



Reserved on : 16.06.2025
Pronounced on : 30.07.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.204 OF 2024

BETWEEN:

MR. MURALI KRISHNA R.,
S/O RAMCHANDRA S.,
AGED ABOUT 38 YEARS
OCC.: CONTRACT DRIVER,
BENGALURU BESCOM CORPORATE OFFICE,
K.R.CIRCLE,
BENGALURU
R/O NO. 8/1, 4TH CROSS
RAMAPPA LAYOUT
TAVAREKERE MAIN ROAD
BENGALURU – 560 029.

... PETITIONER

(BY SRI PRASHANTH S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY LOKAYUKTA POLICE
BANGALORE CITY DIVISION
M.S.BUILDING
BENGALURU – 560 001.

2. PRATAP B.N.,
AGED ABOUT 35 YEARS
R/O NO.312, 5TH MAIN ROAD
2ND BLOCK, III STAGE,
BASAVESHWARNAGAR
BENGALURU – 560 079.

... RESPONDENT

(BY SRI B.B.PATIL, SPL.PP FOR R-1;
R-2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE FIR AGAINST THE PETITIONER / ACCUSED NO.2 IN CR.NO.53/2023, REGISTERED BY KARNATAKA LOKAYUKTHA, BANGALORE CITY POLICE STATION DATED 23/11/2023 WHICH IS PENDING BEFORE XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE CUM SPECIAL JUDGE (P.C. ACT) (CCH-24) AT BANGALORE REGISTERED IN PURSUANCE OF COMPLAINT OF RESPONDENT NO.2 DATED 22.11.2023.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.2 is before this Court calling in question registration of a crime in Crime No.53 of 2023 registered for offence punishable under Section 7(a) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short).

2. Heard Sri S.Prashanth, learned counsel appearing for the petitioner and Sri B.B. Patil, learned Special Public Prosecutor appearing for respondent No.1.

3. Facts, in brief, germane are as follows: -

The 2nd respondent is the complainant. Petitioner-accused No.2 is a contract employee working as a Driver having joined employment in BESCOM about a month ago on 17-10-2023 before registration of crime. The complainant, an electrical contractor registers a complaint on 23-11-2023 against accused No.1/M.L.Nagaraja before the Lokayukta. It is the case of the complainant that he had approached BESCOM on various occasions from 6-04-2023 till registration of the crime for conversion of work order that was issued from HT-2B1, commercial tariff, to HT-2A1, industrial tariff. It is for the said purpose accused No.1 is said to have demanded a sum of ₹10/- lakhs for conversion of electric supply from commercial tariff to industrial tariff. The demanded sum which was to be at ₹10/- lakhs is negotiated and brought down to ₹7.5/- lakhs. Even this the complainant refusing to pay, reaches

the doors of the office of the Lokayukta and registers a complaint on 22-11-2023. Pursuant to the said complaint, a crime is registered in Crime No.53 of 2023. A trap is said to have been laid against the accused by drawing up a trap panchanama. The petitioner/accused No.2 was asked to come to the office on 23-11-2023 by accused No.1 around 3.00 p.m. and was made to sit outside the cabin for some time and then he was called by accused No.1, he was instructed to keep the bag in the car dicky. When the petitioner was keeping the bag in the car dicky, the Lokayukta sleuths conduct a trap. The petitioner is said to have been arrested and investigation is in progress. The petitioner, on the said registration of crime, is before this Court calling in question the very registration of crime.

4. The learned counsel appearing for the petitioner submits that the petitioner is a Driver who had joined the office on contract basis on 17-10-2023. He was not aware what was happening in any quarter of the office. On the said day of trap, he was called to the chamber by accused No.1 and made to sit. After some time, he was handed over a bag to keep it in the boot of the car to which he has

obeyed as Driver. The petitioner is said to have performed the said act at which time the Lokayukta sleuths laid a trap on the petitioner and was nabbed with ₹7.5 lakhs in the bag. The petitioner has neither demanded nor accepted any bribe amount on behalf of accused No.1. He is a Driver who had just been appointed is victim of the aforesaid circumstance. He would submit that the proceedings against the petitioner is an abuse of the process of law.

5. Per contra, the learned counsel Sri B.B. Patil representing the 1st respondent would submit that any person accepting bribe on behalf of a public servant would also become punishable under Section 7(a) of the Act. He would submit that it is a matter of trial for the petitioner also to come out clean. But, he would admit the fact that demand is made by accused No.1 and the amount is accepted in the cabin of accused No.1. The amount is found in the boot of the car of accused No.1. The car Driver was the petitioner. He would admit another fact that the Driver had joined duty on 17-10-2023 and the trap had happened on 23-11-2023, a month and 6 days after he joined. He would nonetheless seek dismissal of

the petition contending that the petitioner can seek his discharge before the concerned Court after filing of the charge sheet.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute as they are a matter of record. Accused No.1 is Chief General Manager in BESCOM and accused No.2/petitioner is his Driver who was appointed one month before the alleged laying of trap. The allegation of the complainant is that accused No.1 had demanded bribe amount of ₹7.5 lakhs to convert the tariff from commercial to industrial. Originally the demand was ₹10/- lakhs and the negotiation led to reduction to ₹7.5 lakhs. The complainant registers the complaint before the Lokayukta on 22-11-2023. Since the entire issue has now triggered from the complaint, I deem it appropriate to notice the complaint. It reads as follows:

“दिनांक: 22-11-2023

रवरी:

ಮಾನ್ಯ ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು,
ಬೆಂಗಳೂರು ನಗರ-2
ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ,
ಎಂ.ಎಸ್.ಬಿಲ್ಡಿಂಗ್,
ಬೆಂಗಳೂರು.

