

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

SATURDAY, THE 25TH DAY OF OCTOBER 2025 / 3RD KARTHIKA, 1947

CRL.A NO. 834 OF 2011

AGAINST THE JUDGMENT DATED 26.04.2011 IN CC NO.21 OF 2008 OF
ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM

APPELLANT/ACCUSED:

P.V.MATHEW, AGED 61,
CHARUVIL HOUSE,
MEENKUZHI, KUMARAMPEROOR, VADAKKEKARA, CHITTAR-
SEETHATHODU VILLAGE, RANNY TALUK, PATHANAMTHITTA.
(FORMER VILLAGE OFFICER, CHITTAR-SEETHATHODE VILLAGE,
RANNY, PATHANAMTHITTA).

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.ANIL K.MUHAMED
SRI.R.ANIL
SRI.T.ANIL KUMAR
SRI.MANU TOM
SHRI.SUJESH MENON V.B.
SRI.SHYAM ARAVIND

RESPONDENT/COMPLAINANT:

STATE
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A FOR VACB
SENIOR PUBLIC PROSECUTOR SMT. REKHA.S FOR VACB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07.10.2025,
THE COURT ON 25.10.2025 DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.Appeal No.834 of 2011******Dated this the 25th day of October, 2025******J U D G M E N T***

Conviction and sentence imposed against the appellant, who is the accused in C.C.No.21 of 2008 on the files of the Enquiry Commissioner and Special Judge, Kottayam, are under challenge in this Criminal Appeal. The respondent herein is the State of Kerala represented by the Vigilance and Anti-Corruption Bureau ('VACB' for short).

2. Heard the learned Senior Counsel for the appellant/accused as well as the learned Public Prosecutor appearing for VACB. Perused the verdict under challenge as well as the records of the Special Court. Also gone through the decisions placed by the learned counsel for the appellant/accused.

3. The prosecution case is that the appellant/accused committed offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of



the Prevention of Corruption Act, 1988 ('PC Act, 1988' for short hereinafter). The precise allegation is that the accused, while working as Village Officer, Chittar-Seethathodu Village, demanded and accepted Rs.250/- from PW1 on 12.09.2005 and again demanded and accepted Rs.2,000/- on 20.10.2005, for the purpose of effecting mutation in respect of 1.33 acres of land owned and possessed by him.

4. The Special Court proceeded with trial on completing the pre-trial formalities. During trial, PW1 to PW5 were examined and Exts.P1 to P13 were marked on the side of the prosecution. M.O1 to M.O11 were also marked. On the side of defence, DW1 to DW3 were examined and Exts.X1 to X3(a) were marked.

5. The Special Court considered the evidence tendered by the prosecution as well as the defence and finally found that the accused had committed the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the PC Act, 1988 and the appellant/accused is sentenced as under:

"The accused is sentenced to undergo simple imprisonment for two years and a fine of Rs.20,000/- (twenty thousand only), in default to undergo simple imprisonment for three



months and convicted under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and sentenced to undergo simple imprisonment for two years and a fine of Rs.20,000/-(twenty thousand only), in default to undergo simple imprisonment for three months. The sentences of imprisonment shall run concurrently. The accused is entitled to set off under Section 428 of Cr.P.C from 20.10.2005 to 24.10.2005. MO1 series shall be returned to PW1. Mos.2, 9 and MO10 series and MO11 shall be returned to the accused. MO4 shall be returned to the Dy.S.P, V.A.C.B, Pathanamthitta. MO3, MO4(a) and MO5 to MO8 shall be destroyed.”

6. The learned Senior Counsel appearing for the appellant vehemently argued that the entire case is false. According to him, in Ext.P7 entrustment/pre-trap mahazar, nothing is stated regarding the presence of gazetted officers, their acquaintance with each other and with the complainant, who was examined as PW1. Apart from that, Ext.P7 entrustment/pre-trap mahazar doesn't describe the signal alleged to be given by PW1. He also pointed out that in Ext.P8 recovery mahazar also, nothing had been stated with regard to the nature of signal given by PW1. It is pointed out further that in the evidence of PW4, the Investigating Officer, also nothing was stated as to what is the mode of signal he had given. At the same time, the learned Senior Counsel fairly conceded the



fact that PW1 deposed before the Court that he had showed the signal after acceptance of bribe money by the accused by lifting his kerchief, and PW2 also deposed about the said signal as given by a policeman.

7. It is pointed out further that the prosecution case to the effect that the accused demanded and accepted bribe on the date of trap and prior to that, for the purpose of effecting mutation, is without any basis, since as per Ext.X3(a) proved through DW2, who was cited by the prosecution as CW4 and who is none other than the Village Assistant during relevant time that he had collected Rs.30/- as mutation fee on the date of trap and thereby effected mutation.

8. It is pointed out that though DW2 examined by the defense was cited as CW4 and DW3 examined by the defence was cited as CW5 from the side of the prosecution, the prosecution did not examine them to avoid the evidence as to what has been transpired on the date of trap.. It is pointed out further that on meticulous evaluation of the evidence of PW1, there are improbabilities and contradictions to disbelieve the prosecution case, which is the sole evidence relied on by the prosecution to find the ingredients of demand and acceptance to constitute the offences under



Sections 7 and 13(2) r/w 13(1)(d) of the PC Act, 1988. He also pointed out that in this case the evidence given by DW2 and DW3, elicited what had been transpired on the date of trap was ignored by the Special Court while giving emphasis to the evidence of the prosecution witnesses to find that the prosecution succeeded in proving the guilt of the accused. Apart from the above contentions, it is submitted by the learned Senior Counsel further that the accused has a specific case right from the very beginning that PW1 was in inimical terms with him since he had given an adverse report against PW1 in a LC case registered against him 18 years back. According to the learned Senior Counsel in order to wreak vengeance on the premise of the said animosity, this case has been foisted with the aid of the vigilance.

