

HIGH COURT OF KARNATAKA**Date of Decision: 13th February 2024****Bench: Hon'ble Mr. Justice S. Rachaih**

CRIMINAL APPEAL NO. 665 OF 2011 (A)

THE STATE OF KARNATAKA ...APPELLANT**VERSUS****L DORAIRAJ ...RESPONDENT****Legislation:**

Sections 7, 13(1)(d) , Section 13(2) of Prevention of Corruption Act, 1988

Subject: Appeal against acquittal of the respondent, L Dorairaj, an Enforcement Officer in the EPF Commissioner Office, Bangalore, for the alleged demand of a bribe under the Prevention of Corruption Act, 1988.

Headnotes:

Acquittal of L Dorairaj from charges under Sections 7, 13(1)(d), Section 13(2) of the Prevention of Corruption Act – Accused, a public servant, alleged to have demanded a bribe for resolving Provident Fund issues – Trial court found insufficient evidence to prove demand and acceptance of illegal gratification [Paras 1-5, 17, 21-22].

Evidence Analysis – Contradictions in witness statements regarding the signal given during the alleged transaction of bribery – PW.6 (panch witness) and PW.7 (shadow witness) provided conflicting accounts, undermining the credibility of the prosecution's case [Paras 19, 21].

Prosecution's Failure to Prove Demand and Acceptance – Mere recovery of tainted money not sufficient to establish the offence under the PC Act without concrete proof of demand and acceptance of the bribe [Paras 20, 21].

Principles of Appeal against Acquittal – Double presumption in favor of the accused; the High Court upholds the trial court's judgment due to the absence of definitive proof of the accused's guilt [Paras 16, 22-23].

Referred Cases:

- BHAGWAN JAGANNATH MARKAD AND OTHERS V. STATE OF MAHARASHTRA (2016) 10 SCC 537
- SHANKERBHAI LALJIBHAI ROT V. STATE OF GUJARAT(2004) 13 SCC 487
- VINOD KUMAR GARG V. STATE (GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI) (2020) 2 SCC 88
- D VELAYUTHAM V. STATE REPRESENTED BY INSPECTOR OF POLICE, SALEM TOWN, CHENNAI (2015) 12 SCC 348
- C M SHARMA V. STATE OF ANDHRA PRADESH (2010) 15 SCC 1
- SURESH CHANDRA JANA V. STATE WEST BENGAL & ORS. (2017) 16 SCC 466
- VINUBHAI RANCHHODBHAI PATEL V. RAJIVBHAI DUDABHAI PATEL AND OTHERS(2018) 7 SCC 743
- PHULA SINGH V. STATE OF HIMACHAL PRADESH(2014) 4 SCC 9
- NEERAJ DUTTA V. STATE (GOVT OF NCT OF DELHI)(2023) 4 SCC 731
- INDRA VIJAY ALOK V. STATE OF MADHYA PRADESH(2016) 1 SCC 709
- CHAITANYA PRAKASH AUDICHYA V. CENTRAL BUREAU OF INVESTIGATION (2015) 7 SCC 720
- STATE OF GUJARAT V. NAVINBHAI CHANDRAKANT JOSHI & OTHERS (2018) 9 SCC 242
- NAGANNA V. STATE OF KARNATAKA CRL.A.NO.214/2007 [KARNATAKA HC]
- N.VIJAYAKUMAR v. STATE (2021) 3 SCC 687
- NEERAJ DUTTA v. STATE (GOVT. OF N.C.T. DELHI) (2023) 4 SCC 731

Representing Advocates:

For Appellant: Sri. Nitin Gowda K.C. for Sri P. Prasanna Kumar

For Respondent: Sri Chandrashekar K.

JUDGMENT

1. This Criminal Appeal is filed by the appellant-State, being aggrieved by the judgment and order dated 24.12.2010 in Spl.C.C. No.39/2004 on the file of the XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCH.34), wherein the Trial Court acquitted the respondent / accused for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act, 1988 (for short 'PC Act').

2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case are as under:

3. It is the case of the prosecution that the accused being the public servant working in the capacity as Enforcement Officer in the Department of Employees' Provident Fund Commissioner, Mysuru, was authorized to recommend in settling the issues of M/s.VST Precision Components Ltd., Mysuru under the EPF Act. It is alleged that on 09.10.1997 and 17.10.1997, the accused by abusing his official position as a public servant, said to have demanded Rs.5,000/- as illegal gratification from the complainant to do some official favour to the complainant. The complainant being unhappy about the demand made by the accused, has approached the Lokayukta Police at the first instance, thereafter, he was advised to approach CBI. The complainant contacted CBI Officer and lodged a complaint against the accused regarding the demand of bribe by the accused to do some official favour.

