:30 p.m., at that time the appellant/accused was still present in the office. According to PW1, one Sambasivan, examined as PW4 in this case, came to visit the appellant/accused . PW4 entered the room and spoke with the appellant/accused for some time. Thereafter, PW1 was called inside, and according to him, PW4 asked whether he had brought the money demanded by the appellant/accused. The appellant/accused then directed PW1 to hand over the money to PW4 at a place outside the office. PW1 stated that he was unwilling to hand over the money to PW4 and informed him that he had sent another person to obtain a loan in order to pay the amount to the appellant/accused. He added that he had stated this to avoid the

presence of PW4 during the transaction. PW4 again entered the office, came out, and informed PW1 that the appellant/accused was busy with other matters and would call him after the rush was over.

12. PW8, the Dy.S.P., VACB, Thiruvananthapuram Unit, deposed that on 30.03.2003, at about 3 p.m., PW1 came to his office and gave Ext.P2 First Information Statement to the effect that the appellant/accused had demanded bribe of Rs.6,000/- (Rupees Six Thousand only). PW8 stated that he registered Ext.P2(a) FIR. After registering the FIR, PW1 informed him that he had also brought a written complaint, and accordingly Ext.P1 complaint was appended by PW8 along with Ext.P2(a) FIR. Since PW1 did not have the amount of Rs.6,000/- (Rupees Six Thousand only) with him on 30.03.2003, he informed PW8 that he would bring the money the next morning, i.e., on 31.03.2003. PW8 further stated that he sent a letter on 30.03.2003 to the Additional District Magistrate requesting the presence of two gazetted officers to witness the trap. Pursuant to this request, PW2 and CW2 gazetted officers-appeared before PW8 at about 7.30 a.m. on 31.03.2003 at his office.

13. PW2 was the Special Tahsildar, Land Acquisition, Kesavadasapuram, during 2003. He, along with CW2, who was also Special Tahsildar, Land Acquisition, PWD Southern Circle, appeared before PW8 on 31.03.2003 at about 8 a.m. Since CW2 passed away at the time of evidence he could not be examined in this case.

14. Corroborating the evidence of PW1, PW3 deposed that he was the Overseer of the Perumkadavila Block Panchayat Office during 2003 and that, during his tenure, the appellant/accused was the Assistant Engineer. He had testified that the Kallikkadu Panchayat was within the jurisdiction of the Perumkadavila Block Panchayat. According to him, works up to ■50,000/- have to be measured by the Overseer, whereas works above ■50,000/- have to be measured by the Assistant Engineer. He further stated that, for the works carried out under the Grama Panchayat, the assistance of the Assistant Engineer of the Block Panchayat was sought by the Grama Panchayat, as per a letter issued from the Panchayat either to the Assistant Engineer or to the Block Development Officer. The crucial evidence of PW3 would show that for all works above ■50,000/-, the supervision of the work, its measurements, preparation of bills, and related tasks would be at the helm of the Assistant Engineer. PW3 deposed that he was aware of the construction of Anganwadi Building No. 51 in the 5th Ward, i.e., the Neyyar Dam Ward of Kallikkadu Grama Panchayat. He identified Ext.P7 as the record of the measurements taken by him in respect of the aforesaid work of Anganwadi Building No. 51 in Ward No. 5 of Kallikkadu Grama Panchayat. He added that Ext.P7 was prepared in his own handwriting and that he had visited the site and taken the actual measurements for its preparation. He testified further that he had perused Ext.P8, the estimate for the said work, before taking the measurements recorded in Ext.P7. He stated that it was actually the duty of the appellant/accused, the Assistant Engineer, to take the measurements in accordance with the Ext.P8 estimate, and that, as directed by the appellant/accused, he visited the work site of Anganwadi Building No. 51 in Ward No. 5 of Kallikkadu Grama Panchayat and took the measurements recorded in Ext.P7. He further stated that he had also seen Ext.P5, the copy of the Measurement Book, before taking the measurements for Ext.P7. He added that he could not state with certainty who was the Assistant Engineer who had