9. While canvassing acquittal of the accused for the reasons pointed out, it is submitted by the learned Senior Counsel for the appellant/accused that there is a settled convention in trap cases that the Trap Laying Officer to make efforts to verify the factum of demand of bribe by the public servant before initiating the trap proceedings. The factum of demand of bribe can also be verified by recording the telephonic



conversation between the decoy and the suspected public servant. When there is no attempt to verify the factum of demand of bribe, the same is fatal to the prosecution and in this regard the learned counsel has given emphasis on a decision of the Apex Court reported in [2024 KHC 6354 : 2024 KHC OnLine 6354 : 2024 INSC 503 : 2024 LiveLaw (SC) 468 : 2024 KLT OnLine 1876 : 2024 CriLJ 3102 : AIROnLine 2024 SC 452 : AIR 2024 SC 3356 : 2024 SCC OnLine SC 1689 : 2024 (10) SCC 489], ***Mir Mustafa Ali Hasmi v. State of A.P.***, with reference to paragraphs 18, 29, 30 and 31. This decision has been placed contending that in the prosecution evidence there is nothing available to see any verification of the factum of demand in this case, and this aspect to be adjudged in favour of the accused.

10. Another decision of the Apex Court reported in [2025 KHC 6618 : 2025 INSC 868 : 2025 SCC OnLine SC 1463], ***Sambasiva Rao M. v. State of Andhra Pradesh***, with reference to paragraph 37 has been placed to contend that when glaring contradictions of subtle importance could be found in the prosecution evidence, it could not be held that the prosecution has proved the case against the accused beyond



reasonable doubt and in such cases the accused would be given the benefit of doubt. Another decision of the Apex Court reported in [2000 KHC 1785 : AIR 2000 SC 3377 : 2000 (5) SCC 21 : 2000 SCC (Cri) 878 : 2000 CriLJ 2273], ***Meena Balwant Hemke v. State of Maharashtra*** also is highlighted where the Apex Court discussed the essential ingredients necessary to prove an offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947.

11. Referring to paragraphs 21 and 28 of a decision of this Court reported in [2021 (3) KHC 85 : 2021 (1) KLD 637 : 2021 KHC OnLine 259 : 2021 (2) KLT SN 53 : 2021 (3) KLJ 49 : 2021 (2) KLT OnLine 1036 : 2021 KER 18205], ***Hariharan P.A v. State of Kerala***, it is submitted by the learned Senior Counsel for the appellant/accused that law has always favoured the persons and importance of a shadow witness in a trap party to prove the genuineness of prosecution case. On going through the decision in the said case, the complainant had turned hostile to the prosecution in the matter of demand and the decoy witness, in fact, either did not witness or give any evidence supporting demand and accordingly this Court acquitted the accused.



12. Repelling this contention the learned Public Prosecutor argued that Ext.P7, the entrustment mahazar/pre-trap mahazar would go to show that PW1 approached the Dy.S.P with a complaint of demand of bribe by the accused and in turn he had produced M.O1 series notes and after smearing the same with Phenolphthalein, the same was entrusted back to PW1. The details of the notes and the essentials of pre-trap could be found in Ext.P7 entrustment/pre-trap mahazar. It is conceded by the learned Public Prosecutor that in Ext.P7 there is no mention regarding the introduction of the official witnesses and PW1 as well as the signal, as pointed out by the learned Public Prosecutor. But PW1 and PW2 categorically deposed these aspects before the court without any contradiction from the previous statements. According to the learned Public Prosecutor, mere omissions of this nature in Ext.P7 or in the recovery mahazar marked as Ext.P8 would not make the prosecution case unbelievable when the evidence otherwise is found to be convincing, to prove the guilt of the accused beyond reasonable doubts. According to the learned Public Prosecutor, there is no anomaly or vital contradictions in the evidence of PW1 with regard to demand and acceptance of bribe supported by



the evidence of PW2 as well as PW4 and thus the prosecution established the guilt of the accused beyond reasonable doubts. It is pointed out further that even though the learned Senior Counsel argued that the evidence of PW1 is flooded with contradictions, no material contradictions could be found therein, in any manner, and no attempt was made to prove any contradictions for getting the same marked in evidence by using the previous statements of PW1.

13. Regarding the animosity of PW1 towards the accused, it is pointed out by the learned Public Prosecutor that in this regard no evidence is available even though PW1 and PW4 when examined, the said defense case was suggested and get the same answered in the negative. It is also pointed out that even otherwise the animosity, according to the accused, itself is before 18 years and the same is of no significance at all. Thus the conviction and sentence are liable to be confirmed.

14. In response to the rival submissions, the point arise for consideration are :

(i) Whether the Special Court rightly found that the appellant/accused committed the offence punishable under Section 7 of the PC Act, 1988?



