IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 12TH DAY OF JUNE 2026 / 22ND JYAISHTA, 1948

CRL.A NO. 899 OF 2016

CRIME NO.8/2004 OF VACB, KANNUR, Kannur

AGAINST THE JUDGMENT DATED 25.08.2016 IN CC NO.19 OF 2016 OF COURT OF ENQUIRY COMMNR. & SPECIAL JUDGE, THALASSERY

APPELLANT/1ST ACCUSED

E.K.NARAYANAN,
S/O. RAMAN NAMBIAR, ETTISSERI KUTTIATTU HOUSE, P.O. KUTTUMUGHAM, SREEKANDAPURAM. (WAS HEAD CLERK, R.T. OFFICE, KANNUR, NOW RETIRED)

BY ADVS.
SRI.MAHESH V RAMAKRISHNAN
SMT.CHITRA JOHNSON
SHRI.PRAVEEN K.S.
SHRI.ALPHIN VARGHESE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY DY.S.P. VIGILANCE AND ANTI-CORRUPTION BUREAU KANNUR, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA. ERNAKULAM, PIN- 682031.

SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A,
SENIOR PUBLIC PROSECUTOR SMT.REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.05.2026, THE COURT ON 12.06.2026 DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.Appeal No.899 of 2016

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Dated this the 12th day of June, 2026

J U D G M E N T

This appeal is at the instance of the 1st accused in C.C.No.19/2016 on the files of the Enquiry Commissioner and Special Judge, Thalassery, and he assails the judgment in the above case dated 25.08.2016.

2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor appearing for the State. Gone through the verdict impugned and the records of the Special Court.

3. Here as per the final report, the prosecution alleges commission of offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (`PC Act, 1988' for short) as well as under Section 120B of the Indian Penal Code (`IPC' for short hereafter), by the 1st and 2nd accused. The precise allegation is that accused Nos.1 and 2 while working as Regional Transport Officer and

Head Clerk of Regional Transport Office, Kannur, respectively, being public servants, had abused their position and entered into criminal conspiracy and in furtherance of the said conspiracy, the 1st accused had demanded and accepted an amount of Rs.500/- for himself and Rs.2,000/- for the 2nd accused as illegal gratification for changing the timing of the bus owned by the complainant.

4. The Special Court ventured the matter after framing charge for the said offences. During trial, PW1 to PW7 were examined. Exts.P1 to P22 and MO1 to MO4 were marked on the side of the prosecution. On the side of defense, Exts.D1 series - D1(a) and D1(b), were marked.

5. On appreciation of evidence, the learned Special Judge found that the appellant/1st accused committed the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the PC Act, 1988 and convicted him under Section 235(2) of the Code of Criminal Procedure, while holding that the prosecution failed to prove the offences alleged to be committed by the 2nd accused. Accordingly, the 2nd accused was acquitted and the 1st accused was sentenced as under:

"In the result, A1 is found guilty of the offence punishable u/s 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988 and he is convicted u/s 235(2) of Cr.P.C. A1 is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.10,000/- (Rupees ten thousand) and in default of payment of fine to undergo Rigorous Imprisonment for one month each for the offence punishable u/s 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988. Substantive portion of the sentence shall run concurrently. The period of detention undergone by A1 is liable to be given set off. Bail bond executed by A1 stands cancelled. A1 is found not guilty of the offence punishable u/s 120-B of I.P.C and he is acquitted of that charge."

6. The learned counsel for the appellant/1st accused argued that in paragraph 31 of the judgment, the learned Special Judge evaluated the evidence of PW1 and also Ext.P1 FIS and thereafter on finding anomaly in the evidence of PW1, the 2nd accused was acquitted. According to the learned counsel for the appellant/1st accused, the reasons for acquittal of the 2nd accused are applicable to the 1st accused also. In such a case, the Special Court went wrong in finding that the appellant/1st accused guilty for the aforesaid offences. Therefore, the impugned verdict would require interference.