signed pages 1 to 7 of Ext.P5. He admitted that in page 7 of Ext.P5 the measurements had been check-measured by the Assistant Executive Engineer, DRDA, Thiruvananthapuram. According to him, the work measured by him excluded the works covered in pages 1 to 7 of Ext.P5. He further stated that he prepared Ext.P7 only to assist the appellant/accused and that on previous occasions also he had assisted the Assistant Engineer in taking measurements. He further stated that on 27.03.2003 the appellant/accused was locked up in his office in connection with a dispute regarding certain bill matters. During cross-examination he admitted that Ext.P7 did not specify the work. He also stated that he could not say who appointed the Assistant Engineer of Nemom to take the measurements recorded in Ext.P5. He added that when he prepared Ext.P7, PW1 was present, and according to him, he suggested payment of an amount of Rs.63,500/- (Rupees Sixty-Three Thousand Five Hundred only) for the works actually undertaken as reflected in Ext.P7. PW2, the Gazetted Officer confirmed that he was present before PW8 at 08.00 a.m. on 31.03.2003 in compliance with the order of the District Collector. He testified that PW8 explained the details of the case to the witnesses. PWs 1, 2, and 8 stated that the reaction of phenolphthalein powder in lime water was demonstrated to them. A ten-rupee note was taken, smeared with phenolphthalein powder, and handed over to a police constable. When the constable dipped his fingers in lime water, the liquid turned pink. The same ten-rupee note was also dipped in lime water, and there was a pink colour change both in the lime water and on the note. The liquid was collected in a bottle, sealed, numbered as â€˜Aâ€™, and signed by PW2, CW3, and PW8. This bottle was identified by these witnesses as M.O.1. It is further stated by these witnesses that PW1 produced an amount of Rs.6,000/-, comprising one 1,000/- rupee note, nine 500/- rupee notes, and one 100/- rupee note. The serial numbers of these currency notes were recorded in a mahazar. The notes were smeared with phenolphthalein powder and placed inside the left pocket of PW1, with instruction not to handle the same unless demanded by the appellant/accused. A mahazar was prepared documenting all these details and Ext.P4 was the mahazar pertaining to the same. PW2 was the second signatory, and PW1 was the third signatory to Ext.P4.

15. PWs 1, 2, and 8 stated that they proceeded from the office of the Dy.S.P., Vigilance (PW8), to the office of the appellant/accused at about 9:30 a.m. On the way, at Neyyattinkara TB Junction, the vehicle was stopped, and PW1 was instructed that if the appellant/accused accepted the bribe money, he should give signal by wiping his face with a handkerchief. PW2 stated that he, along with CW2 and the police constables, positioned themselves in such a way that they could observe the activities inside the accusedâ€™s office. He further stated that although PW1 initially went inside the office, he later came out and waited in the verandah. PW2 testified that he could clearly see the interior of the office through both the front door and the window. PW8, the Dy.S.P., stated that he directed the witnesses to the office of the appellant/accused and waited outside the office compound.

16. PW2 and PW8 stated that by about 11:00 a.m., PW2 was called back to avoid any doubts arising from the presence of additional persons near the office of the appellant/accused. The presence and intervention of PW4 as stated by PW1 is corroborated by the evidence of PW4. He admitted that he had been examined before the Magistrate regarding these incidents and had narrated the entire episode, which was read over to him. He confirmed that the statements recorded