(ii) Whether the Special Court rightly found that the appellant/accused committed the offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act, 1988?

(iii) What is meant by contradictions in the eye of law and how the same be proved?

(iv) Is it necessary to interfere with the verdict impugned?

(v) The order to be passed?

Point Nos.(i) to (v)

15. The prosecution cited PW1 Sri P.M.John @ John, the complainant, as the crucial witness to prove the demand and acceptance of bribe by the accused, as alleged by the prosecution. He deposed that he had obtained 1.33 acres of land from his father as per Ext.P1 Will (certified copy) and his father died in the year 2003. Ext.P2 is the copy of death certificate. His evidence further is that he had applied for effecting the mutation of the said property in the year 2005 and the Village Officer hesitated to accept the same. He identified the Village Officer as the accused at the dock. According to him, he lodged an application before the Tahsildar, Ranni Taluk on 07.07.2005 to effect the mutation and Ext.P3 is the said application and as per which the Tahsildar had given direction to the Village Officer to effect the mutation. On 12.09.2005, he



had submitted necessary documents for effecting the mutation before the Village Officer and for this the Village Officer demanded and accepted Rs.250/- from him. According to him, Ext.P4 is the photocopy of the Power of Attorney executed by his brother Paul in favour of the wife of PW1 and Ext.P5 is the release deed executed on the strength of Ext.P4. PW1 had applied for effecting mutation of the said property as per Ext.P5 application and he had given necessary documents for the same on 15.10.2005. He had given the said application at the hands of the accused and soon he had seated PW1 on a chair in front of him and demanded Rs.5,000/- for effecting the mutation. On discussion, the amount was reduced to Rs.2,000/- and the appellant/accused had directed to bring the money on 17.10.2005. Since he was not well on that day, he didn't go. On 18.10.2005, he contacted the appellant/accused and the appellant/accused informed him to reach the office in the afternoon of 20.10.2005.

16. PW1 deposed about lodging of Ext.P6 statement before the Dy.S.P and also about the presence of 2 gazetted officers therein and reading of Ext.P6 to them. According to him, the gazetted officers asked



him as to whether the allegations in the complaint were true and he had answered in the affirmative. He deposed about the Phenolphthalein test by using a note of Rs.10/-, smeared with Phenolphthalein in Sodium Carbonate solution and the pink colour change. According to PW1, on 20.10.2005, he had reached the vigilance office at 10 a.m along with 20 notes having denomination of Rs.100/- and entrusted the same to the Dy.S.P and he identified the said notes as M.O1 series. According to him, a police constable smeared Phenolphthalein powder on M.O1 series notes and thereafter tied the same with a rubber band and put the same in his pocket. According to the learned Public Prosecutor, in Ext.P7 it has been stated that the same was handed over to him. In fact, Ext.P7 never used for contradicting the version of PW1 in this line the attempt of the learned Senior Counsel for the appellant/accused is to canvass contradictions without the mode known to law, with the aid of previous statement during cross examination of the witnesses.

17. Similar is the position with regard to another contradiction pointed out by the learned Senior Counsel. According to the learned Senior Counsel for the appellant/accused, in Ext.P6 FIS given by



the accused, he had stated that the accused had directed him to reach at 3 p.m and when he had given evidence before the court, he changed the time as afternoon and the the same is a material contradiction to disbelieve PW1. In fact, this contention is found to be untenable since 'in the afternoon' or '3 p.m' are not much different to treat the difference as a material contradiction to disbelieve the witness. Therefore, this contention is found to be untenable. Thus this argument appears to be rather strange and even shocking. Even otherwise, what is intended by placing the notes in the pocket of PW1 and handing over of the same are only to be understood in the sense that it was entrusted back and nothing otherwise. Therefore, this would never be a serious contradiction to disbelieve the evidence of PW1.

18. In criminal law, a contradiction is an inconsistency between the statements of witnesses to the police and their testimonies in court, where the witness says something that is opposite to or very different from or contrary to what they said in their previous statements. To prove a contradiction, the cross-examining lawyer must confront the witness with the specific, inconsistent parts of the previous statement,



which can be done either with the witness's admission or, if denied, by the examining police officer testifying to the contents of the statement.

19. What is a contradiction?

Definition: A contradiction occurs when a witness makes a statement in court that is inconsistent with or contrary to his prior/previous statement recorded during police investigation.

- **Example:** A witness tells the police that they saw Person A stab the victim, but in court, they testify that they saw Person B stab the victim.

- **Omission vs. contradiction:** An omission means when a witness fails to mention a fact in his previous statement he later deposes the same in court. An omission can become a contradiction if it is a significant and relevant fact that was left out or omitted.

20. How to prove a contradiction

1. **Confront the witness during cross-examination:** The lawyer must ask the witnesses about the specific parts of their statements that differ. For example, "Didn't you tell the police officer that you saw Person B, not Person A, stab the victim?"

2. **The statement either admitted or denied:**

- **If the witness admits:** This admission would prove the contradiction, and no further proof from the police officer may be needed for that specific point.

- **If the witness denies:** The contradiction is provisionally marked, and the cross-examining lawyer must then call the police officer who recorded the statement.



3. If the witness cannot remember, he must be reminded of the same by taking his attention to his previous statement and then the fate of the contradiction is based on his admission or denial.