7. It is also pointed out by the learned counsel for the appellant/1st accused that in this case ingredients for demand and

acceptance of bribe by the 1st accused are failed to be proved by the prosecution. Therefore, on the said ground also, the verdict would require interference. He has placed decision of the Apex Court reported in [2003 KHC 6268 : 2023 KHC OnLine 6268 : 2023 LiveLaw (SC) 211 : 2023 SCC OnLine SC 280 : AIR OnLine 2023 SC 217 : 2023 (3) KLT SN 16 : 2023 INSC 245 : 2023 (18) SCC 251], ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi,*** to contend that every demand made for payment of money could not be a demand for gratification, if the complainant did not produce a copy of the application made by him for providing electricity meter which is the subject matter for demand. Apart from that the learned counsel for the appellant/1st accused placed another decision of this Court reported in [2025 KHC 1012 : 2025 KHC OnLine 1012 : 2025 KER 70115 : 2025 KLT OnLine 2950], ***Sreekumar S. v. State of Kerala*** to contend that mere recovery of currency notes without proof of demand is insufficient to sustain conviction for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988.

8. Strongly opposing the contentions raised by the learned counsel for the appellant/1st accused, it is pointed out by the learned

Special Public Prosecutor that in the instant case the Special Court relied on the evidence of PW1 supported by the evidence of the decoy witness and other witness to find demand and acceptance of bribe by the accused. Therefore, the ingredients for the said offences have been proved satisfactorily. In such a case, no interference in the verdict impugned is required.

9. In view of the rival submissions, the following points arise for consideration:

(i) Whether the Special Court is justified in holding that the appellant/1st accused committed the offence punishable under Section 7 of the PC Act, 1988?

(ii) Whether the Special Court is justified in holding that the appellant/1st accused committed the offence punishable under section 13(1)(d) r/w 13(2) of PC Act, 1988?

(iii) Is it necessary to interfere with the impugned judgment in any manner?

(iv) The order to be passed?

Point Nos.(i) to (iv)

10. PW1 examined in this case is the complainant. According to him, in 2004 he had engaged in running bus service and he owned a bus bearing registration No.KL13D2448 by name “Divine Motors”. Earlier he had obtained permit to run the bus bearing Registration No.KL139961 which was an old one and thereafter he had purchased KL13D 2448 and he had applied before the RTO, Kannur for permit replacement. On getting replacement permit, timing also was to be fixed. During 2002 he had applied for change of the timing and the RTO rejected the same. He had challenged the same before this Court and a direction was issued by this Court to take a decision afresh. But the RTO failed to take any action. Again he had applied to the RTO for change in timing in view of the order of this Court, pointing out contempt proceedings on failure to do so. The RTO opposed time change on the ground that counter signatures from the office in Kollam and Pathanamthitta districts were not obtained and he uttered that he would not be made afraid by showing the court order. Later on the basis of the direction issued by this court, he had obtained counter signature from

Kollam district and he had obtained signature from Pathanamthitta district earlier. As the RTO did not give sanction for change in timing, again he approached this Court and as per the direction issued by this Court during 2004, he had applied to the RTO, Kannur and he met the RTO in this regard. Then the RTO directed him to meet the 1st accused Narayanan, the Clerk of C5 Section. Accordingly he met Narayanan, who is the appellant/1st accused herein. Then Narayanan informed him that without obtaining sanction from the RTO, he could not generate the file. Thereafter PW1 again met the RTO and informed this matter and in turn the RTO informed him to meet him at 5 p.m and he met the RTO at 5 p.m. Then he had instructed to meet Narayanan and to meet him with the file. Narayanan came with the file and met the RTO, then he agreed to endorse good timing and for which he was asked to give "five monies" and directed to entrust the money to Narayanan and he would write the file. On 22.09.2004 the complainant met Narayanan at RTO Office Kannur. He directed him to meet the RTO Kannur again and he met the RTO again. Then the RTO directed him to entrust Rs.2,000/- to Narayanan and also directed to meet Narayanan also in similar way. When PW1 again met