by the Magistrate were correct. It is true that the statement under Section 164 Code of Criminal Procedure was recorded by the Judicial First Class Magistrate. PW4 admitted the statement recorded before the Magistrate, confirming that it was read over to him and that he understood that the same reflected his actual versions. PW4 further stated that he was acquainted with PW1 and had also seen him at the office of the appellant/accused. He testified that on the day the appellant/accused was arrested, he, along with one Shaji, went to the office of the appellant/accused in relation to a work undertaken by Sri.Shaji as convener. He stated that at about 2:00 p.m. on 31.03.2002, when he visited the accusedâ€™s office, he saw PW1 at the verandah. He and Shaji entered the office, and then PW1 also came inside. The appellant/accused instructed PW4 to receive the money from PW1. PW4 testified that he did not receive the money because PW1 informed him that another person had gone to obtain the amount as loan. PW4 further stated that he then left for Thiruvananthapuram and learned the next day that the appellant/accused was arrested. According to PW4, his statement was recorded by the Magistrate and the statement so given was true and correct. During cross-examination, he admitted that he was the appellant/accused in C.C.35/2005 registered by the Vigilance Police, and that for that purpose he had been called to the Vigilance Office several times. He stated that the Dy.S.P. informed him that his name would be excluded from the said case if he was willing to give such a statement. He further stated that the Magistrate asked whether he was giving the statement voluntarily or under direction from any other person. PW4 added that what he stated before the Magistrate was based on facts narrated to him by the Investigating Officer. During re-examination by the learned Legal Adviser, he admitted that he did not know who was the Investigating Officer who registered the case against him.

17. Apart from the evidence of PW1 the prosecution relied on PW5 the police constable who was one among the members of the trap party led by PW8 and he deposed that he, along with the Head Constable, Sub-Inspector, and two official witnesses, waited in front of the office of the appellant/accused and witnessed the entire proceedings. According to him, there were two windows on the northern and eastern sides of the front door of the room of the appellant/accused. There was also a half-door, and he was positioned by the side of one of the windows. He stated that even if the half-door was closed, he could see the incidents occurring inside the room through the window. He waited there from 10:30 a.m. He further stated that between 11:00 a.m. and 1:30 p.m., PW1 entered the accusedâ€™s room twice and returned. According to him, after 2:00 p.m., one person entered the accusedâ€™s room, and thereafter PW1 was called inside; then the former person then left the room. He further stated that, two days prior to the occurrence, news items appeared in newspapers describing the appellant/accused as a corrupt person, and for that reason, he was directed by the Dy.S.P. to be present there by wearing a lungi and shirt.

18. PW6 was the Secretary of Kallikkadu Grama Panchayat during 2003. He was examined to prove that he had received the records back from the Investigating Officer as per Ext.P12 Kaichit. During cross-examination, he stated that the custodian of the M Book was the Panchayat and that it would not be handed over to the convener. He added that all works above ■50,000/- have to be measured by the Assistant Engineer. PW6 further stated that the work relating to Kallikkadu Grama Panchayat was supervised by the Assistant Engineer of Perumkadavila Block. He added

that, as per Ext.P5, the Assistant Engineer of the Special Building Section No. III, Nemom, Thiruvananthapuram, measured the work of PW1 in March 2002, which was check-measured by the Assistant Executive Engineer, DRDA, Thiruvananthapuram, as seen from Ext.P5. During re-examination, he stated that for passing the final bill, it must be approved by the Assistant Engineer.

19. While appreciating the evidence of PW4 the special court found that PW4â€™s statements regarding being called several times to the Vigilance Office, being informed that he would be excluded from C.C.35/2005, and that his statements were based on facts narrated by the Dy.S.P., were false and concocted to assist the appellant/accused. However, during chief-examination, he admitted all the facts stated by him before the Magistrate and narrated the entire incident that occurred at 2:00 p.m on 31.03.2003. He also admitted that he had visited the office of the appellant/accused at 2:00 p.m. on 31.03.2003 in connection with the passing of the bill of his friend Shaji, and that the said bill was passed by the appellant/accused and subsequently encashed. Moreover, PW4 reiterated before this Court what he had stated before the Magistrate. In these circumstances, his claim that the statement before the Magistrate was made at the direction of the Dy.S.P. could not be accepted. Therefore, the evidence of PW4 corroborated the version of PW1 regarding the presence of PW4 and his involvement in this occurrence and the demand of bribe by the appellant/accused as alleged by the prosecution.

20. In *Ajith Kumarâ€™s* case (supra) this Court given benefit of doubt to the appellant/accused therein, in a case, where the appellant/accused escaped from the room after realising that the vigilance team had reached there through the back door and rubbed his left hand on the bark of a rubber tree and also on the Dhoti. In the said case non-conduct of phenolphthalein test on the bark of the rubber tree and Dhoti was found to be a material omission to record acquittal of the appellant/accused. In fact the ratio of the decision has no application in this case as the facts of the said case is different from the facts in the present case. In the instant case, the prosecution alleges that the bribe money was placed inside a book as instructed by the appellant/accused, and the same was seized therefrom.

21. Now, it is necessary to address the ingredients required to attract the offences under Section 7 and Section 13(1)(d) r/w Section 13(2) of the PC Act, 1988. The same are extracted as under:-

Section 7:- *Public servant taking gratifcation other than legal remuneration in respect of an ofcial 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 gratifcation whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any ofcial act or for showing or forbearing to show, in the exercise of his ofcial functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fne.*

Section 13:- *Criminal misconduct by a public servant. - (1) A public servant is said to commit the ofence of criminal misconduct,-*

a) xxxxx (b) xxxxx (c) xxxxxx (d) If he,- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding ofce as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

xxxxx (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fne.

22. In this connection, it is relevant to refer a 5 Bench decision of the Apex Court in [AIR 2023 SC 330], *Neeraj Dutta v. State*, where the Apex Court considered when the demand and acceptance under Section 7 of the P.C Act, 1988 to be said to be proved along with ingredients for the offences under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and in paragraph No.68, it has been held as under :

"68. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratifcation by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to frst prove the demand of illegal gratifcation and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

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

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

(i) if there is an ofer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the ofer and receives the illegal gratifcation, 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 gratifcation 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 gratifcation emanates from the public servant. This is an ofence under Section 13 (1)(d)(i) and (ii) of the Act.

iii) In both cases of (i) and (ii) above, the ofer 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 gratifcation without anything more would not make it an ofence 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 ofence, there must be an ofer which emanates from the bribe giver which is accepted by the public servant which would make it an ofence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an ofence 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 gratifcation 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 gratifcation 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 gratifcation was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1) (d) and (ii) of the Act. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.â€■

23. Thus, the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act, 1988, is extracted above. Regarding the mode of proof of demand of bribe, if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant. The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the appellant/accused and in the absence of rebuttal presumption stands. The mode of proof of demand and acceptance is either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the appellant/accused public servant.

Insofar 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.

24. In this context, it is relevant to refer the decision of this Court in *Sunil Kumar K. v. State of Kerala* reported in [2025 KHC OnLine 983], in Crl.Appeal No.323/2020, dated 12.9.2025, wherein in paragraph No. 12, it was held as under:

â€œ12. Indubitably in Neeraj Duttaâ€™s case (supra) the Apex Court held in paragraph No.69 that there is no confict 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 ofences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or â€œprimary evidenceâ€■ of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns â€œhostileâ€■ is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no confict between the judgments in the aforesaid three cases. Further in Paragraph No.70 the Apex Court held that in the absence of evidence of the complainant (direct/primary,oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and 13(1)(d) r/w Section 13(2) of the Act based on other evidence adduced by the prosecution. In paragraph No.68 the Apex Court summarized the discussion. That apart, in State by Lokayuktha Policeâ€™s case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the ofences punishable under Section 7 and 13(1)(d) r/w 13(2) of the PC Act,1988 and held that demand and acceptance of bribe are necessary to constitute the said ofences. Similarly as pointed out by the learned counsel for the petitioner in Aman Bhatiaâ€™s case (supra) the Apex court reiterated the same principles. Thus the legal position as regards to the essentials to be established to fasten criminal culpability on an accused are demand and acceptance of illegal gratifcation by the accused. To put it otherwise, proof of demand is sine qua non for the ofences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and dehors the proof of demand the ofences under the two Sections could not be established. Therefore mere acceptance of any amount allegedly by way of bribe or as undue pecuniary advantage or illegal gratifcation or the recovery of the same would not be sufcient to prove the ofences under the two Sections in the absence of evidence to prove the demand.â€■

25. In this case, the prosecution relied on the evidence of PW1 to prove the demand and acceptance of bribe by the appellant/accused at 6:45 p.m. on 31.03.2003 from PW1, for the purpose of preparing a bill of Rs.63,500/- (Rupees Sixty-Three Thousand Five Hundred only) due to PW1 for the construction of the Anganwadi building carried out by him at Neyyar Dam. The case put forward by the appellant/accused is that he had no role in dealing with the work, as the same was not handled by him. However, the evidence of PW1, supported by the testimony of PW3, the Overseer, would establish that, as authorised by the appellant/accused, PW3 had measured the work for the purpose of preparing the bill, and that the appellant/accused had demanded bribe for finalising the bill and encashing the same. Since PW3 has given categorical evidence supporting the prosecution case, as deposed by PW1 and PW8, the learned counsel for the appellant/accused contended that the entire case was foisted at the instance of PW3. However, nothing has been pointed out by the learned counsel for the appellant/accused to show any animosity between the appellant/accused and PW3, who was a subordinate officer under him, so

that PW3 to be inimical towards the appellant/accused. Therefore, this contention cannot be appreciated. Even at all the works were otherwise supervised or check-measured by the Assistant Executive Engineer, DRDA, Thiruvananthapuram, as contended by the appellant/accused, it is evident that, for the purpose of finalising the bill, the measurement was taken by PW3 as directed by the appellant/accused and accordingly bill preparation started. Though PW3 was cross-examined at length with an attempt to shake his version, the same did not succeed in any manner. Apart from the evidence of PW1, PW2, the Gazetted Officer, also deposed to the pre-trap as well as post-trap proceedings, including the recovery of the bribe money from the possession of the appellant/accused. Thus, the contention raised by the learned counsel for the appellant to disbelieve the prosecution case appears to be untenable. In this regard, the evidence of PW6, who was the Secretary of Kallikad Grama Panchayat during 2003, to the effect that the work had to be approved by the Assistant Engineer for passing the final bill, also is relevant.

26. Regarding the contention raised by the learned counsel counsel for the accused that prior to trap PW1 entered the room of the accused two or three times, the categorical evidence of PW1 is that he entered so in the presence of the accused as called by him. If so, the case put up by the accused that PW1 placed MO2 in the note book in the absence of the accused also must fail.

27. Thus, on reappreciation of the evidence, it has to be held that the Special Court rightly appreciated the evidence on record and found that the appellant/accused had committed the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The said conviction, therefore, does not require any interference.

28. Coming to the sentence the special court imposed rigorous imprisonment for a period of two years and to pay fine of Rs.2,500/-(Rupees Two Thousand Five Hundred only) or the offence punishable under section 7 of the PC Act, 1988 and in default of payment of fine rigorous imprisonment for a period of two months also was imposed. Similarly for the offence punishable under section 13(2) r/w 13(1)(d) of the PC Act, 1988 the appellant/accused sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2,500/-(Rupees Two Thousand Five Hundred only) and in default of payment of fine the appellant/accused would undergo rigorous imprisonment for a period of two months.

29. Having considered the facts and circumstances of the case, and taking into account the prayer made by the learned counsel for the appellant/accused seeking reduction of sentence, I am inclined to reduce the sentence to the minimum permissible under law.

30. In the result this criminal appeal allowed in part. The conviction imposed by the special court is upheld and the sentence stands modified as under:-

1. The appellant/accused is sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.2,500/- (Rupees Two Thousand Five Hundred only) for the offence punishable under section 7 of the PC Act, 1988 and in default of payment of fine the appellant/accused shall undergo default rigorous imprisonment for a period of two weeks.

2. The appellant/accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,500/- (Rupees Two Thousand Five Hundred only) for the offence punishable under section 13(2) r/w 13(1)(d) of the PC Act, 1988 and in default of payment of fine the appellant/accused shall undergo default rigorous imprisonment for a period of two weeks.

31. The order suspending sentence and granting bail to the appellant/accused is cancelled and his bail bond also is cancelled. Accordingly, the appellant/accused is directed to surrender before the special court forthwith to undergo the modified sentence.

32. If the appellant/accused fails to surrender as directed, the special court is directed to execute the modified sentence without fail.

The Registry is directed to forward a copy of this judgment to the special court forthwith for information and compliance.