ಇಂದ:

ಪ್ರತಾಪ್ ಬಿ.ಎನ್. ಬಿನ್ ನಂಬೇಗೌಡ,
35 ವರ್ಷ, ಕೆಲಸ: ಎಲೆಕ್ಟ್ರಿಕಲ್ ಕಂಟ್ರಾಕ್ಟರ್,
ವಾಸ ನಂ.312, 5ನೇ ಮುಖ್ಯ ರಸ್ತೆ,
2ನೇ ಬ್ಲಾಕ್, 3ನೇ ಹಂತ, ಬಸವೇಶ್ವರನಗರ,
ಬೆಂಗಳೂರು-560079.

ಮೊ.ಸಂ. 80952 92617.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಬೆಸ್ಕಾಂ ವಿದ್ಯುತ್ ಸಂಪರ್ಕವನ್ನು ಕಮರ್ಷಿಯಲ್‌ನಿಂದ ಇಂಡಸ್ಟ್ರೀಸ್‌ಗೆ
ಟಾರಿಫ್ ಕನ್ವರ್ಷನ್ ಮಾಡಿಕೊಡಲು ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ
ನಾಗರಾಜು, ಚೀಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್ (ಕಾರ್ಯಾಚರಣೆ) ಇವರ ವಿರುದ್ಧ
ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರಿ.

~ * ~

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ಸಂಸಾರ ಸಮೇತವಾಗಿ ವಾಸಮಾಡಿಕೊಂಡಿದ್ದು, ಇದೇ
ವಿಳಾಸದಲ್ಲಿ "ಶ್ರೀ ಚಕ್ರ ಎಲೆಕ್ಟ್ರಿಕಲ್ಸ್" ಎಂಬ ಕಛೇರಿಯನ್ನು ಇಟ್ಟುಕೊಂಡು ಎಲೆಕ್ಟ್ರಿಕಲ್ ಕಂಟ್ರಾಕ್ಟರ್ ಕೆಲಸವನ್ನು
ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನಾನು ಬೆಂಗಳೂರು ಪೂರ್ವ ವಲಯ, ದಕ್ಷಿಣ ತಾಲ್ಲೂಕ್, ಇಪಿಐಪಿ ಏರಿಯಾ, ವೈಟ್
ಫೀಲ್ಡ್‌ನಲ್ಲಿರುವ M/s. STT Global data centres India Pvt Ltd., ಪ್ಲಾಟ್
ನಂ.142,143,144 ಮತ್ತು 145-ಪಿ ನಲ್ಲಿರುವ ನಲ್ಲಿ ಪಡೆದಿರುವ ವಿದ್ಯುತ್ ಸಂಪರ್ಕ ಇದುವರೆವಿಗೂ
ಕಮರ್ಷಿಯಲ್ ಟಾರಿಫ್‌ನಲ್ಲಿ ಇರುತ್ತದೆ. ಆರ್.ಆರ್.ನಂ.E12EHT-38 ಆಗಿರುತ್ತದೆ. ಸದರಿ ಕಮರ್ಷಿಯಲ್
ಟಾರಿಫ್ HT-2B1 ಯಿಂದ HT-2A1 ಇಂಡಸ್ಟ್ರಿಯಲ್ ಟಾರಿಫ್‌ಗೆ ಕನ್ವರ್ಷನ್ ಮಾಡಿಕೊಡುವ ಸಂಬಂಧ
ನಾನು ಸದರಿ ಕಂಪನಿಯಿಂದ ದಿನಾಂಕ: 15-03-2023 ರಂದು ಗುತ್ತಿಗೆ (Purchase Order)
ಪಡೆದಿರುತ್ತೇನೆ.

ಈ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ದಿನಾಂಕ:06-04-2023 ರಂದು ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಇಂಜಿನಿಯರ್, ಮದದೇವಪುರ ಇ-12 ಉಪ ವಿಭಾಗ, ಬೆಂಗಳೂರು ರವರಿಗೆ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿರುತ್ತೇನೆ.

ನನ್ನ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಕಡತವು ದಿನಾಂಕ:22-06-2023 ರಂದು ಮುಖ್ಯ ಇಂಜಿನಿಯರ್ (ವಿದ್ಯುತ್)(ಸಿ.ಓ&ಎಂ) BMAZ-NORTH, BESCO, ನಂ.8, ನಂದಿದುರ್ಗ ರೋಡ್, ಬೆನ್ಸನ್‌ಟೌನ್, ಬೆಂಗಳೂರು ಇವರಿಂದ ಚೀಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್ (ಕಾರ್ಯಾಚರಣೆ), ಬೆಸ್ಕಾಂ ಕಾರ್ಪೊರೇಟ್ ಕಛೇರಿ, ಕೆ.ಆರ್.ಸರ್ಕಲ್, ಬೆಂಗಳೂರು ರವರಿಗೆ ಬಂದಿರುತ್ತದೆ.

ನನ್ನ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕಳೆದ ಸುಮಾರು 4 ತಿಂಗಳಿನಿಂದ ಸುಮಾರು 4-5 ಭಾರಿ ಶ್ರೀ ನಾಗರಾಜು, ಚೀಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್ (ಕಾರ್ಯಾಚರಣೆ), ಬೆಸ್ಕಾಂ ಕಾರ್ಪೊರೇಟ್ ಕಛೇರಿ ಕೆ.ಆರ್.ಸರ್ಕಲ್, ಬೆಂಗಳೂರು ರವರನ್ನು ಭೇಟಿ ನೀಡಿ ಮಾತನಾಡಿದಾಗ ಅವರು ಪ್ರತಿ ಸಲವೂ ಕೆಲಸ ಮಾಡಿಕೊಡುವುದಾಗಿ ಹೇಳಿ ಕಳುಹಿಸುತ್ತಿದ್ದರು. ಆದರೆ ನನ್ನ ಟಾರಿಫ್ ಕನ್ವರ್ಷನ್ ಕಡತವನ್ನು ಡಿ.ಟಿ., ಬೆಸ್ಕಾಂ ರವರಿಗೆ ಕಳುಹಿಸಿ ಕೊಡುವ ಕೆಲಸ ಮಾಡಿಕೊಟ್ಟಿರುವುದಿಲ್ಲ.

