

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 6TH DAY OF MARCH 2026 / 15TH PHALGUNA, 1947

CRL.A NO. 1229 OF 2014

AGAINST THE JUDGMENT DATED 31.10.2014 IN CC NO.27 OF 2010 OF
ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

SUDARSANAN
ASI OF POLICE (GRADE), CHAVARA POLICE STATION,
KOLLAM, RESIDING AT ANU BHAVAN, ELAVOOR MURI,
PALLIMON VILLAGE, KOLLAM.

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.T.ANIL KUMAR
SRI.MANU TOM
SHRI.SUJESH MENON V.B.
SHRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.M.VIVEK

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

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

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.02.2026,
THE COURT ON 06.03.2026 DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

Crl.Appeal No.1229 of 2014-C

*Dated this the 6th day of March, 2026****J U D G M E N T***

Judgment in C.C.No.27/2010 dated 31.10.2014 on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, is put under challenge in this appeal filed by the sole accused arraying State of Kerala as the respondent.

2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor in detail. Perused the verdict under challenge and the evidence available.

3. Precisely the prosecution case is that the accused, who was employed as Assistant Sub Inspector (Grade) in Chavara Police Station during the period from 24.4.2006 to 22.04.2009, demanded illegal gratification of Rs.2,000/- from Sri Shiharudheen, who was examined as PW1 on 21.04.2009 and thereafter demanded and accepted the same at 11.30 a.m on 24.04.2009. Accordingly the prosecution case is that the



accused committed 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).

4. When final report was filed before the Special Court, the Special Court secured the presence of the accused and completed the pre-trial formalities. Thereafter charge was framed for the said offences and recorded evidence. PW1 to PW11 were examined and Exts.P1 to P27 were marked on the side of the prosecution. Apart from that M.O1 to M.O11 were also marked on the side of the prosecution. During cross examination of PW1, Exts.D1 to D6 and during cross examination of PW2, Ext.D7 contradictions were marked on the side of the accused. Apart from that, DW1 to DW3 were examined and Exts.D8 and D9 were also marked on the side of the defense. The learned Special Judge meticulously analysed the evidence and found that the appellant/accused committed the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988. Accordingly, the accused was sentenced as under:

“Therefore, for the offence under S.7 of P.C. Act, 1988, the accused is sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- (Rupees Five Thousand only). Fine, if not paid, accused shall undergo



rigorous imprisonment for a further period of three months. For the offence S.13(1)(d) r/w S.13(2) of P.C. Act, 1988 also the accused is sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- (Rupees Five Thousand only). Fine, if not paid, he shall undergo rigorous imprisonment for a further period of three months.”

5. The learned counsel for the appellant/accused argued that on perusal of Ext.P26 prosecution sanction proved through PW11, the same would show that it was not issued by PW11 Smt.Harhitha Attaluri, who was the District Superintendent of Police at the relevant time, which was issued by. Therefore, the competent authority had not issued sanction to prosecute the accused and for the said reason alone the entire prosecution is vitiated. Apart from that, the evidence of PW1 is not trustworthy and the same would show contradictions. Exts.D1 to D6 have been highlighted in this regard. According to him, there are contradictions between the evidence of PW2, the friend of PW1, who accompanied PW1 at the relevant time of trap. That apart, the evidence of PW1 and PW2 are contrary and mutually destructive. According to him, there is no version as that of PW1 as to demand of illegal gratification and his version regarding demand of 'other item' would not be sufficient to prove any demand of illegal gratification or bribe by the accused. It is pointed out



that, while recovering M.O1 series, the alleged bribe money, from the accused, Ganja was also recovered. Therefore, the possibility that the accused might have asked for Ganja by referring it as the 'other item' creates a doubt in the prosecution case. According to him, M.O4, which was produced before the court as the solution used to demonstrate the phenolphthalein test on the hands of the accused during examination, as stated by PW8, found to be without any liquid therein and the same also casts a doubt on the prosecution case. On these grounds, the learned counsel for the appellant/accused sought for reversal of the verdict impugned and to record acquittal of the accused.