4. The complainant on 17.10.1997 visited the office of the Investigating Officer where PWs.6 and 7 were introduced to the complainant and pre-trap panchanama was drawn. On the same day, the complainant along with panch witnesses and also the Investigating Officer have left the office by van. As per the direction of PW.9, the complainant had to take shadow witness along with him. Accordingly, the complainant and the shadow witness said to have visited the office of the accused and said to have paid the amount of Rs.5,000/- as demanded by the accused. After having paid the said amount, the complainant signaled the Investigating Officer. Immediately, the Investigating Officer along with co-panch entered into the chamber of the accused and trap mahazar was drawn and seizure of tainted notes had taken place. The said seizure mahazar is marked as Ex.P10. The CBI conducted investigation and submitted the charge sheet.
5. To prove the case of the prosecution, the prosecution has examined 11 witnesses as PW.1 to PW.11 and got marked 24 documents as Exs.P1 to P24 and got identified material objects as M.O.1 to M.O.7. On the other hand, the respondent herein got marked Ex.D1 which is a transfer order and the respondent has not marked any documents on his behalf. The Trial Court after appreciating the oral and documentary evidence on record, opined that the prosecution has failed to prove the ingredients of Sections 7, 13(1)(d) r/w 13(2) of the PC Act and recorded the acquittal. Being aggrieved by the same, the Lokayukta police have preferred this appeal.
6. Heard Sri.Nitin Gowda K.C., learned counsel appearing for Sri P.Prasanna Kumar, learned counsel for the appellant and Sri Chandrashekar K., learned counsel for the respondent.
7. It is the submission of the learned counsel for appellant that the findings of the Trial Court in recording the acquittal which appears to be perverse and illegal and the same is liable to be set aside.
8. It is the submission of the learned counsel for appellant that the Trial Court failed to appreciate the evidence of PW.6 who is the panch witness to the incident, PW.7 who is shadow witness and the evidence of PW.11 who is the complainant in this case properly, consequently, the impugned judgment is passed which is required to be set aside.
9. It is further submitted that all the witnesses supported the case of the prosecution with regard to demand and acceptance of illegal gratification and also proved the pendency of work with the respondent. In spite of having

proved the demand and acceptance of illegal gratification, the Trial Court failed to take note of the same and passed the impugned judgment which is liable to be set aside. Making such submissions, learned counsel for the appellant prays to allow the appeal.

10. In support of his contentions, learned counsel relied on the judgments of the Hon'ble Supreme Court in the following cases:-
 1. BHAGWAN JAGANNATH MARKAD AND OTHERS V. STATE OF MAHARASHTRA¹
 2. SHANKERBHAJ LALJIBHAI ROT V. STATE OF GUJARAT²
 3. VINOD KUMAR GARG V. STATE (GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI)³
 4. D VELAYUTHAM V. STATE REPRESENTED BY INSPECTOR OF POLICE, SALEM TOWN, CHENNAI⁴
 5. C M SHARMA V. STATE OF ANDHRA PRADESH⁵
 6. SURESH CHANDRA JANA V. STATE WEST BENGAL & ORS.⁶
 7. VINUBHAI RANCHHODBHAI PATEL V. RAJIVBHAJ DUDABHAI PATEL AND OTHERS⁷
 8. PHULA SINGH V. STATE OF HIMACHAL PRADESH⁸
 9. NEERAJ DUTTA V. STATE (GOVT OF NCT OF DELHI)⁹
 10. INDRA VIJAY ALOK V. STATE OF MADHYA PRADESH¹⁰
 11. CHAITANYA PRAKASH AUDICHYA V. CENTRAL BUREAU OF INVESTIGATION¹¹

¹ (2016) 10 SCC 537

² (2004) 13 SCC 487

³ (2020) 2 SCC 88

⁴ (2015) 12 SCC 348

⁵ (2010) 15 SCC 1

⁶ (2017) 16 SCC 466

⁷ (2018) 7 SCC 743

⁸ (2014) 4 SCC 9

⁹ (2023) 4 SCC 731

¹⁰ (2016) 1 SCC 709

¹¹ (2015) 7 SCC 720

12. STATE OF GUJARAT V. NAVINBHAI CHANDRAKANT JOSHI & OTHERS¹²

13. NAGANNA V. STATE OF KARNATAKA¹³

11. Per contra, Sri.Chandrashekar.K, learned counsel for the respondent, vehemently justified the judgment of acquittal passed by the Trial Court and submitted that the evidence of PW.6 who is panch witness contrary to the evidence of PW.7 who is shadow witness and on conjoint reading of evidence of these two witnesses, it appears some contradictions in their evidence. Having considered the said contradictions, it may be inferred that they were not present at the scene of occurrence. Therefore, their evidence ought to be discarded as eyewitnesses to the incident. The Trial Court rightly appreciated their evidence and acted upon it properly.

12. It is further submitted that the evidence of PW.11 who is said to be the complainant has even though supported the case of the prosecution, in the absence of independent corroboration, his evidence ought not to have been considered. Therefore, PW.11 being an interested witness, even though supported the case of the prosecution, conviction cannot be based on such evidence.

13. It is further submitted that the prosecution has failed to prove the demand and acceptance of illegal gratification which is sine qua non to constitute offences stated supra. Therefore, the findings of the Appellate Court required to be maintained. Making such submission, learned counsel for the respondent prays to dismiss the appeal.