ದಿನಾಂಕ:16-11-2023 ರಂದು ಸಂಜೆ ಸುಮಾರು 5.30 ಗಂಟೆಗೆ ಶ್ರೀ ನಾಗರಾಜು ರವರ ಕಛೇರಿಗೆ ಹೋಗಿ ಭೇಟಿ ಮಾಡಿ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮಾತನಾಡಿದಾಗ ಶ್ರೀ ನಾಗರಾಜು ರವರು ಕೈಸನ್ನೆ ಮಾಡಿ ಪೇಪರ್‌ನಲ್ಲಿ 10 ಲಕ್ಷ ಎಂದು ಬರೆದು ಹಣವನ್ನು ತರುವಂತೆ ಹೇಳುತ್ತಾರೆ. ಅದಕ್ಕೆ ನಾನು ಅಷ್ಟೊಂದು ಹಣವನ್ನು ಕೊಡಲು ಸಾಧ್ಯವಿಲ್ಲ, ನಾನು ಕ್ಲೈಂಟ್‌ನೊಂದಿಗೆ ಮಾತನಾಡಿ ತಿಳಿಸುವುದಾಗಿ ಹೇಳಿ ಬಂದೆನು.

ದಿನಾಂಕ:18-11-2023 ರಂದು ಶ್ರೀ ನಾಗರಾಜು ರವರು ಮದ್ಯಾಹ್ನ ಸುಮಾರು 1.12 ಸಮಯದಲ್ಲಿ ಅವರ ಮೊಬೈಲ್ ನಂ.94498 44899 ನಿಂದ ನನ್ನ ಮೊಬೈಲ್ ನಂ.80952 92617 ಗೆ ವಾಟ್ಸಾಪ್‌ನಲ್ಲಿ ಮಿಸ್ ಕಾಲ್ ಮಾಡಿದ್ದರು. ನಾನು ಪುನಃ ಅವರಿಗೆ ಮದ್ಯಾಹ್ನ ಸುಮಾರು 1.13 ಸಮಯದಲ್ಲಿ ನನ್ನ ಮೊಬೈಲ್ ನಂ.80952 92617 ನಿಂದ ಶ್ರೀ ನಾಗರಾಜು ರವರು ಮೊಬೈಲ್ ನಂ.94498 44899 ಗೆ ವಾಟ್ಸಾಪ್ ಕಾಲ್ ಮಾಡಿದನು. ಆಗ ನಾಗರಾಜು ರವರು ಕಾಲ್ ರಿಸೀವ್ ಮಾಡಿ ಅಫೀಸ್‌ಗೆ ಯಾವಾಗ ಬರುತ್ತೀಯೆ ಎಂದು ಕೇಳಿದರು? ಅದಕ್ಕೆ ನಾನು ಈ ದಿನ 3.00 ಗಂಟೆ ಮೇಲೆ ಕಛೇರಿಗೆ ಬರುವುದಾಗಿ ತಿಳಿಸಿದೆನು.

ಅದರಂತೆ ನಾನು ಅದೇ ದಿನ ದಿನಾಂಕ:18-11-2023 ರಂದು ಸಂಜೆ ಸುಮಾರು 4.00 ಗಂಟೆಗೆ ಶ್ರೀ ನಾಗರಾಜು ರವರ ಕಛೇರಿಗೆ ಹೋಗಿ ಅವರನ್ನು ಭೇಟಿ ಮಾಡಿ ಮಾತನಾಡಿದಾಗ ಅವರು ನನಗೆ ಏನಾಯ್ತು ಎಂದು ಕೇಳಿದರು. ಅದಕ್ಕೆ ನಾನು ಸರ್ ಅಷ್ಟೊಂದು ಅಮೌಂಟ್ ಸ್ವಲ್ಪ ಕಡಿಮೆ ಮಾಡಿಕೊಳ್ಳಿ ಎಂದು ಕೇಳಿದಾಗ, ನಾಗರಾಜು ರವರು ದಿನಾಂಕ:18-11-2023 ನೀವು ನಿಮ್ಮ ಸ್ಥಾವರದ ಎಲೆಕ್ಟ್ರಿಸಿಟಿ ಬಿಲ್‌ನ ಟಾರಿಫ್ ಕನ್ವರ್ಷನ್ ಅನ್ನು ಬೇಗ ಮಾಡಿಸಿಕೊಂಡರೆ ಅದು ಈ ತಿಂಗಳಿಗೆ ಅನುಗುಣವಾಗುತ್ತದೆ. ಅದಕ್ಕೆ ನೀವು ಬೇಗ ಕೇಳಿದ ಹಣವನ್ನು ನೀಡುವಂತೆ ಬೇಡಿಕೆ ಇಡುತ್ತಾರೆ. ಅದಕ್ಕೆ ನಾನು ಮತ್ತೊಮ್ಮೆ ಅವರಲ್ಲಿ ಹಣವನ್ನು ಸ್ವಲ್ಪ ಕಡಿಮೆಮಾಡಿಕೊಳ್ಳಿ ಎಂದಾಗ ನೀನೆ ಹೇಳು ಎಂದು, 10-L ಎಂದು ಪೇಪರ್‌ನಲ್ಲಿ ಬರೆದು ತೋರಿಸಿ, ಅದಕ್ಕೆ ನೀನೆ ಹೇಳು ನಾನು ನೋಡಿ ಹೇಳುತ್ತೇನೆ ಎಂದು ಹೇಳಿದರು ಅದಕ್ಕೆ ನಾನು ಪೇಪರ್‌ನಲ್ಲಿ, 7-L ಎಂದು