21. The purpose of proving a contradiction

- The purpose is not to prove the contradictory fact itself, but to test the witness's credibility and reliability.
- Proving a contradiction can cast doubt on the witness's veracity and impact how the court weighs their testimony.

A contradiction is an art of the cross-examiner and the method to prove it is a science. Any contradiction if proved in accordance with the provisions of the Evidence Act, 1872 can impeach the credibility of the witness and can help in rejecting the evidence of the prosecution in criminal trials and of the other side in civil trials. Contradictions have to be proved in accordance with the procedure prescribed under the Evidence Act, 1872 otherwise it would have no evidentiary value and would not be admissible.

A witness can be contradicted with his previous statements either made by him in writing or reduced into writing by someone. In criminal trials, statements recorded by the Police during the course of any investigation cannot be used for any purpose during the trial except to contradict the witness as provided under Section 145(1) of the Evidence Act, 1872. The



police officer has the power to question and record the statements of the witnesses who are acquainted with the facts and circumstances of the case as provided under Section 161(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”). The investigating officer will invariably reduce into writing any statement made by the witness before him in accordance with Section 161(3) of the Code of Criminal Procedure, 1973 and the said statements will be a part of the final report (charge-sheet) to be submitted under Section 173 of the Code to the Magistrate concerned. Section 162(3) of the Code provides that such statements made to the police officer by any person is not required to be signed and it further imposes a bar for use of such statements for any other purpose except as provided under the proviso to the said section. The statements recorded under Section 161(3) of the Code are not substantive piece of evidence and the Court cannot suo motu make use of such statements in case if the testimony of the witness made during the trial is not consistent with the statement made before the police during the course of investigation. The object of Section 162 of the Code is to protect the accused against overzealous police officers and untruthful witness.



22. In many cases, during trial, the witnesses would either turn hostile or would give exaggerated versions. Sometimes clever witness in their examination-in-chief conforms to what they have stated earlier to the police, but in the cross-examination introduces statements in a subtle way contradicting in effect what they stated in the examination-in-chief. In either case, for the defence as well as for the prosecution it becomes important to bring the earlier part of the statement which is inconsistent with the deposition, on the record of the case as otherwise it cannot be used for any purpose and the court will not be in a position to refer to it. If the witness turns hostile and resiles from his earlier statement made before the police, then it becomes important for the Public Prosecutor to bring that part of the earlier statement on record of the trial and the manner is provided under Section 145 of the Evidence Act, 1872 read with the proviso to Section 162 of the Code. If the earlier part of the statement where the witness has supported the case of the prosecution is not brought on record and if the contradiction between the testimony in court and the earlier statement is not proved then the said statement though supporting the case of the prosecution would not be used for any purpose by the court.



If there are material improvements or contradictions or omissions which amount to contradictions found in the deposition then it would be necessary for the defence to bring the earlier statement made before the police on record and to further prove it in accordance with the manner prescribed under Section 145 of the Evidence Act, 1872. It is only after such contradictions are brought on record and thereafter proved the question would come of evaluating the testimony. Therefore, it becomes very important for both the prosecution as well as the defence to first bring the contradiction on the record and thereafter to prove it in accordance with the manner prescribed.

23. What is contradiction and when can an omission amount to a contradiction and how the same can be proved during the trial?

Contradiction: Meaning and Purpose:- The word ‘contradict’ according to the Oxford Dictionary means “to affirm to the contrary; to be directly opposed to; to go counter to; to deny categorically”. The word contradiction is not defined under the Evidence Act or under the Code. Contradiction means “A state or condition of opposition in things compared; variance, inconsistency, contrariety”. The Cambridge



Dictionary defines the word contradiction as “the act of saying something that is opposite or very different in meaning to something else what is said earlier”. To illustrate: ‘X’ states in the witness box that ‘Y’ stabbed ‘Z’; But before the Police ‘X’ stated that ‘A’ stabbed ‘Z’. This is a pure and simple case of contradictory statements. Contradictions have to be brought on record during cross-examination of the witness. The purpose of cross-examination is three-fold, (i) is to test the veracity of the statement made by a witness in his examination-in-chief, (2) is to shake/impeach his credit and (3) is to elicit from that witness any relevant facts which may be favourable to the case for the cross-examiner. Right to cross-examine the witness by the accused is the cardinal rule of a fair trial which is a fundamental right of every accused, similarly it is the duty of the court trying the accused to satisfy itself regarding the reliability/credibility of the witness. In order to impeach the credibility of the witness one of the methods provided under Section 155 of the Evidence Act is to bring out the proof of former statement inconsistent with any part of his evidence in court, which is liable to be contradicted. So, in order to impeach the credibility of the witness, if there is any inconsistency in the deposition



with the earlier statement then the proof of the former statement has to be brought on record and thereafter it has to be proved. In some cases, an omission to state a fact or circumstance in the statement under Section 161(3) of the Code, may amount to contradiction during the deposition in court, if the omission appears to be significant and otherwise relevant.

24. When omission amounts to contradiction?

An omission may amount to contradiction when what is stated in deposition becomes irreconcilable with what is omitted and impliedly negatives its existence. When omission would amount to contradiction by an example: 'A' made a statement before the police under Section 161(3) of the Code, that he saw 'X' stabbing 'Y' to death; In the witness box, he states that he saw 'X' and 'Z' stabbing 'Y' to death. 'X' omitted to mention that he saw 'X' and 'Z' both stab 'C' to death. Not mentioning the name of 'Z' in the statement before the Police amount to significant and relevant omission as it is not comprehensible that a witness who saw two persons stab 'Y' would mention in the statement before the Police that he saw only one person stab 'Y' to death and therefore in such situations omissions can also amount to contradiction and will have to be proved in the manner prescribed. If the statement before the Police does not come on



record of the trial and if the court is not in a position to refer to it then it would lead to a miscarriage of justice. If the statement before the Police is brought on record and thereafter proved in accordance with the procedure then the court will be in a position to imply that 'Z' was not present. Therefore, whenever there is an inherent repugnancy between the testimony and the statement before the Police, then even an omission can become a contradiction and every such contradiction by way of omission is of much significance.

25. When inherent repugnancy to be understood?

If a witness makes a statement before the Police and the officer records the statement under Section 161(3) of the Code wherein: The witness then deposes before the court that he saw 'A' shooting 'B' by using a gun which resulted in death of 'B'. During the trial, he deposes before the court that he saw 'C' stabbed 'B' to death; Both statements cannot stand together and are inherently repugnant. Third category of omissions resulting into contradiction would be where a negative aspect of a positive recital is found in the statement. Example of this third category would be when in the recorded statement under Section 161(3); the witness states that a dark man stabbed 'A', whereas in the witness box the



witness deposes that a fair man stabbed 'A'. As explained in the judgment reported in [AIR 1959 SC 1012], *Tahsildar Singh & Anr. v. State of U.P.*, sometimes a positive statement may have a negative aspect and a negative one a positive aspect. When the witness says that 'a man is dark' which is a positive statement, it also means that 'the man is not fair', which is a negative aspect of the statement and which is implied in the positive statement. These are the three categories of omissions which may amount to contradiction and will have to be proved during the trial as discussed above.

26. Tracing the history of contradiction, this common law principle requiring the cross-examiner to confront a witness with the contents of a prior inconsistent statement before the introduction of extrinsic statement was laid down in the famous case of Queen Carolines in the year 1820. The witness must be confronted with the time, place, persons present and the substance of an impeaching statement before extrinsic evidence could be admitted as proof that the statement had been made. The Rule in Queen Carolines case "laid down the requirement that a cross-examiner, prior to questioning the witness about his own prior



statement in writing, must first show it to the witness.”. The same rule finds place in Section 145 of the Evidence Act, 1872 and now in Section 148 of Bharatiya Sakshya Adhiniyam, 2023 (‘BSA’ for short). The rule is based on the principle of fair-play and is essential for proving the contradiction regarding any inconsistency in the previous statements. In the judgment of [1915 SCC OnLine PC 16], ***Bal Gangadhar Tilak v. Srinivas Pandit***, Statements before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction. Under Section 145 of the Evidence Act and under Section 148 of BSA, the attention of the witness has to be called to those parts of it which are to be used to contradict him. The Supreme Court in the decision reported in [2015(9)SCC 588], ***V. V. R. Mishra v. State of Uttarakhand*** in para 19 has reiterated the procedure for bringing the contradiction on record of the trial. It was held that the first and foremost is to understand the procedure for proving a pure and simple contradiction and then we will examine how to prove an omission which amounts to contradiction. Once the examination-in-chief is completed by the Public Prosecutor and the



witness deposes something contradictory to the previous statement then during cross-examination by the defence: His attention has to be drawn to that part of the statement made before the Police which contradicts his statement in the witness box. The attention of the witness drawn to that part must reflect in the cross-examination. While recording the deposition of the witness, it becomes the duty of the trial court to ensure that the part of the police statement/case diary with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. Ideally the relevant portions of case diary/statement used for contradicting a witness must be extracted fully in the deposition. If the same is cumbersome at least the opening and closing words of the contradiction in the case diary statement must be referred to in the deposition and marked separately as a prosecution/defence exhibit. If he admits to have made the previous statement then no further proof is necessary to prove the contradiction. The contradiction is brought on record and it is proved. It can be read while appreciating the evidence. But if the witness after going through the earlier statement denies having made that part of the statement then it must be mentioned in the deposition. By this process the



contradiction is merely brought on record, but it is yet to be proved. Thereafter when the investigating officer or the officer who recorded the said statement is examined in the court, his attention should be drawn to the passage marked for contradiction. After going through the police statement if he says that the witness had made that statement then the contradiction can be said to have been proved. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the Court cannot suo motu make use of statements to police not proved in accordance with Section 145 of the Evidence Act. During the examination-in-chief, if the witness does not support the case of the prosecution and ultimately, he is declared hostile by the court then with the permission of the court the Public Prosecutor will have to cross-examine the witness. The method of proving the contradiction and bringing the earlier statement on the record would be the same as mentioned above. If the Public Prosecutor does not confront the witness with earlier statements the contradiction would not be on record and he will not be in a position to prove it through the investigating officer.