Narayanan, he had demanded Rs.500/- for him and he had paid Rs.500/- to Narayanan on that day and agreed to give the remaining amount on 25.09.2004. Then Narayanan informed him that if the entire amount would not be paid to the RTO, PW1 would not get sanction. Accordingly, he met Narayanan on 25.09.2004 when Narayanan informed that on that day he was holding the charge of Superintendent and PRO and he directed him to meet the RTO again. Then the RTO informed him that the sanction was pertaining to a long distance route and he demanded only a small amount and he had instructed to give the money so demanded to Narayanan. He informed this demand to the Vigilance Dy.S.P, Kannur and he had reached at 2 p.m to the Dy.S.P Vigilance. Then the Dy.S.P recorded his complaint and PW1 identified Ext.P1 as the statement so recorded. He stated that Subramanian was the RTO on the relevant time and he identified him at the dock. He also identified the 1st accused Narayanan at the dock as the person who had demanded bribe from him. He had deposed about the procedure for preparation of pre-trap mahazar, conduct of phenolphthalein test, entrustment of the bribe money to the Dy.S.P, smearing of phenolphthalein powder and return of the money to him to be given to the accused as and when he would demand for the same. Ext.P3 is the file containing the application for change in timing put up by PW1 and its relevant page got marked as Ext.P3. Exts. P4, P4(a), P5, P5(a), P6, and P6(a) were also relevant files marked in this case. PW1 categorically deposed that on the date of trap, when he met Narayanan, he demanded whether the money asked for had been brought, to which he replied in the affirmative and then handed over the money given by the Dy.S.P. Soon Narayanan accepted the money, marked as MO.1 series, and placed it on the writing pad between the files. Thereafter, he gave the pre-arranged signal to the Dy.S.P., and the Vigilance party entered the room.

11. PW2, examined in this case, is the decoy witness who witnessed both the pre-trap and post-trap proceedings. PW2 testified that while he was working as Special Tahsildar, National Highway on 25.09.2004, he had reported before the Dy.S.P, V.A.C.B, Kannur as per the direction given by District Collector for assisting a trap. Senior Superintendent Raveendran was also accompanied him. On reaching the Dy.S.P office, the Dy.S.P introduced PW1 to them and PW1 told that the

section clerk of R.T.O office, Kannur had demanded an amount of Rs.2500/- as bribe for himself and R.T.O and Rs.500/- was paid to the section clerk and the balance amount was directed to be paid on 25.09.2004. Dy.S.P informed them that based on the complaint given by PW1, crime was registered. Demonstration of phenolphthalein test was conducted using a 10 rupee note. PWI entrusted 4 currency notes of denomination of Rs.500/- to Dy.S.P and Dy.S.P had shown those notes to PW2. MO1 series notes identified by PW2 as the notes handed over by PW1 to the Dy.S.P. Phenolphthalein powder was smeared on those currency notes and they were handed over to PW1 with instruction that the same should be given to the accused only if he would demand it. He deposed about preparation of Ext.P2 entrustment mahazar, regarding pre-trap proceedings and he admitted that he had signed in it. Then the Vigilance party reached Collectorate at 4.25 p.m. Dy.S.P sent PW1 to the R.T.O office with an instruction that if the amount would be accepted by the accused, signal had to be given by PW1 by rubbing his head with kerchief. A policeman was deputed to watch the signal. Two policemen were deputed at the main entrance. After 10 minutes, signal was received.