6. Repelling this contention, it is pointed out by the learned Public Prosecutor that, insofar as the contradictions extracted from the mouth of PW1, marked as Exts.D1 to D6, majority of the same are not even contradictions otherwise also the same are not so material as to disbelieve PW1. She also pointed out that there is no contra evidence in the versions of PW2 or PW4 as against PW1 so as to disbelieve the version of PW2, as argued by the learned counsel for the appellant.

7. According to the learned Special Public Prosecutor,



though the trap was on 22.04.2009, the witnesses were examined during April, 2014 after 5 years of occurrence and, therefore, some minor deviations in the evidence are natural and the same by itself are insufficient to disbelieve the categorical evidence given by PW1 and other witnesses. It is also pointed out that even though M.O4 liquid found to be colourless during examination as stated by PW8 the same is of least significance and it has been held in the decision reported in [2011 SCC OnLine Ker 4038 : (2011) 4 KLJ 400 : (2011) 4 KLT (SN 83) 78], *E.V.Shaji v. State of Kerala*, as observed in paragraph 13 that, phenolphthalein test is only the procedure adopted by the trap officer to detect the crime and the same is not a mandate to convict under the PC Act or any other statute. It is also argued that, PW8, the thondi clerk examined in this case being the Senior Grade Assistant, who dealt with the M.Os, deposed that, at the time when the M.Os were produced, there was leak in the stoppers and therefore the leakage of the stoppers of the bottles resulted in emptying M.O4 and therefore the same is not a reason to disbelieve the prosecution case and the same is not at all fatal to the prosecution.



8. In consideration of the rival submissions the points arise for consideration are:

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

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

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

(iv) The order to be passed?

Points (i) to (iv)

9. Having gone through the facts of this case, the evidence of PW1 and PW11 is very relevant. PW1 is Shiharudheen, who was an Ex-service man. According to him, his rank was 'Naik' and he had resided in Chavara during 2009 along with his wife and children. On the southern side of his house, one Omana owned property and he entered into an agreement with the Omana to purchase the said property as on



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10.03.2008 and Ext.P1 identified as the copy of the said agreement. He deposed that the agreement was to purchase the property for a total consideration of Rs.7 lakh, out of which Rs.2,25,000/- was paid as advance. But the sale was not materialised since the property was mortgaged with Kerala Financial Corporation ('KFC') for Housing loan. Thereafter, on 11.06.2008 another agreement was executed and Rs.3,50,000/- was given to Omana to clear the housing loan and copy of the certified copy of the said agreement got identified as Ext.P2. When the Sub Registrar, Chavara was approached to execute sale of the property, there were 6 attachments and execution of the same would not be possible. Since the property sale became impossible, Omana requested time to pay back the advance sale consideration and Omana failed to return the amount. In this regard, he had made a complaint to Sri Jacob C.I of Police. Then the C.I instructed to give the same to S.I Abhilash and he lodged a complaint to S.I Abhilash against Omana and children. S.I entrusted this complaint to Sudarsanan, the accused, who was working as Assistant Sub Inspector of Police ('ASI' for short). According to PW1, Ext.P3 is the complaint and he had lodged Ext.P3 complaint on 19.03.2009



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and Ext.P4 complaint on 06.03.2009. When he met the accused on 19.03.2009 at the Police Station Chavara and discussed about the case, since the accused did not take any steps on this complaint till 19.04.2019, the accused demanded Rs.25,000/- as bribe and PW1 agreed to pay Rs.5,000/-. He further agreed to give Rs.2,000/- then and there itself and he lodged complaint before the vigilance and on that day he had handed over Rs.2,000/- to the accused at the Chavara Police Station. According to him, before trap he had entrusted 4 numbers of Rs.500/- notes to the Vigilance Dy.S.P at 11 a.m on 22.04.2009 and he further deposed about the demonstration of phenolphthalein test and entrustment of the above notes after smearing the same phenolphthalein powder to him with instruction to give the same to the accused only on demand. PW1 identified M.O1 series as notes so entrusted and he had given to the accused on demand and accepted by him. According to him, after the pre-trap proceedings, the trap party including himself reached Chavara Police Station at 11.30 a.m and he moved towards the Police Station alone and one among the decoy witness followed him behind. The accused was on the first floor of the police station and he met the accused therein after



walking through the staircase then the accused asked whether the 'other item' was brought. He answered in the affirmative and then he directed to put the notes on his table. According to PW1, he was not ready to put the money on the table and he said that the money was arranged by hard work and the same could not be placed on the table and the same would be given at hand. He again stated that if there was any difficulty, he would come on the next day and he started to move back. Then demanded to give the same and he had entrusted M.O1 series to the hands of the accused. Then he had shown signal to the decoy witness by moving the cap he had worn as earlier instructed and then the Dy.S.P and party reached the office. Then the accused stated that he did not expect such an action from the 'soldier' (referring PW1 as 'soldier') as the accused used to call him as 'soldier', his nick name. He identified Ext.P5 as the complaint he lodged before the Dy.S.P on 22.04.2009 after identifying the signature therein. He was subjected to cross examination and during cross examination he stated that he did not give Rs.5,000/- as bribe. According to the learned counsel for the accused, PW2 stated that the bribe amount given was Rs.5,000/-. There was a suggestion made to the effect that even though



the complaint was lodged on 06.03.2009 regarding the occurrence on 10.03.2008, he replied that he had been visiting the police station for about 46 days.

10. It is true that during cross examination of PW1, Exts.D1 to D6 contradictions were marked, out of which Ext.D1 is a contradiction marked by using the previous statement of PW1 and in the previous statement he had stated that, the accused asked as to whether 'the money demanded was brought'? This portion of previous statement was denied by PW1 and his evidence during chief examination is that the accused asked whether the 'other item' was brought? In fact, the phraseology used in the previous statement is a direct demand and the phraseology used during examination is an indirect demand. In fact, there is no contradiction as to demand of 'something' which in turn led to acceptance of the bribe money by the accused. It is pertinent to note that PW1's evidence would show that when he met the accused on the date of trap, he demanded whether the 'other item' was brought. His further evidence is that when the accused demanded to put the bribe money on the table, he hesitated to do so. Then the accused demanded the money and accepted



the same. Therefore, this contradiction by itself is not sufficient to disbelieve the evidence of PW1, as the evidence of PW1 clearly established demand of bribe, consequential acceptance of the same by the accused and subsequent recovery of the same from the accused.

11. Regarding the contradiction marked as Ext.D2, the same is not so materials as the same is confined to showing of a signal.

12. Coming to Exts.D3, D4 as well as D5 contradictions when the accused was attempted to be contradicted by using the said sentences in the previous statements, the answer given by PW1 was that he did not remember. Thereafter, without making any attempt to get his attention so as to remember the same with a view to either admit or deny the statement, the learned Special Judge marked the same as contradictions. In fact, the same are not at all contradictions in the eye of law.

13. Coming to Ext.D6 contradiction, this is only a minor immaterial contradiction of least significance. Thus evidence of PW1 if taken together there is no reason to disbelieve the evidence of PW1 which was recorded on 04.04.2014 in relation to demand and acceptance of bribe



as on 22.04.2009, that is exactly about 5 years before the occurrence. It is settled law that when witness gives evidence after efflux of time, there may be some variation in the evidence regarding the exact phraseology given to the police and before the court. Then what is material is a contra meaning to be discernible from both the statements to take it as a contradiction and the same should be a material contradiction which would go to the root of the matter. In the instant case, the evidence of PW1 did not contain any material contradictions to disbelieve him. On the contrary, the evidence of PW1 found to be trustworthy and wholly reliable.

14. Regarding the demand of bribe as deposed by PW1 and the arrival of PW1 and PW2 before the Dy.S.P, entrustment of the trap money, entrustment of bribe, preparation of pre-trap mahazar, as deposed by PW1, PW2 given evidence supporting the evidence of PW1 Ext.D7 is a contradiction marked during examination of PW2. In fact, this is also not a contradiction. The rationale is, a portion of the previous statement was suggested to PW2 for the purpose of either denying or admitting the same, then the answer given by PW2 was that he did not remember. Then the learned Special Judge marked the same as contradiction without alerting



the memory of the witness either to deny or admit the same. Therefore, this also is not a contradiction in the eye of law, as already observed.

