



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-S-2530-SB-2010

Reserved on: February 14th, 2025

Pronounced on: March 11th, 2025

Neka Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Ms. Rupinder Kaur Thind, Advocate
for the appellant.

Mr. Shiva Khurmi, Assistant Advocate General, Punjab.

MANJARI NEHRU KAUL, J.

Appellant is impugning the judgment of conviction and order of sentence dated 01.10.2010 passed by learned Special Judge, Mansa, whereby he has been convicted and sentenced under Section 7 and 13(2) of The Prevention of Corruption Act (hereinafter referred to as 'the P.C. Act') as under:

Offence under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
7 of the P.C. Act	RI for one year	₹1,000/-	R.I. for three months
13(2) of the P.C. Act	RI for one year	₹1,000/-	R.I. for three months

2. The brief facts of the prosecution case may be noted as thus:

(i) The FIR in the present case was registered based on the statement of the complainant, Dhanna Singh, at Police Station Vigilance Bureau, Bhatinda. The complainant alleged that his wife had

executed a sale deed in favour of their daughter-in-law. Subsequently, the complainant submitted an application before the Tehsildar for sanctioning the mutation, which was allowed, directing the mutation to be entered. The complainant then handed over the said application to the concerned Kanungo, who further marked it to the Patwari (the appellant). Upon requesting the appellant to enter the mutation of the land in question, the appellant allegedly demanded ₹1,500/- as a bribe, though the deal was ultimately settled at ₹800/-.

(ii) The complainant, after discussing the matter with his brother, Gurudev Singh (who later acted as the shadow witness), approached the office of the Vigilance Bureau to have the appellant apprehended and met DSP Balbir Singh, the Investigating Officer (I.O.). Upon receiving the complaint, the I.O. summoned two independent witnesses-Kuldeep Singh, District Welfare Officer, and Sohan Singh, Senior Assistant, to join the raiding team. The complainant produced eight currency notes of ₹100 each, whose serial numbers were duly recorded by the I.O. The notes were then treated with phenolphthalein powder. Additionally, a personal search of the complainant was conducted to ensure he was not carrying any other currency. He was specifically instructed not to shake hands with the appellant before or after handing over the tainted money.

(iii) Gurudev Singh, the brother of the complainant, was assigned the role of shadow witness. A demonstration of the trap was conducted in the office, and after its conclusion, the solution used for the demonstration was disposed of, and the raiding team washed their hands. A memorandum was prepared documenting these proceedings, duly attested by the complainant and the witnesses. Thereafter, the

raiding party proceeded to the office of the appellant. The complainant and the shadow witness entered the *Patvarkhana*, while the trap team remained concealed nearby. Upon receiving the pre-arranged signal from the shadow witness, the raiding team conducted the raid and apprehended the appellant on the spot.

(iv) A sodium carbonate solution was prepared in a glass, and to verify its effectiveness, two officials dipped their hands into it, but the color of the solution did not change, however, when the hands of the appellant were washed in the same solution, it turned light pink. The solution was then sealed and taken into possession. Similarly, the front pocket of the appellant's *kurta* was washed in the sodium carbonate solution, which also resulted in a color change. The appellant's *kurta* pocket, along with the solution, was sealed and taken into possession by the I.O. The tainted currency notes, totalling eight, were recovered from the front pocket of the appellant's *kurta*, and their serial numbers matched those recorded during the pre-trap proceedings.

(v) During the course of the investigation, the I.O. took the relevant documents into possession and the sealed items were sent to the Forensic Science Laboratory for examination.

3. **Findings of the learned trial Court:**

Upon appreciating the evidence led by both the prosecution and the defence, the learned trial Court convicted the appellant for offences punishable under Sections 7 and 13(2) the P.C. Act vide judgment dated 01.10.2010 and sentenced the appellant as detailed above.

4. Aggrieved by the conviction, the appellant has preferred the present appeal.

5. **Submissions on behalf of the appellant:**

(i) Learned counsel for the appellant contends that the appellant has been falsely implicated and has never demanded any money, let alone illegal gratification from the complainant.

(ii) It is submitted that the alleged false implication arises from an earlier incident in which the appellant was involved in an accident with a relative of the complainant. The appellant had registered an FIR against the relative of the complainant, following which the complainant and his family exerted pressure on the appellant to compromise the matter. However, when the appellant refused to yield, the present FIR was lodged on false and fabricated grounds.

(iii) Learned counsel further argues that the falsity of the prosecution's case is evident from the fact that the raid was conducted on 20.09.2006, whereas the mutation had already been incorporated on 11.09.2006. Since the work was completed well before the alleged demand, there was no occasion for the appellant to demand any illegal gratification from the complainant.