14. In support of his contentions, learned counsel for the respondent relied on the following judgments:

1. N.VIJAYAKUMAR v. STATE¹⁴

2. NEERAJ DUTTA v. STATE (GOVT. OF N.C.T. DELHI)¹⁵

¹² (2018) 9 SCC 242

¹³ CRL.A.NO.214/2007 [KARNATAKA HC]

¹⁴ (2021) 3 SCC 687

¹⁵ (2023) 4 SCC 731

15. Having heard learned counsel for the respective parties and also perused the averments of the appeal memo along with findings of the Trial Court, the points which would arise for my consideration are:
 - i) Whether the findings of the Trial Court in recording the acquittal for the offences under Sections 7, 13(1)(d) r/w 13(2) of the PC Act is justifiable?
 - ii) Whether the appellant has made out grounds to interfere with the findings of acquittal passed by the Trial Court?
16. It is relevant to take note of the proposition of law regarding appeal against acquittal. It is needless to say that, in a case of appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. If the two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal.
17. Having regard the proposition of law, now it is relevant to refer to the facts of the case. The case of the prosecution is that, the accused / respondent was discharging the duty as a public servant in the office of Employees' Provident Fund Commissioner at Mysuru. There are some issues in the complainant – Company regarding Provident Fund. The respondent being an officer proposed for settlement and assured that the matter would be resolved amicably. Having said that, the respondent said to have demanded illegal gratification for a sum of Rs.5,000/- from the complainant. The complainant being aggrieved by the same and he is not having interested to make such payment, approached the ACB at first instance and subsequently, he was advised to approach CBI. Accordingly, a complaint came to be registered by the complainant who is examined as PW.11 and the said complaint is marked as Ex.P14. The appellant herein directed the complainant to act as per their instructions. Accordingly, the complainant was invited to the office and PWs.6 and 7 have been introduced to the complainant.

18. On the following day, PW.11 was directed to take PW.7 along with him and approach the respondent. As per the direction, both PWs.7 and 11 went to the Company of the complainant expecting the arrival of the respondent. However, the respondent had not been there. Thereafter, they came back to the office and as per the direction, again went to the office of the respondent.

19. As per the evidence of PW.7, both himself and PW.11 entered inside the building, where the respondent was working and he was standing 10 feet away from the chamber of the respondent. PW.11 went inside the chamber and handed over the amount. The respondent after receiving the amount, kept it on his left side chest pocket of the shirt. PW.11 as pre-directed by the authority, gave signal by removing his pen from the pocket. Whereas, PW.6 being a panch witness has stated in his evidence that, PW.11 gave signal to them by removing the kerchief and wiped his head. PW.11 has stated in his evidence that, he was directed to remove his spectacle and give signal. On conjoint reading of the evidence of all the three witnesses, it appears that, each witnesses have stated different version regarding signal given by PW.11.

20. Assuming that, the appellant herein and his team conducted raid and seized the tainted notes from the respondent that may not be sufficient to constitute an offence. In other words, mere recovery of the amount is not sufficient to constitute an offence, unless, the demand and acceptance is proved by the prosecution. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of N.VIJAYAKUMAR, stated supra, paragraph Nos.26 and 27 which read 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 and in B. Jayaraj v. State of A.P. 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.

27. The relevant paras 7, 8 and 9 of the judgment in B. Jayaraj read as under: (SCC pp. 58-59)

“7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M. Sharma v. State of A.P. and C.M. Girish Babu v. CBI.

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any

valuable thing or pecuniary advantage cannot be held to be established.

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.”

The abovesaid view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a “possible view” as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.”

21. On careful reading of the dictum of Hon'ble Supreme Court, it makes it clear that, mere recovery of the amount by itself is not sufficient to prove the charge of the case of the prosecution against the accused and to

raise the presumption under Section 20 of the PC Act, the prosecution has to prove the demand and acceptance of illegal gratification. In order to prove the offence under Section 7 of the PC Act, it is settled position of law that demand of illegal gratification is sine qua non to constitute the said offence. The Hon'ble Supreme Court further observed that, once the conviction is recorded under the provision of the Prevention of Corruption Act, it casts a social stigma on the person in the Society apart from serious consequences on the service rendered. It is needless to say that, appreciation of evidence in the case of appeal against acquittal should be fair and impartial. In case if the evidence is not appreciated properly, certainly, the person who rendered his service throughout would be put to hardship and entire family of that person would suffer because of the stigma.

22. Having considered the dictum of the Hon'ble Supreme Court and the facts and circumstances of the case, I am of the considered opinion that the Trial Court has rightly appreciated the evidence and recorded the acquittal and there is no occasion for this court to interfere with such finding.

23. In the light of the observations made above, I proceed to answer the points which arose for my consideration as under:-

Point No.(i) .. in the 'Affirmative'

Point No.(ii) .. in the 'Negative'

24. Hence, I proceed to pass the following:-

ORDER

The Criminal Appeal stands dismissed.

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