15. PW3 examined in this case is the Sub Inspector of Chavara Police Station from 18.02.2009 onwards and on 22.04.2009. He testified about entrustment of Ext.P3 and P4 complaints lodged by PW1 to the accused who worked as Assistant Sub Inspector of Police and it was through him Ext.P6 GD entry regarding entrustment got marked. According to PW3, the accused joined duty on 06.03.2009 after leave and as per the GD entry on 21.04.2009. Ext.P9 is the attendance register marked through PW3 showing the attendance of the accused during the period he was working as the Assistant Sub Inspector of Police.

16. The Additional Tahsildar, Taluk Office, Kollam got examined as PW4. According to him as per the order of the District Collector, Kollam, he along with Special Tahsildar Jayaprakash reached at Kollam Vigilance Dy.S.P. Office at 9 a.m on 22.4.2009 in order to assist the Dy.S.P in a Vigilance case. When he reached at the office of the Vigilance Dy.S.P. a person named Shiharudeen (PW1) was present there. PW4 further would depose that Vigilance Dy.S.P. (PW7) at that time



informed that on the basis of the complaint of Shiharudeen a case had been instituted and Shiharudeen produced the trap amount worth ₹2,000/-, ie. four currency notes in the denomination of ₹500/-. Dy.S.P ascertained the number of the said currency notes and put his initials on the water mark of the said currency notes. PW4 identified M.O.1 series four currency notes having denomination of ₹500/- before the court. According to PW4, then as directed by the Dy.S.P. one of the police constables present there smeared M.O.1 series currency notes with phenolphthalein powder and after that entrusted M.O.1 series currency notes to PW1 with specific direction to hand over the currency notes to the accused as and when demanded by the accused, specifically. According to PW4 the action of phenolphthalein powder was demonstrated by using lime water in a glass. When the hands of the police constable who smeared phenolphthalein powder on the currency notes was dipped in lime water, his fingers showed pink colour change. The lime water also showed pink colour change. The said pink coloured solution was taken in a bottle as sample and marked as 'A' and sealed the same, After that PW4, PW7 Dy.S.P. and other witnesses put their signatures on the said bottle. PW4 identified the



said bottle before the court marked as M.O.2. According to PW4, Ext. P21 entrustment mahazar was prepared detailing the above referred things. Then at about 10.50 a.m they were proceeded to Chavara Police Station and they reached in front of Chavara Police Station at 11.20 a.m. Then PW1 defacto complainant was sent to meet the accused Assistant Sub Inspector with specific direction to give the bribe money on demand by the accused. PW4 further deposed that PW7 Dy.S.P. gave direction to PW1 defacto complainant to give signal. According to PW4, he followed PW1 the defacto complainant and he stood at the landing space of the top most step of the stair case which led to the first floor (upstairs). PW4 testified that PW1 approached the accused and they talked together and PW1 gave the currency notes to the accused and accused received the currency notes using his right hand and put the currency notes inside the right drawer of the table which was placed in front of the seat of the accused. Then PW1 had given the signal as regards to receipt of bribe by the accused and PW4 relayed the signal to the police constable who waited there expecting the signal and within a short span of time Dy.S.P., witness Jayaprakash and other Vigilance Officers reached at the first floor of the Chavara Police



Station. On arrival the Dy.S.P asked the complainant (PW1) whether the accused accepted the bribe amount and soon PW1 pointed out the accused and informed the Dy.S.P. that accused Sudarsanan had demanded and received ₹2,000/- from him as bribe and accused put the amount inside the right drawer of the table. PW4 further testified that he also informed the Dy.S.P. regarding the receipt of bribe money by the accused. After that Dy.S.P. introduced him to the accused showing his identity card and at that time accused became perplexed. After that Dy.S.P. and witnesses were subjected to search mutually and none of them found possessed any currency notes. On questioning the accused by the Dy.S.P. accused admitted that he received 2,000/- as bribe from PW1. Then the hands of witnesses including PW4 and Dy.S.P. were dipped in lime solution and there was no colour change to the solution. The said solution was collected in a bottle and the bottle was marked as 'B' and sealed it. Witnesses including PW4 and PW7 Dy.S.P. put their signatures on the said bottle. PW4 identified the said bottle before this court and the same got marked as M.O.3. After that right fingers of accused Sudarsanan dipped inside the lime water taken in another glass, then right fingers of accused Sudarsanan



showed pink colour change. The said solution was also collected, in another bottle and sealed the same and the bottle was marked as 'C'. According to PW4 he along with witness Jayaprakash and Dy.S.P. put their signatures on the said bottle also. PW4 identified the said bottle, which got marked as M.O.4. At the time of marking M.O.4, the said bottle found empty. However, PW4 categorically deposed before this court that when M.O.4 bottle was sealed pink coloured solution was present inside it. PW4 further deposed that when PW7 Dy.S.P. questioned the accused regarding the amount received from the complainant, the accused Sudarsanan disclosed that he kept the amount inside the drawer of the table which placed in front of his chair.

17. In continuation of the same, as directed by PW7 the Dy.S.P. witness Jayaprakash(CW3) examined the right top drawer of the table and took four currency notes having denomination of ₹500/- from the drawer of the table used by the accused and entrusted it to the Dy.S.P. and it was understood that the said four currency notes were the currency notes described in Ext.P21 mahazar. PW4 deposed further that the corners of the said four currency notes were dipped in lime water as per the direction of Dy.S.P, the same lime water became pink and the corners of



the currency notes also turned pink colour and the said lime water also was taken as sample in another bottle and the said bottle was marked as 'D' for the purpose of identifying it and PW4, witness Jayaprakash and Dy.S.P. put their signatures on the said bottle. PW4 identified the said bottle also before this court and the same got marked as M.0.5 through PW4. According to PW4 after that witness No.3 Jayaprakash conducted body search of accused Sudarsanan and obtained a purse from his uniform shirt. Inside the said purse currency notes amounting to ₹4,933/- found present. That apart, identity card of the accused was also present inside the said purse. The said identity card got marked as M.O.6 through PW4. Currency notes worth ₹4,933/- in different denominations and one 2 rupee note got identified by PW4 before court and the same were marked as M.O.7 series.

18. Thus on the drawer of the table of the accused, looked like the seat of the accused, a plastic cover packet found present inside it and on examining the plastic cover by the Dy.S.P. ganja and ganja beedies found present inside the said packet and a separate mahazar was prepared in respect of the said ganja and ganja beedies and the same were entrusted



to the Circle Inspector of Police, Chavara for the purpose of further proceedings. According to PW4, as per the direction of the Dy.S.P. witness Jayaprakash (CW3) inspected the lower drawer of the table and a document in the name of Omana Amma and an application in the name of 'Sheela' found present inside the said drawer. The application in the name of 'Sheela' got marked as M.O.8. The document which was in the name of Omana Amma was sale deed No.1748/93 of Sub Registry Office, Chavara. (The said document was marked as M.O.11 through PW7 Investigating Officer). According to PW4, Dy.S.P. prepared a mahazar detailing the above referred aspects and they put their signatures on the said mahazar, and the said mahazar dated 22.4.2009 11.30 a.m got marked as Ext.P22 through PW4.

19. Dy.S.P got examined as PW7 and he testified fully supporting the versions of PW1 and PW4, the Tahsildar. The evidence of PW7 would show that PW1, the defacto complainant approached him on 22.4.2009 and informed the matter and on the basis of the statement given by PW1, ie. Ext.P5, PW7 registered crime No.130/2009 and prepared Ext.P5(a) FIR. PW7 had specifically testified that PW1



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entrusted ₹2,000/-, ie. M.O.1 series four currency notes having denomination of ₹500/- and as per his direction Head Constable Mukundan smeared M.O.1 series currency notes with phenolphthalein powder and the said proceedings were recorded in Ext.P21 entrustment mahazar and the trap amount was entrusted to PW1, the defacto complainant. Subsequently PW7, along with PW1 and other witnesses had proceeded to Chavara Police Station and they reached there at about 11.30 a.m and the trap was successfully laid. The transaction that had taken place at the first floor of the police station, Chavara had been spoken by PW7 also. PW7 had identified M.O.1 to M.O.11 before the court. During cross-examination, PW7 had admitted that he had prior acquaintance with the accused, Sudarsanan and the accused worked under him about one year when PW7 had been working as Sub Inspector. During cross-examination, PW7 had denied the suggestion made by the learned defence counsel that the accused had never demanded any bribe and as per the instigation of PW7, PW1 complainant thrust the amount into the hands of the accused. According to him, the custodian of the final report would ordinarily be the Assistant



Sub Inspector or Head constable. PW7 had further affirmed that final report of crime 130/2009 of Chavara Police Station had been seized by him under inventory, from the Sub Inspector of Police, Chavara, who got examined as PW3. During cross-examination, PW7 had also deposed that on 21.4.2009, PW1 defacto complainant approached the accused at Chavara Police Station. PW7 had emphatically denied the suggestion at the instance of the learned defence counsel that PW1 intentionally dropped the amount and a ganja packet inside the drawer of the accused's table without the accused's knowledge to wreak vengeance.

20. The contention raised by the learned counsel for the appellant/accused that PW4, the decoy witness did not witness any version between PW1 and the accused found to be untenable as the evidence of PW4 would suggest a discussion before acceptance of bribe money by the accused.

21. In the instant case, DW1 to DW3 were examined and Exts.D8 and D9 were tendered in evidence. In fact, nothing was argued by the learned counsel for the appellant/accused regarding the veracity of



these evidence which was found to be of no significance in the facts of this case.

22. 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) xxxxxx

(c) xxxxxxxx

(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. xxxxxx*

(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.*

23. 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.”

24. On scrutiny of the evidence, no anomaly could be noticed in the evidence of PW1, supported by that of PW2, PW4, PW7 and other witnesses where bribe money was recovered redhandedly from the possession of the accused immediately after he demanded and accepted the same. Though it is argued by the learned counsel for the appellant/accused that ganja also was seized from the table of the accused and therefore when PW1 given evidence that the accused asked ‘other item’ whether it was meant for the said ganja also makes to believe the evidence of PW1 in the matter of demand, in fact, evidence of PW1 along with other evidence when read in toto in no way suggests even such a remote possibility. Thus this contention also must fail. Regarding the contention that there are contradictions in the evidence of PW1 and PW2, no material contradiction to be found to read the same as sufficient to disbelieve the prosecution case. Thus none of the contentions raised by the learned counsel for the appellant are found tenable.

25. On an overall evaluation of the evidence discussed, the ingredients to constitute offences punishable under Sections 7 and 13(1)(d)



r/w 13(2) of the PC Act, 1988 have been satisfactorily proved by the prosecution beyond reasonable doubts and thereby the learned Special Judge found that the accused committed the said offences. In view of the above, conviction doesn't require any interference.

26. Coming to sentence, the sentence imposed by the Special Court can be interfered and reduced in the interest of justice to the statutory minimum.

27. In the result,

(i) the appeal is allowed in part;

(ii) The conviction imposed by the learned Special Judge is confirmed;

(iii) The sentence is modified as under:

(1) The appellant/accused is sentenced to undergo Rigorous Imprisonment for a period of six months and to pay fine of Rs.5,000/- (Rupees Five thousand only) for the offence punishable under Section 7 of the PC Act, 1988 and in default of payment of fine, the appellant/accused shall undergo Rigorous Imprisonment for a period of two weeks;

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



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Imprisonment for a period of one year and to pay fine of Rs.10,000/- (Rupees Ten thousand only) for the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988 and in default of payment of fine, the appellant/accused shall undergo Rigorous Imprisonment for a period of one month;

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

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

Sd/-

A. BADHARUDEEN, JUDGE

rtr/