Dy.S.P along with PW2 and Raveendran went to the R.T. office through main gate. When they reached near the seat of the accused, he was talking with PW1 who was standing outside the window near his seat. Dy.S.P introduced PW2 and Raveendran and also made self introduction to the accused. On enquiry, accused disclosed his name as E.K.Narayanan and stated that he had been working as Head Clerk in C5 section of R.T.O office. When the Dy.S.P asked him whether he had demanded and accepted any amount from PW1, the accused became perplexed and nervous and he tried to get up from the seat. Dy.S.P asked PW1, who was standing outside, to come inside and he asked him whether he had given amount to the accused. He said that he had given MO1 series to Narayanan through the window, when Naryanan demanded the same. PW1 also stated that the accused had put currency notes under papers which were found on the writing pad and the accused had received the amount using his left hand and immediately the accused tried to rub his left hand on the hand rest of the chair. Sodium carbonate solution was taken in a temblor and the hands of the Dy.S.P., PW2 and Raveendran were dipped in that solution. There was no colour change for the solution. Sample was taken from that solution in a bottle and MO2 identified as the bottle in which the said sample was taken. Dy.S.P asked Raveendran to verify the currency notes (MO.1 series) among the papers on the writing pad of the accused. Raveendran verified the papers and found that 4 currency notes of Rs.500/- denomination were kept inside those papers. When Narayanan was asked about it, he said that PW1 had thrown the currency notes. Sodium carbonate solution was taken in another temblor. When the left hand of the accused was dipped in the solution, the same turned pink. MO3 sample was taken from it. On verification of the currency notes (MO1 Series) taken by Raveendran, it was found that the same were the currency notes which were entrusted to PW1 by the Dy.S.P. Those currency notes were dipped in sodium carbonate solution. The solution turned pink. MO4 sample was taken from it. Those currency notes were seized and Narayanan was arrested by the Dy.S.P. He identified Narayanan as the first accused standing at the dock arrested by Dy.S.P. He testified further that the files were seized from the office of the accused. Ext.P7 is the note file of File No.G/3068/98C. Ext.P8 is the attendance register seized from the office. Moreover, Exts.P3, P5 and P6 files were also seized from the office. Ext.P9 recovery mahazar was prepared regarding the post trap proceedings at the office of the R.T.O. The trap party along with Narayanan and the seized articles reached VACB office by 8 o' clock.

12. Apart from PW1 and PW2, PW5 supported the case of the prosecution. PW5 deposed that on 25.09.2004 when he was working as Dy.S.P. V.A.C.B Unit, Kannur, PW1 came to his office and complained that he had given application before Kannur R.T.O for getting the timing of the bus KL 13D 2448 owned by him, which was plying in inter district route and no decision was taken in that application by R.T.O. Further PW1 informed him that on 22-09.2004, the head clerk of the R.T.O office one E.K. Narayanan had demanded an amount of Rs.2500/- as bribe and an amount of Rs.500/- was received by him on that day and had demanded payment of the balance amount of Rs.2,000/- on 25.09.2004. He testified that Narayanan had demanded Rs.500/- for himself and Rs.2,000/- for the R.T.O. The statement given by PW1 was recorded and crime was registered as VC 8/2004 and Ext.P1(a) identified as the FIR so registered by him. Ext.P1 identified as the similar statement given by PW1 before him. His evidence further is that he had made request to the

District Collector for getting assistance of two Gazetted Officers for assisting the trap. Senior Superintendent M.P. Raveendran and Special Tahsildar Gangadharan (PW2) reached his office as directed by the Collector. The contents of the complaint given by PW1 was disclosed by him to the Gazetted Officers. PW1 had handed over 4 currency notes of Rs.500/- denomination to him and he had shown those currency notes to the Gazetted Officers. The currency notes handed over to him by PW1 identified as the currency notes marked as MO1 series. Demonstration of phenolphthalein test was conducted using 10 rupee note. Thereafter phenolphthalein powder was smeared on MO1 series currency notes and the same were entrusted back to PW1 after preparing Ext.P2 entrustment mahazar with a direction that the bribe money should be given to the accused only if he would demand for the same. The vigilance party along with PW1 and the Gazetted Officers reached the R.T.O office premises, Kannur and they waited near the office of Dy.S.P Kannur, which was situated near the R.T.O office building. PW1 was sent to the R.T.O office and he along with other officers stood at different parts of the building. He had given instruction to PW1 to give signal, in case the accused would receive the bribe, by rubbing on his head. PW1 went near the window on the eastern side of the R.T.O office building, which was situated near the seat of Narayanan and he gave the amount to him through the window and at once he gave signal intimating the receipt of the amount. On getting the signal, he entered into the office room of the R.T.O with his party and gazetted officers through the main gate and when they reached near the seat of the accused Narayanan, he was talking with PW1, who was standing outside the window near his seat. Then he asked the accused whether he had demanded and accepted money from the complainant, after introducing him as Dy.S.P of vigilance. The accused told that PW1 had given amount and the same was kept under the papers kept on the writing pad. Soon the accused tried to rub his left hand on the hand rest of the chair in which he was sitting and it was prevented. Then his fingers and the fingers of the Gazetted officers were dipped in sodium carbonate solution, but there was no colour change for the solution and sample was taken from that solution and the same was identified as MO2. Thereafter the fingers of the left hand of Narayanan was dipped in sodium carbonate solution taken in another glass tumbler and the solution turned pink and

MO3 sample was taken from it. He asked Raveendran to take the currency notes kept on the writing pad of the accused and Raveendran took those currency notes. When end portion of those currency notes were dipped in sodium carbonate solution taken in another glass temblor, the solution turned pink and MO4 sample was taken. He arrested the accused after preparing Exts.P17 and P18 arrest memo and inspection memo and he identified Narayanan the 1st accused standing at dock before court. Accused was produced before the court after preparing remand report. Certain currency notes were found in the pocket of the 1st accused and they were returned to him as it was his private money. The 1st accused produced the application given by PW1 for changing the timing of the bus, which was kept in his table. The file produced by the 1[a] accused and the attendance register of the R.T.O office were seized and they were got marked as Exts.P3 and P5 to P8. He deposed about preparation of Ext.P9 mahazar regarding the post-trap events. He deposed further that he had investigated this case. He had questioned all the witnesses in this case. He had seized Exts. P4 and P11 to 14 documents as per Ext.P10 mahazar on 21.10.2004. He had seized Ext.P15 site plan in tune with Ext.P16 mahazar. He had submitted Ext.P19 report for adding Section 13(1)(d) and 13(2) of P.C Act in the F.I.R. Since he had already received information that the officers of the R.T.O office had been demanding bribe, no independent pre-verification was done by him after receipt of the complaint of PW1. He submitted the factual report and his successor filed the final report before the Court.

13. The R.T.O, Vatakara, was examined as PW3. He testified that he had produced certain documents in connection with this case. He had produced regular permit register, viz., Ext.P4 and there was endorsement in page 132 and 133 which would show that permit was issued to vehicle KL 13D 2448 belonging to PW1. He identified Ext.P11 as the inward register for the period 07.08.2004 to 22-09-2004. In page 138 of Ext.P11, it was endorsed that requisition given by PW1 for endorsing the concurrence in the permit was received on 13.09.2004 and that entry was the entry marked as Ext.P11(a). He deposed about Ext.P12, the attested copy of the order passed in WPC 3009/049(G) of Kerala High Court. Ext.P13 the posting order of the first accused dated 18.08.2003. Ext.P14 the office order of R.T Office, Kannur dated 19.09.2003 showing that

T.K. Narayanan was posted as Head Clerk in C5 and A2 section also tendered in evidence through PW3. He also deposed about the production of Exts.P11 to P14 documents before the Vigilance Official and they were seized as per Ext.P10 mahazar. Ext.P8 identified as the attendance register of Kannur R.T.Office and Ext.P8(a) entry, in page 41 of Ext.P8, would show that the 1st accused had attended the office in the month of September 2004 on all working days. According to him, the entry marked as Ext.P8 (b) seen in page 44 of Ext.P8, would show that the 2nd accused had attended the office on all working days except one day in September 2004.

14. Ext.P15 site plan of the place of occurrence was tendered in evidence through PW4, the Village Officer. He also prepared a sketch of the building where the R.T.O office was situated after seeing the place of occurrence. He identified Ext.P16 as the mahazar prepared at the time of preparation of Ext.P15.

15. PW6 testified that while he was working as Dy.S.P, V.A.C.B Kannur, he had obtained prosecution sanction order for prosecuting accused persons from Chief Secretary and he had filed Ext.P20 report for

adding Section 120-B of I.P.C in the F.I.R, and also Ext.P21 report for adding the name of the 2nd accused in this case. He deposed further that he had submitted the charge sheet before court.

16. The prosecution examined PW7 to prove the prosecution sanction. PW7 deposed that while he was working as Prl. Secretary to Government, Home and Vigilance, he had issued Ext.P22 sanction order for prosecuting accused Nos.1 and 2 who were the clerk of RTO office, Kannur and R.T.O Kannur respectively. He had issued that order after perusing the prosecution records and on satisfying that the accused persons were liable to be prosecuted. He also deposed that at the time of issuance of the order, Government of Kerala was the competent authority to remove the accused persons from the service and he had issued the prosecution sanction order as Prl. Secretary to the Government for and on behalf of the Government.

17. Now, it is necessary to address the ingredients required to attract the offences under Section 7 r/w 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."

18. In this connection it is relevant to refer a 5 Bench

decision of the Apex Court in [AIR 2023 SC 330], ***Neeraj Dutta Vs 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 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 gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and (ii) of the Act.*
>
> *(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*
>
> *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
>
> *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*
>
> *(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer*

and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the

prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1) (d) 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."

19. Thus the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the P.C 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 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 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.

20. 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:

> *"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 dehors 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."*

21. In a recent decision of the Apex Court reported in [2026 INSC 365] in ***The State of Kerala v. K.A.Abdul Rasheed***, the Apex Court considered the decision [(2023) 4 SCC 731], ***Neeraj Dutta v. State (NCT of Delhi)*** and in paragraph 13 the Apex Court held as under:

*"13. We pause here to notice that the Constitution Bench in **Neeraj Dutta** had specifically dealt with the efficacy of the deposition of hostile*

*witnesses. It referred with approval to **Sat Paul v. Delhi Administration** wherein it was held:*

> *"52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should as a matter of prudence, discard his evidence in toto."*

22. In this case on reading paragraph 13 of the verdict impugned, as pointed out by the learned counsel for the appellant/1st accused, the learned Special Judge compared the evidence given by PW1

before the court with that of Ext.P1 his previous statement, even though during cross examination of PW1, the defense side didn't use the statement for contradicting PW1 in any manner. Thus it is well discernible that without confronting PW1 with his previous statement in accordance with Section 145 of the Evidence Act, the Special Court compared the statements on its own and found certain discrepancies to disbelieve his version regarding the demand and acceptance of the bribe by Accused No. 2, the RTO. Consequently, Accused No. 2 was acquitted. The said procedure is not permissible in law. It is unfortunate to note that the prosecution did not prefer any appeal challenging acquittal of accused No.2.

23. In the present case, the evidence of PW1, duly corroborated by PW2 and PW5 (the Dy.S.P.), clearly establishes the ingredients of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, 1988. Accordingly, the learned Special Judge is justified in holding that the appellant had committed the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, 1988, and therefore the conviction recorded against him does not

warrant any interference. Coming to the sentence, I am inclined to modify the sentence to the statutory minimum, in consideration of the plea raised by the learned counsel for the appellant.

24. In the result:

(i) the appeal is allowed in part and the conviction imposed by the Special Court stands confirmed;

(ii) the appellant/1st accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/- (Rupees Ten thousand only) and in default of payment of fine to undergo rigorous imprisonment for a period of 2 months for the offence punishable under Sections 7 r/w 13(1)(d) r/w 13(2) of the PC Act, 1988;

(iii) substantive sentence shall run concurrently and default sentence shall run separately;

(iv) bail bond executed by the appellant/1st accused stands cancelled with direction to the appellant/1st accused to surrender before the Special Court forthwith to undergo the modified sentence.

Registry is directed to forward a copy of this judgment to the Special Court concerned for executing the modified sentence.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/