ಬರೆಯುತ್ತೇನೆ. ಅದಕ್ಕೆ ನಾಗರಾಜು ರವರು ಓಕೆ ಆಡ್ ಒನ್ ಫೋರ್ ಎಂದು ಹೇಳಿದಾಗ, ನಾನು ಟೋಟಲ್ 8 ಎಂದು ಹೇಳುತ್ತೇನೆ. ಅದಕ್ಕೆ ಅವರು ಗೋಹೆಡ್ ವಿತ್ 8 ಲ್ಯಾಕ್ ಎಂದು ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುತ್ತಾರೆ.

ನಂತರ ನಾನು 20% ಡಿಸ್ಕೌಂಟ್ ಎಂದು ಹೇಳುತ್ತೇನೆ. ಅದಕ್ಕೆ ಅವರು ದೀಪಾವಳಿ ಡಿಸ್ಕೌಂಟ್ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಅದಕ್ಕೆ ನಾನು ದೀಪಾವಳಿ ಆಗೋಯ್ತು ಸರ್ ಇದು ನ್ಯೂ ಇಯರ್ ಡಿಸ್ಕೌಂಟ್ ಎಂದು ಹೇಳಿದೆನು.

ನಂತರ ನಾನು 50 ಅನ್ನು ಕಡಿಮೆ ಮಾಡಿಕೊಳ್ಳಿ 7.5 ಪೈಸಲ್ ಮಾಡಿಕೊಳ್ಳಿ ಎಂದು ಹೇಳಿದೆನು. ಅದಕ್ಕೆ ನಾಗರಾಜು ರವರು ನಿನಗೂ ಅವಕಾಶ ಸಿಗಬೇಕು ಎಂದು ಹೇಳುತ್ತಾರೆ. ಅದಕ್ಕೆ ನಾನು ಕಂಪನಿಯವರು ನನಗೆ 2 ಮೆಫಾ ವ್ಯಾಟ್ ಹೊಸ ಪ್ರಾಜೆಕ್ಟ್ ಅನ್ನು ನೀಡಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿದಾಗ ಅದಕ್ಕೆ ಅವರು ಗೋಹೆಡ್ ಎಂಬುದಾಗಿ ಎರಡು ಸಲ ಹೇಳುತ್ತಾರೆ. ಅದಕ್ಕೆ ನಾನು ನಿಮಗೆ ಕಾಲ್ ಮಾಡಿ ತಿಳಿಸುತ್ತೇನೆ ಎಂದು ಹೇಳಿ ಅವರ ಕಛೇರಿಯಿಂದ ಹೊರ ಬರುತ್ತೇನೆ.

ಶ್ರೀ ನಾಗರಾಜು ರವರು ನನ್ನ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಕಡತವನ್ನು ಅವರ ಕಛೇರಿಯಲ್ಲಿ ದಿನಾಂಕ:22-06-2023 ರಂದು ಸ್ವೀಕರಿಸಿದ್ದು, ಸದರಿ ಕಡತವನ್ನು ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಡೈರೆಕ್ಟರ್ ಟೆಕ್ನಿಕಲ್, ಬೆಂಗಳೂರು ರವರಿಗೆ ಕಳುಹಿಸಬೇಕಿತ್ತು. ಆದರೆ ಶ್ರೀ ನಾಗರಾಜು ರವರು ನಾನು ಲಂಚದ ಹಣವನ್ನು ಕೊಡದ ಕಾರಣ ಸುಮಾರು 4 ತಿಂಗಳಿನಿಂದಲೂ ತನ್ನ ಕಛೇರಿಯಲ್ಲಿಯೇ ಕಡತ ಬಾಕಿ ಇಟ್ಟುಕೊಂಡಿರುತ್ತಾರೆ.