27. In this connection an illustration which is explained in



the landmark judgment of *Tahsildar Singh* (*supra*) may have relevance: 'X' makes a statement before the Police that "When I arrived at the scene I saw 'A' running away, chased by 'B' and caught by 'C'". In the witness box 'X' says that "When I arrived at the scene, I saw A take out a dagger from his pocket, stab 'D' in his chest and run away. He was chased by 'B' and caught by 'C'. Here is an example of omission of two facts in the statement before the Police: 'A' takes out a dagger from his pocket; 'A' stabbed 'D' in his chest; The said omissions are vital. It is not believable that the witness who says 'A' took out a dagger and stabbed D in the chest would not mention such a crucial and important fact. Further, it is also not possible that a police officer investigating the case would miss out on such a crucial piece of information. Therefore, it can be implied that the witness has improved his version and is not giving out the correct facts and therefore the omission becomes a contradiction. However, in order to bring the contradiction on record first, the omission will have to be converted into a contradiction by asking the question in the cross-examination which will bring out the contradiction. The cross-examination in the case of omission becomes very important and it should be aimed at bringing out



the contradiction between the statements.

28. Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 or under Section 27 of the Indian Evidence Act, 1872 (1 of 1872).

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

29. Since the use of contradiction and make use of the same are discussed in detail, the argument tendered by the learned Senior Counsel for the accused by merely reading the previous statement and the evidence tendered by the witnesses to address the contradictions are quite unsustainable. Therefore, the contradictions pointed out by the learned counsel for the appellant/accused could not be acted upon by a court of law, since the same is not proved, as discussed herein above in detail, otherwise the contradictions are of least significance as already observed above.



30. PW1 deposed further that Ext.P7 mahazar was prepared in this regard and thereafter he along with a police in the vigilance party reached the Village Office at 2.30 p.m, after one and a half hours from the vigilance office. When he reached the Village Office, the Village Officer was not there and he returned back at 5.30 p.m, when the Village Officer seated on his chair, he met PW1 and asked about the mutation. Soon he asked whether the money required was brought and he replied in the affirmative and accordingly he had given Rs.2,000/- (M.O1 series) to the accused, which was entrusted by the Dy.S.P after smearing Phenolphthalein powder. The accused accepted the same by using his right hand and put the same in the side pocket of his bag and PW1 identified the said bag as M.O2.

31. PW1 deposed further that on accepting the money, he had instructed the staff to effect the mutation and went outside and PW1 accompanied him. One police man was deputed at Depot padi and he had shown signal by raising his kerchief to him and then the Dy.S.P and the officials reached near the Village Officer and he informed the Dy.S.P that the accused demanded and accepted the money and accordingly the Dy.S.P



brought back the accused to the Village Office.

32. PW1 was cross examined with a view to challenge his version and during cross examination, availability of stool or chair was pointed out and PW1 answered that he did not care about it. Similarly, animosity of PW1 towards the accused on the premise that he had given adverse report against PW1 in a LC case 18 years ago also was suggested and get it answered in the negative. In fact, nothing was extracted during the cross examination of PW1 even though an attempt was made during the cross examination of PW1 if the Village Officer was intercepted by the Dy.S.P at the bus station about 200 meters away from the Village Office, PW1 answered that it was at Depot padi.

33. PW2 examined in this case is the decoy witness, who accompanied the vigilance team, after appearing before the Dy.S.P as deposed by him as on 20.10.2005. Evidence of PW2 is that he had reached the Vigilance office at 1 p.m on 20.10.2005 and on his arrival, the Additional District Officer, Economics and Statistics District Office had also reached the vigilance office and the Dy.S.P had introduced one John (PW1) to them and also informed about the complaint of PW1 regarding



demand of Rs.2,000/- as bribe by the accused. He deposed about the Phenolphthalein test and also deposed that PW1 entrusted M.O1 series notes to the Dy.S.P, who had put his initial at the centre of each note, after identifying the same before him. He also deposed that Ext.P7 mahazar was prepared after identifying M.O1 series. He also deposed that after smearing Phenolphthalein on M.O1 series, the same was kept in the pocket of PW1 with request to give the same to the accused on demand. He also deposed that PW1 was instructed to show signal by raising his kerchief and later he received the signal from the police man.

34. On perusal of the evidence of PW2 in the above line, it is emphatically clear that even though in Ext.P7 mahazar, introduction of PW1 to the gazetted officers could not be found, as argued by the learned Senior Counsel for the appellant/accused, evidence of PW1 and PW2 in categorical terms is in support of the prosecution case. Similarly as regards to the absence of signal in Exts.P7 and P8 mahazars, the same appears to be of little significance since PW2, an independent decoy witness, deposed categorically that there was instruction to PW1 to give signal, though the said fact was not deposed by the Dy.S.P, who was



examined as PW4. Thus the absence of the mode of signal in Exts.P7 and P8 is of no much significance in view of the evidence of PW2 as well as PW1 describing the signal with its characteristics.

35. It is argued by the learned counsel for the accused that PW1 had shown signal to PW2. But this submission appears to be incorrect. The categorical evidence of PW1 is that he had shown signal to the police man and the evidence of PW2 is that the policeman had given signal to PW2 and the vigilance team. Therefore, there is no anomaly in the matter of giving signal also. As such, this contention also is of no avail to the accused.

36. According to PW2, they started at 2.30 p.m and reached Chittar Depot junction at 4 p.m. Then PW1 and one policeman were sent to the Village Office and they waited near Chittar Manakkayam Road. PW1 was directed to give signal on receipt of bribe money by the accused and later PW2 got signal from the police man. He deposed about interception of the accused at Depot junction by the Dy.S.P and also questioning of him by the Dy.S.P regarding the demand and acceptance of bribe from PW1. Soon the accused admitted the same and stated that he



placed the notes in his hand bag. He identified M.O2 as the hand bag. According to PW2, the Dy.S.P and the Vigilance Team had reached the Village Office. He deposed about the Phenolphthalein test at the hands of the vigilance team as well as the accused by using Sodium Carbonate solution collected in 4 glasses and the pink colour change in the fingers of the accused and M.O5 identified as the solution used for the same. He also deposed that M.O1 series notes when dipped in Sodium Carbonate solution, the same also showed pink colour change and the liquid so collected is M.O7. PW2 deposed about preparation of Ext.P8 mahazar and also deposed that there was no colour change occurred when the hands of the vigilance team had been dipped in the Sodium Carbonate solution.

37. At this juncture, one argument advanced by the learned Senior Counsel for the accused also to be addressed. According to him, as regards to entrustment of M.O1 series notes to the accused, evidence are contrary and according to him, it was entrusted at the hands of PW1 and, therefore, there is likelihood of pink colour change in the hands of PW1 also, as already discussed. But the pertinent thing forthcoming is that it had been placed in the pocket of PW1. That apart, the hands of PW1 had



not been subjected to Phenolphthalein test, as usually no such procedure being adopted in trap cases. Even otherwise PW1 should have contacted with M.O1 series notes at the time when he took the same for the purpose of handing over the same to the accused. Thus it appears that this argument is absolutely meaningless.

38. During cross examination of PW2, he deposed that he would remember that there was a curtain separating the Village Officer from the other staff. It is true that in the evidence of PW2, arrest was recorded at 9 p.m, but the same is recorded as 7.30 p.m, as deposed by the officer who arrested him. This fact is of no serious consequence and the same by itself is not a reason to disbelieve the prosecution case. During cross examination a pertinent question was asked to PW2 suggesting that he had an intention to ensure the conviction of the accused, PW2 categorically denied the same. In fact, nothing was extracted during the cross examination of PW2 to disbelieve him during pre as well as post trap proceedings.

39. Ext.P3 in this case is an application put up by PW1 as on 19.07.2005 before the Tahsildar, Taluk Office, Ranni, and it was



forwarded by the Additional Tahsildar to the Village Officer and it was recommended as per Ext.P3 that since there was no sub division in the property for which PW1 had applied for mutation, it was recommended to mutate the property. This aspect had been deposed by PW3, the Additional Tahsildar supporting Ext.P3. Exts.P9 to P11 were also marked through PW3 to show that in page Nos.206 and 207 of Ext.P11, the mutation register, the application of PW1 was registered with No.734/2005. It is true that there was payment of fee for mutation on 20.10.2005. Ext.X3(a), supported by the evidence of DW2, as pointed out by the learned Senior Counsel, also would establish the same. In fact, the evidence of DW2 has been given heavy reliance by the learned Senior Counsel for the accused to contend that as on 20.10.2005, DW2 issued Ext.X3(a) receipt after mutating the property and, therefore, the demand for bribe for the same is an impossibility. In fact, this contention is not digestible to prudence. Here the specific case of the prosecution is that the accused demanded bribe for effecting mutation and accordingly on 20.10.2005 the bribe had been given. PW1 deposed that on receiving the bribe amount marked as M.O1 series, the accused had instructed the staff



to effect the mutation and had gone outside. Thereafter the mutation had been effected by DW2 as directed by the Village Officer only after receiving the bribe and, therefore, these aspects do not support the innocence of the accused, as argued by the learned Senior Counsel for the accused.

40. PW4 examined in this case is the Dy.S.P and he deposed in support of the prosecution in terms of PW1 and PW2.

41. The accused himself got examined as DW1 and according to him, he did not demand any amount or accept the same, as alleged by the prosecution. DW2 and DW3 were also examined in this case. The learned Special Judge addressed the evidence of DW2 and DW3 and was not inclined to act upon the same.

42. DW2 deposed that he was the Village Assistant in Chittar-Seethathode Village from 2004 to 2006 and the accused was the village officer in the year 2004. The accused was on duty on 20.10.2005 and he left to the field work at about 2 p.m along with the village man Pushkaran. At about 4 p.m, John came there and he received fees Rs.10/- for effecting mutation and gave receipt. Thereafter he prepared 'A' form



and report and he identified Ext.P3(a) as the report written by him. He further said that PW1 sat on the stool nearby the village officer's table and he went outside for taking tea and that M.O2 bag was on the table. Further he said that the village officer came back at about 5.45 p.m when there were other policemen who came to enquire about property details of other accused persons. At that time John was present there and then he went outside the village office along with the village officer. He further said that there was no partition between the place where the village officer and staff were sitting and the staff could see all the transactions done by the village officer. To a question whether he saw PW1 giving anything to the village officer, he replied 'no'. He also testified that Ext.X1 is the Nalvazhy kept at the village office, and Rs.9,457/- was collected till 20.10.2005 and the village officer gave that amount to the police and in turn the police entrusted him that amount. To a question that he already completed the formalities for mutation before the village officer came into village office, he replied positively. He also said that Ext.X2 was the receipt book for the collections made by the village officer and Ext.X3 was the receipt book for the collections made by himself which contains the



carbon copy of the receipt for Rs.30/- collected from PW1. The carbon copy of the receipt got separately marked as Ext.X3(a).

43. DW3 deposed that he was village man in Chittar-Seethathode village from 2003 onwards, that on 20.10.2005 he went to field work and when he returned John was sitting on the stool nearby village officer's table, that village officer came to the office at 6 p.m, there were policemen who came from Pathanamthitta in the office and that when they returned John again came there. To a question whether John entrusted anything to the village officer, he replied negatively.

44. It is true that regarding the presence of a curtain separating the Village Officer from the staff, PW2 deposed that he did not remember the same. But DW1 and DW3 deposed that there was no separation. In this connection, it is relevant to note that the trap was on 20.10.2005 and the witnesses were examined during February, 2011, after 6 years. It is not expected from a witness to share about all minute niceties about the place of occurrence by keeping the same in the memory after 6 years and the same, in fact, is humane impossibility. Therefore, minor discrepancies in the evidence, that too, by passage of time by itself, are



quite insufficient to disbelieve the prosecution case where the witnesses were consistent in their versions with regard to the specific allegation of the prosecution. Therefore, this challenge also would not succeed. It is true that DW2 and DW3 deposed against the prosecution case, but their evidence could not be believed for the sole reason that a Village Assistant or village man could not collect mutation fee without the order of the Village Officer and without preparing 'A' form for the same as per the procedure by the Village Officer. Therefore, effecting of mutation by DW2 is as directed by the accused on getting the bribe money, as alleged by the prosecution. Contra evidence given by DW2 and DW3 in negation of the prosecution case could not be believed as they were attempting to save the accused, their higher official. In fact, these witnesses were cited by the prosecution after recording their statements in tune with the prosecution allegations. But they were given up. Thus the Special Court is right in disbelieving the evidence of DW2 and DW3, interested witnesses.

45. 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 gratification other than legal remuneration in respect of an official act. – *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*

Section 13:- Criminal misconduct by a public servant. – *(1) A public servant is said to commit the offence 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 office 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 fine.

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

*“12. Indubitably in **Neeraj Dutta**’s case (supra) the Apex Court held in paragraph No.69 that there is no conflict in the three judge Bench decisions of this Court in B.Jayaraj and P.Satyanarayana Murthy with the three judge Bench decision in M.Narasinga Rao, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or “primary evidence” of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns “hostile” is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no conflict 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 Police**'s case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the offences 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 offences. Similarly as pointed out by the learned counsel for the petitioner in **Aman Bhatia**'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 gratification by the accused. To put it otherwise, proof of demand is sine qua non for the offences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and de hors the proof of demand the offences 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 gratification or the recovery of the same would not be sufficient to prove the offences under the two Sections in the absence of evidence to prove the demand."*

47. As regards to the contention raised by the learned Senior Counsel for the appellant that there is a settled convention in trap-case that



the trap laying officer to make efforts to verify the trap and payment of bribe by the public servant before initiating the trap proceedings with the aid of the decision *Mir Mustafa Ali Hasmi v. State of A.P*'s case (*supra*). Following the said decision as well as the decision of the Apex Court reported in [(2025) 4 SCC 624], *Madan Lal v. State of Rajasthan*, the law that emerges is that failure to conduct pre-trap verification, coupled with inconsistencies in witnesses' statements or trap proceedings, during evidence would create doubt about the demand affecting the credibility of the trap and the same could be adjudged as a ground for acquittal. Thus the legal position is not in dispute though merely because an omission at the instance of the Investigating Officer to make an effort to verify the factum of demand of bribe before initiating trap proceedings the same by itself would not become fatal to the prosecution when the prosecution evidence adduced would categorically establish the offences by proving the ingredients of Section 7 regarding the demand as well as acceptance of the bribe by the accused. Therefore, this contention also must fail.

48. Having re-appraised the evidence on the basis of the challenge raised by the accused and for the reasons discussed herein, it



could only be held that the prosecution succeeded in proving the guilt of the accused beyond reasonable doubt, as rightly held by the Special Court. The contra contentions raised are found to be untenable for the reasons herein above extracted. Thus the conviction is confirmed.

49. Coming to the sentence, in consideration of the fact that the petitioner has some diseases, as pointed out by the learned Senior Counsel for the appellant/accused, some leniency can be shown, which is permissible by law, to the appellant/accused. Therefore, I am inclined to modify the sentence.

50. In the result, the appeal is allowed in part. The conviction imposed by the Special Court is confirmed, but the sentence stands modified as under:

“(1) The appellant/accused is sentenced to undergo simple imprisonment for a period of six months and to pay fine of Rs.20,000/- (Rupees Twenty thousand only) for the offence punishable under Section 7 of the PC Act, 1988, in default of payment of fine, he shall undergo simple imprisonment for a period of two months.

(2) The appellant/accused is sentenced to undergo simple



imprisonment for a period of one year and fine of Rs.25,000/- (Rupees Twenty five thousand only) for the offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act, 1988, in default of payment of fine, to undergo simple imprisonment for a period of two months.

(3) The substantive sentences shall run concurrently and the default sentences shall run separately.

51. The order suspending execution of sentence to the accused stands vacated with direction to him to appear before the Special Court forthwith, without fail, to undergo the modified sentence. On failure to do so by the accused, the Special Court is directed to execute the modified sentence without fail.

Registry is directed to forward a copy of this judgment to the Enquiry Commissioner and Special Judge, Kottayam, for compliance and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/