(iv) Additionally, it is contended that the shadow witness in the present case was none other than the complainant's own brother, thereby rendering his testimony unreliable. Furthermore, after sealing the recovered items, the I.O. retained custody of the seal instead of handing it over to an independent witness. When viewed in conjunction with the unexplained delay of seven days, in sending the sealed parcels to the FSL, this creates serious doubt regarding the prosecution's version of events.

(v) Learned counsel submits that the prosecution has failed to prove the essential ingredients of demand and acceptance of illegal

gratification. Moreover, there exists material inconsistencies in the testimonies of prosecution witnesses. Consequently, the conviction of the appellant cannot be sustained as the impugned judgment is based on conjectures and surmises. In support of these submissions, the counsel has placed reliance upon *Amrik Singh Versus State of Punjab 2005(4) RCR (Criminal) 310*.

6. **Submissions on behalf of the respondent-State:**

(i) Learned State counsel while refuting the submissions made on behalf of the appellant, argues that the appellant was caught red-handed while accepting a bribe from the complainant. The tainted money was recovered from the front pocket of the appellant's *kurta*, and both his hands and *kurta* pocket tested positive for phenolphthalein when washed with the sodium carbonate solution. This fact was further corroborated by the FSL report produced in evidence during the trial.

(ii) It is contended that once the bribe money was recovered from the appellant, the presumption under Section 20 of the P.C. Act was rightly invoked by the learned trial Court, thereby shifting the onus on the appellant to explain the possession of the tainted money, a burden which he failed to discharge.

(iii) Learned State counsel further submits that two independent witnesses, namely Kuldeep Singh and Sohn Singh, were part of the raiding team. Hence, the contention that no independent witness was present is without merit. Moreover, the bribe money was recovered in their presence, and the serial numbers of the currency notes matched those recorded during the pre-trap proceedings.

(iv) Lastly, it is argued that the defence of false implication raised by the appellant is an afterthought and cannot form the basis for

acquittal, particularly in view of the cogent evidence led by the prosecution, which establishes the guilt of the appellant beyond a reasonable doubt.

7. The appellant has been convicted under Section 7 and 13 (2) of the P.C. Act, therefore, it would be relevant to note here that the P.C. Act imposes a stringent requirement on the prosecution to prove the demand and acceptance of illegal gratification by a public servant, beyond a shadow of reasonable doubt. The conviction of the appellant was based on the allegation put forth by the prosecution that the appellant, a public servant holding the post of Patwari, had demanded and accepted an illegal gratification of ₹800/- from the complainant for entering certain revenue mutations.

8. The appellant, aggrieved by his conviction and sentence has challenged the findings of the trial Court on multiple grounds, including **failure of the prosecution to establish the demand and acceptance of illegal gratification beyond reasonable doubt**, improper appreciation of evidence, **erroneous invocation of the presumption under Section 20 of the P.C. Act**, and complete disregard of the **defence raised by the appellant** suggesting false implication.

9. Having carefully considered the material on record, the evidence led by both parties, and the settled principles of law, this Court finds serious infirmities in the case of the prosecution, which render the conviction of the appellant legally unsustainable.

10. Accordingly, for the reasons detailed below, this Court sets aside the impugned order convicting the appellant for offence under Section 7 and 13(2) of the P.C. Act and acquits him of all charges.

11. Before analysing the merits of the present appeal, it is

imperative to reiterate the well-settled legal principles governing conviction under Section 7 and 13(1)(d) of the P.C. Act.

12. Hon'ble the Supreme Court, in *Neeraj Dutta Versus State (NCT of Delhi), 2023 (4) SCC 731* has emphatically held in the following terms that in order to establish an offence under the P.C. Act, the prosecution must prove both demand and acceptance of illegal gratification beyond reasonable doubt.

The prosecution must first establish the demand of illegal gratification, followed by proof of its acceptance by the accused. Mere possession of tainted money or recovery thereof is not sufficient to sustain a conviction unless the demand is independently proved. It would be apposite to reproduce the observations made by Hon'ble the Supreme Court in *Neeraj Dutta (supra)*.

“74. 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)(i) 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.” (emphasis added) The referred question was answered in paragraph 76 of the aforesaid judgment, which reads thus:

“76. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

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 Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution.” (emphasis added)

11. Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon’ble Judges in the cases of B. Jayaraj and P. Satyanarayana Murthy. There is another decision of a three Judges’ bench in the case of N. Vijayakumar v. State of Tamil Nadu, which follows the view taken in the cases of B. Jayaraj¹ and P. Satyanarayana Murthy. In paragraph 9 of the decision in the case of B. Jayaraj¹, this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:

“9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only

on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent.” 5 2021 (3) SCC 687 (emphasis added) The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are ‘demand’ and ‘acceptance’ of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.

12. In the case of N. Vijayakumar, another bench of three Hon’ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1) (d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

*“26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. **Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also***

fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.” (emphasis added) Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.