ದಿನಾಂಕ:21-11-2023 ರಂದು ರಾತ್ರಿ ಸುಮಾರು 8.36 ಗಂಟೆಗೆ ವಾಟ್ಸಪ್‌ನಲ್ಲಿ ಮಿಸ್ಡ ಕಾಲ್ ನೀಡಿರುತ್ತಾರೆ. ನಂತರ ನಾನು ರಾತ್ರಿ 9.10 ಮತ್ತು 9.13 ಗಂಟೆಗೆ ವಾಟ್ಸಪ್‌ನಲ್ಲಿ ಕಾಲ್ ಮಾಡಲಾಗಿ ನಾಗರಾಜು ರವರು ರಿಸೀವ್ ಮಾಡಲಿಲ್ಲ. ಪುನಃ ನಾಗರಾಜು ರವರು ರಾತ್ರಿ 9.29 ಗಂಟೆಗೆ ವಾಟ್ಸಪ್ ನಲ್ಲಿ ಮಿಸ್ಡ ಕಾಲ್ ಕೊಟ್ಟಿರುತ್ತಾರೆ. ನಂತರ ನಾನು ರಾತ್ರಿ 9.33 ಗಂಟೆಗೆ ವಾಟ್ಸಪ್‌ನಲ್ಲಿ ಕಾಲ್ ಮಾಡುತ್ತೇನೆ ಅವರು ರಿಸೀವ್ ಮಾಡಲಿಲ್ಲ. ಪುನಃ ನಾಗರಾಜು ರವರೆ ನನಗೆ ರಾತ್ರಿ 9.35 ಗಂಟೆಗೆ ವಾಟ್ಸಪ್ ನಲ್ಲಿ ಕಾಲ್ ಮಾಡಿ ಏನು ಸಮಾಚಾರ ಎಂದು ಕೇಳಿದರು ಅದಕ್ಕೆ ನಾನು ಅರೆಂಜ್ ಮಾಡ್ತಾ ಇದಿನಿ ಸರ್, ವಿಷಯ ತಿಳಿಸಿದ್ದೀನಿ ಕಂಪನಿಯ ಫಾರ್ಮಲಿಟೀಸ್, ನಾಳೆ ನಾಡಿದ್ದು, ಆಫೀಸ್ ಕಡೆ ಬರ್ತಿನಿ ಎಂದು ಹೇಳಿದೆನು. ಅದಕ್ಕೆ ಅವರು ಆಯ್ತು ಎಂದು ಹೇಳಿದರು. ಇವರೊಂದಿಗೆ ವಾಟ್ಸಪ್ ಕಾಲ್‌ನಲ್ಲಿ ನಡೆಸಿರುವ ಸಂಭಾಷಣೆಯನ್ನು ನನ್ನ ನಿನ್ನೊಂದು ಮೊಬೈಲ್ ಫೋನ್ ಮೂಲಕ ವಾಯ್ಸ್ ರೆಕಾರ್ಡ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ.

ಮೇಲ್ಕಂಡಂತೆ ದಿನಾಂಕ: 18-11-2023 ರಂದು ನಾನು ಶ್ರೀ ನಾಗರಾಜು, ಚೇಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್ (ಕಾರ್ಯಾಚರಣೆ) ರವರೊಂದಿಗೆ ನಡೆಸಿರುವ ಸಂಭಾಷಣೆಯನ್ನು ನಾನು ನನ್ನ ಮೊಬೈಲ್ ಫೋನ್ ಮೂಲಕ ವಾಯ್ಸ್ ರೆಕಾರ್ಡ್ ಮಾಡಿಕೊಂಡಿದ್ದು ಮತ್ತು ದಿನಾಂಕ:21-11-2023 ರಂದು ವಾಟ್ಸಪ್ ಕಾಲ್‌ನಲ್ಲಿ ನಡೆಸಿರುವ ಸಂಭಾಷಣೆಯನ್ನು ನಾನು ನನ್ನ ನಿನ್ನೊಂದು ಮೊಬೈಲ್ ಫೋನ್ ಮೂಲಕ ವಾಯ್ಸ್

ರೆಕಾರ್ಡ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ಎರಡು ಸಂಭಾಷಣೆಗಳನ್ನು ನಮ್ಮ SanDisk Cruzer Blade USB 2.0 Flash Drive 16 GB ಪೆನಡ್ರೈವ್ ವರ್ಗಾಯಿಸಿಕೊಂಡಿರುತ್ತೇನೆ.

ಶ್ರೀ ನಾಗರಾಜು, ಚೇಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್ (ಕಾರ್ಯಾಚರಣೆ), ಬೆಸ್ಕಾಂ ಕಾರ್ಪೊರೇಟ್ ಕಛೇರಿ, ಕೆ.ಆರ್.ಸರ್ಕಲ್, ಬೆಂಗಳೂರು ರವರು ಸರ್ಕಾರಿ ಕರ್ತವ್ಯವನ್ನು ನಿರ್ವಹಿಸಲು ಮೊದಲು ರೂ.10 ಲಕ್ಷ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟು ಕೊನೆಯದಾಗಿ ರೂ. 7.5 ಲಕ್ಷಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುತ್ತಾರೆ. ನನಗೆ ಲಂಚದ ಹಣವನ್ನು ಕೊಟ್ಟು ಕೆಲಸ ಮಾಡಿಸಿಕೊಳ್ಳಲು ಇಷ್ಟವಿಲ್ಲದ ಕಾರಣ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ ಶ್ರೀ ನಾಗರಾಜು ರವರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಕೋರುತ್ತೇನೆ. ಇದರೊಂದಿಗೆ ಲಂಚದ ಹಣಕ್ಕೆ ಬೇಡಿಕೆ ಇಟ್ಟಿರುವ ಬಗ್ಗೆ ನಡೆಸಿರುವ ಸಂಭಾಷಣೆ ಇರುವ SanDisk Cruzer Blade USB 2.0 Flash Drive 16 GB ಪೆನಡ್ರೈವ್ ಮತ್ತು ವಿದ್ಯುತ್ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದ 1) Purchase order 2) Work order -Annexure. 3) ದಿನಾಂಕ :06-04-2023 ರಂದು ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಇಂಜಿನಿಯರ್, ಮಹದೇವಪುರ ಇ-12 ಉಪ ವಿಭಾಗ, ಬೆಂಗಳೂರು ರವರಿಗೆ ಅರ್ಜಿಯ ಪ್ರತಿ, . 4) M/s. STT Global data centres India Pvt Ltd., ವಿದ್ಯುತ್ ಬಿಲ್ ಪ್ರತಿ. 5) ದಿನಾಂಕ:26-05-2023 ರಂದು ಎಇಇ (ವಿದ್ಯುತ್) ಇ-12 ಉಪ ವಿಭಾಗ, ಮಹದೇವಪುರ, ಬೆಸ್ಕಾಂ, ಬೆಂಗಳೂರು ರವರು ಇಇ (ವಿದ್ಯುತ್), ವೈಟ್ಲೇಲ್ ವಿಭಾಗ, ಬೆಸ್ಕಾಂ ಬೆಂಗಳೂರು ರವರಿಗೆ ಬರೆದಿರುವ ಪತ್ರ, 6) ದಿನಾಂಕ:22-06-2023 ರಂದು ಮುಖ್ಯ ಇಂಜಿನಿಯರ್ (ವಿದ್ಯುತ್)(ಸಿ.ಓ&ಎಂ) BMAZ-NORTH, BESCOM, ಬೆನ್ಸನ್‌ಟೌನ್, ಬೆಂಗಳೂರು ಇವರು ಚೇಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್ (ಕಾರ್ಯಾಚರಣೆ), ಬೆಸ್ಕಾಂ ಕಾರ್ಪೊರೇಟ್ ಕಛೇರಿ, ಕೆ.ಆರ್.ಸರ್ಕಲ್. ಬೆಂಗಳೂರು ರವರಿಗೆ ಬರೆದಿರುವ ಪತ್ರ. 7) CMG OP Bescom Nagaraj +91 94498 44899 ಎಂಬುದಾಗಿರುವ ಮೊಬೈಲ್ ಸ್ಟ್ರೀನ್ ಶಾಟ್ ಹಾಗೂ ಶ್ರೀ ನಾಗರಾಜು ರವರೊಂದಿಗೆ ವಾಟ್ಸಾಪ್‌ನಲ್ಲಿ ನಡೆಸಿರುವ ಕರೆಗಳ ವಿವರ ಇರುವ ಮೂರು ಮೊಬೈಲ್ ಸ್ಟ್ರೀನ್ ಶಾಟ್ ಗಳು ಒಟ್ಟು 11 ಪುಟಗಳನ್ನು ಲಗತ್ತಿಸಿರುತ್ತೇನೆ.

ವಂದನೆಗಳೊಂದಿಗೆ

ತಮ್ಮ ವಿಶ್ವಾಸಿ

ಸಹಿ/-22/11/2023

(ಪ್ರತಾಪ್ ಬಿ.ಎನ್.)”

A perusal at the entire complaint no where refers to the petitioner/accused No.2. Not a word is found against accused No.2. It is entirely dedicated to accused No.2. Vivid details of different

occasions are narrated. The audio recording done by the complainant is handed over to the Lokayukta. The Lokayukta then draws up a trap panchanama. In the trap panchanama again there is no reference to the name of the petitioner. In the trap panchanama two paragraphs are dedicated to the petitioner. The paragraphs read as follows:

"....

ತನಿಖಾಧಿಕಾರಿಯವರು ಆರೋಪಿ-2 ರವರಾದ ಶ್ರೀ ಮುರುಳಿ ಕೃಷ್ಣ ಆರ್. ಆರೋಪಿ-1 ಶ್ರೀ ನಾಗರಾಜು ಎಂ.ಎಲ್. ರವರ ಕಾರಿನ ಡ್ರೈವರ್ ರವರಿಗೆ ನೀವು ಪರ್ಯಾಯದಾರರಿಂದ ಪಡೆದುಕೊಂಡಿರುವ ರೂ. 7.5 ಲಕ್ಷ ಲಂಚದ ಹಣವನ್ನು ಎಲ್ಲಿ ಇಟ್ಟುಕೊಂಡಿದ್ದೀರಿ ಎಂದು ಕೇಳಿದಾಗ, ಅವರು ತಾನು ಓಡಿಸುವ ಇನ್ನೋವಾ ಕೆಎ-03 ಎಎ-7347 ಕಾರಿನ ಡಿಕ್ಕಿಯಲ್ಲಿರುವ ನನ್ನ ಕಪ್ಪು ಬಣ್ಣದ ಬ್ಯಾಗ್‌ನಲ್ಲಿ ಇಟ್ಟಿರುವುದಾಗಿ ತಿಳಿಸಿದರು. ತನಿಖಾಧಿಕಾರಿಯವರ ಸೂಚನೆಯಂತೆ ಆರೋಪಿ-2 ಮುರುಳಿ ಕೃಷ್ಣ ಆರ್ ನವರು ಕಾರಿನ ಡಿಕ್ಕಿಯನ್ನು ತೆಗೆದು ಅದರಲ್ಲಿದ್ದ ಕಾಲೇಜ್ ಬ್ಯಾಗ್‌ನಂತಿದ್ದ ಒಂದು ಕಪ್ಪು ಬಣ್ಣದ ಬ್ಯಾಗ್‌ನ ಜಿಪ್ ಓಪನ್ ಮಾಡಿ ಅದರಲ್ಲಿ ರೂ.7.5 ಲಕ್ಷ ಇದ್ದ ಒಂದು ಕ್ರೀಮ್ ಕಲರ್ ಲೈಲಾನ್ ಬ್ಯಾಗ್ ತೆಗೆದು ತನಿಖಾಧಿಕಾರಿಗಳಿಗೆ ತೋರಿಸಿದರು.

ನಂತರ ತನಿಖಾಧಿಕಾರಿಗಳು ಆರೋಪಿ-2 ರವರನ್ನು ಕುರಿತು ಲಂಚದ ಹಣ ಪಡೆದುಕೊಂಡ ಕಾ ಬಗ್ಗೆ ವಿಚಾರಿಸಲಾಗಿ ಆರೋಪಿ-2 ರವರು ನನ್ನ ಮೇಲಾಧಿಕಾರಿಯವರಾದ ಶ್ರೀ ನಾಗರಾಜು ಎಂ.ಎಲ್. ಚೇಫ್ ಜನರಲ್ ಮ್ಯಾನೇಜರ್, ಬೆಸ್ಕಾಂ ರವರು ಫರ್ಯಾದಿ ರವರು ಕೊಡ್ತಾರೆ ಅವರ ಜೊತೆಗೆ ಹೋಗು ಇಲ್ಲ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ನಾನು ಫರ್ಯಾದಿ ಶ್ರೀ ಪ್ರತಾಪ್ ಬಿ.ಎನ್. ರವರ ಕಡೆಯಿಂದ ಲಂಚದ ಹಣವನ್ನು ಸ್ವೀಕರಿಸಿ ನನ್ನ ಕಾರಿನ ಡಿಕ್ಕಿಯಲ್ಲಿ ಇಟ್ಟುಕೊಂಡೆನು ಎಂಬುದಾಗಿ ತಿಳಿಸಿದರು."

The trap panchanama refers to accused No.2/petitioner that he was a Driver of Innova Car which accused No.1 was holding and ₹7.5 lakhs was given to him to put it in the boot of the car. Accused No.2 is said to have opened boot of the car to keep it at the said place.

At that time the trap is laid. Prior to the trap panchanamaa pre-trap panchanama was also done by the sleuths' of Lokayukta. On the date of the trap certain conversation happens which is recorded by the complainant. Insofar as the petitioner is concerned, all that is found is as follows:

"....

ಆರೋಪಿ-1	ಹೂ
ಪಿರಾದಿ	I will give him and give you a call
ಆರೋಪಿ-1	ಎಷ್ಟಿದೆ
ಪಿರಾದಿ	ಏಳೂವರೆ
ಆರೋಪಿ-1	ಓಕೆ ಏನೂ ಅಂದ್ರೆ Next week will forward
ಪಿರಾದಿ	Done Sir I will may a move
ಪಿರಾದಿ	ಸರ್ ಎಣಿಸಿಕೊಳ್ಳಿರಾ
ಆರೋಪಿ-2	ಇಲ್ಲಾ
ಪಿರಾದಿ	ಹೇಳಿಬಿಡಿ ನೀವೆ
ಆರೋಪಿ-2	ನೀವೆ ಇನ್‌ಫಾಮ್ ಮಾಡಿಬಿಡಿ, ತಗೋಳಿ ಇದು ಬ್ಯಾಗ್
ಪಿರಾದಿ	ಸರ್ ಅಪ್ಪುಚಿಟ್ 7.5 Laks ಕೊಟ್ಟಿದ್ದೀನಿ, ನಿನ್ ಹೆಸರು ಏನಪ್ಪಾ
ಆರೋಪಿ-2	ಮುರಳಿ"

(Emphasis added)

The complainant was present in the cabin of accused No.1. He gives him the money. Accused No.1 asks what is the amount. The complainant says it is ₹7.5 lakhs; is it OK is what is asked. Accused No.1 says that it is OK and said that he will forward the report next week. Till this point accused No.2 is not in the picture. Accused

No.2 is called, handed over the bag, complainant asks accused No.2 'do you want to count'. Accused No.2 says 'no'. Complainant hands over the bag and asks his name; he has answered 'his name is Murali'. Barring this, there is nothing that is done by accused No.2. The Driver who had admittedly joined a month ago in the office of accused No.1 on contract basis is dragged into the web of crime on the circumstances generated by accused No.1. The entire recording is against accused No.1 who has clearly demanded and accepted the bribe. Nothing beyond what is noted in the recording would be necessary to pin down accused No.1. But, the same cannot be said to accused No.2, a humble Driver who becomes a victim of circumstances of demand and acceptance done by accused No.1.

8. What is alleged against the petitioner is Section 7(a) of the Act. Section 7 of the Act reads as follows:

"7. Offence relating to public servant being bribed.—Any public servant who,—

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

- (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party."

Interpretation of Section 7(a) of the Act need not detain this Court for long or delve deep into the matter. The Apex Court in the case of **MADAN LAL v. STATE OF RAJASTHAN**¹, has held as follows:

"....

18. On an examination of the evidence, there is considerable doubt raised in our mind, which qualifies as reasonable doubt, as to whether there was acceptance of bribe amounts by both the accused. True, the officers of the trap team spoke about the handing over of the money by the complainant to the 1st accused who handed over half, to the 2nd accused; which amounts were said to have been put by both the accused in their trouser pockets. PW 8 who led the trap team merely spoke of a recovery of the bribe amounts from the possession of the accused and the hands and trousers of the accused having positively reacted to the test solution. The said deposition is contrary to the statements made by the independent witnesses that some notes were found thrown on the floor. None of the officers spoke of any of the accused having taken out the notes and thrown it on the floor.

19. On an examination of the entire evidence, we are of the opinion that the prosecution has failed to establish beyond all reasonable doubt, the demand of bribe and its acceptance, in a trap laid by the trap team of the ACB. In that circumstance there is no question of a presumption under Section 20 arising in this case. The conviction and sentence of the accused as brought out by the trial court and affirmed by the High Court [*Madan Lal v. State of Rajasthan*, 2022 SCC OnLine Raj 914] , hence, is set aside. The bail bonds, if any executed by the accused, in these cases, shall stand cancelled."

(Emphasis supplied)

¹ (2025) 4 SCC 624

A little earlier, the Apex Court in the case of **NEERAJ DUTTA**

v. STATE (GOVERNMENT OF NCT OF DELHI)², has held as follows:

"....

10. Reliance could also be placed on *C.K. Damodaran Nair v. Union of India* [*C.K. Damodaran Nair v. Union of India*, (1997) 9 SCC 477: 1997 SCC (Cri) 654] ("*C.K. Damodaran Nair*"). That was a case under the Prevention of Corruption Act, 1947 ("the 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.

11. While discussing the expression "accept", it was observed in *C.K. Damodaran Nair case* [*C.K. Damodaran Nair v. Union of India*, (1997) 9 SCC 477: 1997 SCC (Cri) 654] 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

² (2023) 4 SCC 731

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 Sections 5(1)(a) and (b) and not under Sections 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 Penal Code, 1860 (for short "IPC"), which can be established by proof of either "acceptance" or "obtainment".

Conflict in the three decisions?

12. 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 *B. Jayaraj v. State of A.P.* [*B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] ("*B. Jayaraj*"); *P. Satyanarayana Murthy v. State of A.P.* [*P. Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] ("*P. Satyanarayana Murthy*") with the decision in *M. Narsinga Rao v. State of A.P.* [*M. Narsinga Rao v. State of A.P.*, (2001) 1 SCC 691 : 2001 SCC (Cri) 258] ("*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

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

(A) B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543]

14. In *B. Jayaraj* [*B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55: (2014) 5 SCC (Cri) 543], PW 2 the complainant therein did not support the prosecution case under Section 7 and Sections 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 (Ext. 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.

15. It was further observed in *B. Jayaraj case* [*B. Jayaraj v. State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] 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 [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11]

16. In *P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152: (2016) 1 SCC (Cri) 11]*, 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.

17. This Court in *P. Satyanarayana Murthy [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11]* by placing reliance on *B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543]* **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 of the Act would also not arise.

18. It was further observed in *P. Satyanarayana Murthy* [*P. Satyanarayana Murthy v. State of A.P.*, (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] 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 Sections 13(1)(d)(i) and (ii) read with Section 13(2) of the Act was not sustainable.”

(Emphasis supplied)

The Apex Court again in the case of **SOUNDARAJAN v. STATE³**, has held as follows:

“....

9. He relied on this Court's decisions in *Mohan Singh v. State of Bihar* [*Mohan Singh v. State of Bihar*, (2011) 9 SCC 272 : (2011) 3 SCC (Cri) 689] and *Union of India v. Ajeet Singh* [*Union of India v. Ajeet Singh*, (2013) 4 SCC 186 : (2013) 2 SCC (Cri) 347 : (2013) 2 SCC (L&S) 321] . The learned counsel lastly relied upon a decision of the Constitution Bench in *Neeraj Dutta v. State (NCT of Delhi)* [*Neeraj Dutta v. State (NCT of Delhi)*, (2023) 4 SCC 731: (2023) 2 SCC (Cri) 352] for submitting that a demand for gratification can be established even on the basis of circumstantial evidence.

Finding on proof of demand

10. 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 *Neeraj Dutta* [*Neeraj Dutta v. State (NCT of*

³ 2023 SCC OnLine SC 424

***Delhi*), (2023) 4 SCC 731: (2023) 2 SCC (Cri) 352] 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.**

11. As stated earlier, complainant PW 2 has not supported the prosecution. He has not said anything in his examination-in-chief about the demand made by the appellant. The Public Prosecutor cross-examined PW 2. The witness stated that there was no demand of a bribe made by the appellant. According to him, he filed a complaint as the return of the sale deed was delayed. Though PW 2 accepted that he had filed the complaint, in the cross-examination, he was not confronted with the material portions of the complaint in which he had narrated how the alleged demand was made. The Public Prosecutor ought to have confronted the witness with his alleged prior statements in the complaint and proved that part of the complaint through the police officer concerned who had reduced the complaint into writing. However, that was not done.

12. Now, we turn to the evidence of the shadow witness (PW 3). In the examination-in-chief, he stated that the appellant asked PW 2 whether he had brought the amount. PW 3 did not say that the appellant made a specific demand of gratification in his presence to PW 2. To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26-7-2018, is "gratification". There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused."

(Emphasis supplied)

The afore-quoted judgments of the Apex Court would clearly indicate that **demand and acceptance are *sine qua non* to the offence under Section 7 of the Act. The twin pillars of demand and acceptance must be firmly established. In the absence of either the edifice of the prosecution crumbles. There is neither demand nor acceptance of bribe by accused No.2. It is not the case of the complainant even that accused No.2 has demanded or accepted.**

9. The prosecution places reliance on explanation 2 to Section 7, which criminalizes acceptance by a third party on behalf of a public servant. Even this provision cannot be stretched to a breaking point, so as to ensnare a contract Driver utterly unaware of the sordid transaction unfolding before him, when he was asked to keep the bag in the boot by accused No.1. The recordings upon which reliance is placed by the prosecution are replete with elaborate dialogue incriminating accused No.1 and are deafeningly silent, as to any demand, acceptance or knowledge on the part of the petitioner. Therefore, he is unnecessarily

brought into the frame of the crime, merely because he was present and obeying his superior for placing the bag in the car boot.

10. In the light of the offence being goaded against accused No.1, the recordings in its entirety are not against accused No.2. The demand and acceptance are made by accused No.1. It is accused No.1 who has to justify his action and not the petitioner. As observed hereinabove, a humble contract employee who was just 40 days old to his duty as Driver, is caught in the web of crime. Even if the incident is taken as true, it would not amount to an offence under Section 7(a) of the Act. Permitting further investigation even against the petitioner in the case at hand or even filing of the charge sheet, would on the face of it, become an abuse of the process of law and result in miscarriage of justice.

11. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

- (ii) Crime No.53 of 2023 pending before the XXIII Additional City Civil & Sessions Judge-cum-Special Judge (P.C. Act), Bengaluru stands quashed *qua* **petitioner/accused No.2.**
- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending against accused No.1.

Sd/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT: MJ