13. Section 7, as existed prior to 26 th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to “any gratification”. The substituted Section 7 does not use the word “gratification”, but it uses a wider term “undue advantage”. When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence.

14. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt. The Constitution Bench was dealing with the

issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence....”

13. In the case of ***Soundarajan Versus State 2023 LiveLaw (SC) 3147***, Hon’ble the Supreme Court has further clarified that a simpliciter demand for money does not constitute a demand for illegal gratification; it must be unequivocally proved that the demand was for a corrupt motive.

14. Section 20 of the P.C. Act provides for a legal presumption that once the acceptance of a bribe is proved, it shall be presumed that the money was accepted as illegal gratification. However, this presumption cannot be raised unless the prosecution first discharges its burden of proving demand beyond reasonable doubt.

15. In ***State of Punjab Versus Madan Mohun Lal Verma 2013(3) RCR (Criminal) 972***, Hon’ble the Supreme Court held that before calling upon the accused to explain the possession of money, the prosecution must establish the foundational fact of demand. Failure to prove demand renders the presumption inoperative.

16. Adverting to the facts of the present case, the prosecution examined two prime witnesses to prove the alleged demand of illegal gratification-PW-1 Dhanna Singh (complainant) and PW-2 Gurdev Singh (shadow witness), brother of the complainant.

17. Complainant Dhanna Singh (PW-1) deposed that he, along with PW-2 Gurdev Singh went to the office of the appellant, where the appellant allegedly demanded ₹800/-. However, upon perusal of his testimony, it becomes evident that no specific demand for illegal gratification was made by the appellant in relation to the entry of mutations. His deposition merely states that the appellant asked for money, but there is no categorical assertion that the amount was sought as a *quid pro quo* for any official act.

18. The shadow witness PW-2 Gurdev Singh, who was the brother of the complainant, stated that the appellant asked the complainant whether he had brought the money, following which the complainant handed over the currency notes. However, this statement also fails to specify whether the amount was sought as illegal gratification.

19. Hon'ble the Supreme Court in *Neeraj Datta (supra)* has held that the demand must be explicit and unambiguous-it cannot be inferred merely from the acceptance of money. In the present case, no independent witness has corroborated the demand, and the shadow witness is an interested witness, being the brother of the complainant.

20. Further, it has been admitted by the prosecution that at the time when the complainant and PW-2 Gurdev Singh visited the office of the appellant, several other Patwaris and officials were present. However, none of them were made witnesses or examined during the trial.

21. Hon'ble the Supreme Court in *Madan Mohan Lal Verma (supra)* has cautioned against placing undue reliance on interested witnesses without corroboration from independent sources. The failure of the prosecution to examine any neutral witness severely weakens the version of the prosecution and raises serious doubt about the credibility of the allegations.

22. Since the prosecution has failed to establish demand, the learned trial Court erred in invoking the presumption under Section 20 of the P.C. Act. The mere recovery of tainted money from the possession of the accused does not automatically establish guilt, as has been held in *Madan Mohan Lal Verma (supra)*. The foundational fact of

demand must first be proved before presumption can be raised.

23. The case of the prosecution further collapses upon perusal of the evidence regarding the mutations in question. It has been conclusively proved that the mutations had already been entered by the appellant on 25.08.2006, merely a month before the trap was laid on 20.09.2006.

24. The Investigating Officer, PW-11 DSP Balbir Singh confirmed this fact in his deposition. "*It is correct that mutations were already entered by the Patwari on 25.08.2006*". Thereby, negating any possibility of the appellant demanding bribe for an act that had already been completed. The prosecution deliberately concealed this material fact, which casts serious doubt on the veracity of the complaint itself.

25. Furthermore, the appellant led cogent evidence to prove that he was being falsely implicated due to prior enmity with Binder Singh, a relative of the complainant. He placed on record FIR No.179 dated 23.12.2004 (Exhibit DW-3/A), in which he was the complainant against Binder Singh. The defence witnesses DW-1-Mukhtiar Singh and DW-2 Prem Singh corroborated that the appellant was being pressurized to compromise the matter and was falsely implicated when he refused.

26. Hon'ble the Supreme Court has consistently held that an accused is not required to prove his defence beyond reasonable doubt but only on a preponderance of probabilities. Even a plausible defence that raises doubt on the prosecution's version must be considered. The trial Court in the present case completely disregarded the defence, which was a serious error.

27. In light of the failure of the prosecution to prove demand,

absence of independent corroboration, erroneous invocation of the presumption under Section 20 of the P.C. Act, and concealment of material facts, this Court has no hesitation that the conviction of the appellant is wholly unsustainable.

28. Accordingly, the instant appeal is allowed.

March 11th, 2025
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes