



2026:KER:1885

CRL.A.NO.1063 OF 2013

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 12TH DAY OF JANUARY 2026/22ND POUSHA, 1947

CRL.A NO. 1063 OF 2013

AGAINST THE JUDGMENT DATED 12.07.2013 IN CC NO.36
OF 2007 OF ENQUIRY COMMISSIONER& SPECIAL JUDGE,
KOZHIKODE.

APPELLANT/ACCUSED:

V.CHANDRAN
AGED 50 YEARS
S/O.RAMANKUTTY, VALLIPLAKKAL HOUSE,
VALLIYOORKAVU, PAYYAMPALLY VILLAGE, ARTTUTHARA
DESOM,MANANTHAVADY, WAYANADU DISTRICT.

BY ADV SRI.MATHEW KURIAKOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BNUREAU,WAYANAD.
(VC-2/2006 OF VIGILANCE AND ANTI-CORRUPTION
BUREAU,WAYANAD)
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

SPL PP RAJESH.A SR PP REKHA.S

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
19.12.2025 AND THE COURT ON 12.01.2026 DELIVERED THE
FOLLOWING:



2026:KER:1885

CRL.A.NO.1063 OF 2013

2

CR

JUDGMENT

Dated this the 12th day of January, 2026

This criminal appeal is at the instance of the sole accused in C.C.No.36/2007 on the files of the Enquiry Commissioner and Special Judge, Kozhikode and he assails conviction and sentence imposed against him as per judgment dated 12.07.2013 in the above case.

2. Heard the learned counsel appearing for the appellant and the learned Special Public Prosecutor for the respondent. Perused the verdict impugned and records of the Special Court.

3. Here, the prosecution alleges commission of offences punishable under Sections 7 and 13(1)(d) r/w. Section 13(2) of the Prevention and Corruption Act, 1988 (hereinafter referred to as 'PC Act, 1988') by the accused, who was working as a Villageman at Payyampally Village



2026:KER:1885

CRL.A.NO.1063 OF 2013

3

Office, Mananthavady, on the premise that the accused demanded and accepted ₹500 as bribe at 3.15 pm on 04.10.2006.

4. On getting the final report filed, the learned Special Judge recorded evidence. PW1 to PW10 were examined and Exts.P1 to P23 and MO1 to MO8 were marked on the side of the prosecution. No evidence was adduced on the side of the defence.

5. The Special Court, on evaluation of evidence, finally found that the accused committed offences punishable under Sections 7 and 13(1)(d) r/w. Section 13(2) of the PC Act, 1988 and accordingly, the appellant was convicted and sentenced as under:

“In the result, the accused is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo Rigorous Imprisonment for one month for each of the offences punishable under Sections 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988. Substantial



2026:KER:1885

CRL.A.NO.1063 OF 2013

4

portion of the sentence shall run concurrently. Accused is entitled to get set off under Section 428 of Criminal Procedure Code regarding the period of detention. Bail bond executed by the accused is cancelled."

6. The learned counsel appearing for the accused/appellant argued that the conviction and sentence imposed by the Special Court are unsustainable in law. According to him, the prosecution case, which proceeds on the assumption that PW1/the complainant's property was measured by the accused, who was incompetent to measure the property, is not believable. It is submitted that in fact, when PW1 had approached the accused to measure his property, the accused arranged a private surveyor and on the date of trap, the complainant reached the village office, where the private surveyor, who was examined as DW1, also was present and in the meantime, the complainant, who was examined as PW1, forcefully inserted the bribe money into the pocket of the accused, though the accused had no



2026:KER:1885

CRL.A.NO.1063 OF 2013

5

intention to either demand or accept the bribe, as alleged by the prosecution. The learned counsel given emphasis to the evidence of PW1 also in this regard. It is also pointed out that there is a contradiction in the evidence of PW1 and PW7 regarding the handing over of money by PW1 to the accused, and that there is a discrepancy in the evidence of PW7 regarding his position at the time of the incident. On this premise, the learned counsel for the appellant/accused argued that the prosecution case is not free from doubts and therefore, enlarging the benefit of doubts, the accused is entitled to acquittal.

7. Whereas it is submitted by the learned Special Public Prosecutor that in this case, the prosecution relied on the evidence of PW1 to prove demand and acceptance and the evidence of PW1 in this regard was not at all shaken during cross-examination. Therefore, the Special Court rightly entered into the finding that the accused committed



2026:KER:1885

CRL.A.NO.1063 OF 2013

6

offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988. He also submitted that apart from PW1, the decoy witness, and the evidence of PW9, the Investigating Officer, who gave Ext.P19 sanction to prosecute the accused, also supported the prosecution case. Therefore, the finding of the Special Court that offences alleged to be committed by the accused were proved beyond reasonable doubt is only to be justified and as a sequel thereof no interference in this verdict is required.

8. Having considered the rival submissions, points arise for consideration are,

1. Whether the Special Court went wrong in holding that the accused committed the offence punishable under Section 7 of the PC Act, 1988?
2. Whether the Special Court went wrong in holding that the accused committed offence punishable under Section 13(1)(d) r/w. Section 13(2) of the PC Act, 1988?



2026:KER:1885

CRL.A.NO.1063 OF 2013

7

3. Whether the impugned verdict would require any interference by this Court.
4. The order to be passed.
9. Point Nos.1 to 4

The prime evidence put in by the prosecution to find commission of offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988, is that of PW1, supported by the evidence of PW2 and PW9.

10. PW1 had given evidence that he knew the accused. He had given complaint before the Vigilance officials on 04.10.2006 against the accused alleging that the accused had demanded bribe from him for transferring the Jama rights of the property and for collecting the Land Revenue for the same. Ext.P1 is the F.I. Statement recorded by the Vigilance officials as stated by him. His father had gifted his landed property and for which Jama change was sought for. PW1 gave an application for transferring the Jama rights of the



2026:KER:1885

CRL.A.NO.1063 OF 2013

8

property on 22.06.2006 at Payyampally Village Office. Application was given to the Village Assistant, Sri.Koshi and fee of ₹10 was remitted. Ext.P2 receipt was given for the amount remitted by him. The Village Assistant told him that the property had to be measured and directed him to come after a few days. Thereafter, the accused met the Village Assistant in July 2006. He had issued notice to be given to the neighbours and accused gave notice to his neighbours. When he went to the Village Office subsequently, the Village Officer was available in the office and informed him that the Village Assistant was on leave. The accused was present in the office at that time and told PW1 that he would have to spend an amount for measuring the property. Thereafter, PW1 returned from the Village Office. Subsequently, he made enquiry at the Village Office and understood that the Village Assistant was not available. In September 2006, PW1 met the Village Officer and told that he had to avail loan and necessary steps had to be taken urgently. At that time, accused was present in the



2026:KER:1885

CRL.A.NO.1063 OF 2013

9

office. The Village Officer asked the accused what could be done in this matter. The accused told PW1 that he would come to measure the property. He asked PW1 to come and enquire after a few days and PW1 would have to spend some amount. On 25.09.2006, PW1 met the accused at the Village Office and the accused stated that photocopies of certain documents have to be obtained from outside. The accused and one Thankappan took PW1 to take the photocopies. While returning to the office after taking photocopies, the accused told him that sketch and plan had to be taken from the Taluk Office and ₹950 would be required for the expenses thereof. PW1 told that his child was not doing well and he could not spend that much amount. Then the accused told him that ₹500 had to be given. PW1 gave the land phone number of his house to the accused and the accused noted it in a calendar kept in the office. Subsequently, the accused called PW1 in the land phone and



2026:KER:1885

CRL.A.NO.1063 OF 2013

10

directed him to come to the office. PW1 went to the office and met the accused. The accused asked him whether he had brought the money. PW1 told that he had not brought the amount. The accused asked him to bring the amount on 03.10.2006 after calling him by phone. On 30.09.2006, PW1 went to the Vigilance Office at Meenangadi and stated his complaint. The Deputy Superintendent of Police sent a Police Constable along with him to the Village Office. They went to the Village Office and at that time, the accused was not there in the office. The Dy.S.P asked him to come on 03.10.2006 to his office. On 03.10.2006, PW1 went to the Vigilance Office and called the accused from that office. The accused asked PW1 to bring the amount on the next day at 3 pm. The conversation between PW1 and the accused was overheard by the Dy.S.P. through parallel phone. The Dy.S.P. asked PW1 to come on 04.10.2006. PW1 went to the Vigilance Office on 04.10.2006. He stated his complaint to the Dy.S.P.



2026:KER:1885

CRL.A.NO.1063 OF 2013

11

It was recorded and he had signed in the statement recorded by the Vigilance officials. Subsequently, 2 gazetted officers reached the room of the Dy.S.P. The Dy.S.P. introduced them to PW1. Thereafter, PW1 handed over five 100/- rupee currency notes to the Dy.S.P. The Dy.S.P. had put 'V' mark on those currency notes. MO1 series currency notes were the currency notes handed over by him to the Dy.S.P. on 04.10.2006. Subsequently, demonstration of phenolphthalein test was conducted at the Vigilance Office using 10/- rupee note. Sample of the liquid used for demonstration is taken, which is marked as MO2. Subsequently, phenolphthalein powder was smeared on MO1 series currency notes and they were put in the pocket of the shirt worn by PW1 with an instruction that he shall give the amount to the accused only if he demands bribe. Ext.P3 Entrustment Mahazar was prepared and he had signed in it. Vigilance party reached near the Village Office at 3 pm. PW1



2026:KER:1885

CRL.A.NO.1063 OF 2013

12

and Police Constable were sent to Village Office with an instruction to give signal after the accused received the amount. Policeman who accompanied PW1 waited near the entrance of the church near the Village Office. PW1 went to the Village Office. Accused was sitting in his seat. There were two persons sitting in front of him. The accused gave signal to PW1 to come outside from the office using his eyes. PW1 went to the varanda situated at the eastern side of the Village Office. When himself and accused reached the varanda, the accused asked PW1 to hand over the cash. PW1 gave MO1 series currency notes to the accused. He had accepted the same using his right hand and put it in the pocket of the shirt and he requested PW1 to come to the office on the next day. PW1 went to the road and gave signal by rubbing his face using towel as directed by the Dy.S.P. Then, the Dy.S.P. and party came to the Village Office. PW1 told Dy.S.P. that the accused had received the cash using his right hand and then



2026:KER:1885

CRL.A.NO.1063 OF 2013

13

put it in his pocket. The Dy.S.P. met the accused at the varanda and the Dy.S.P. asked something to the accused. At that time accused tried to ran away. He was caught by the Dy.S.P. and the Policeman. On 09.10.2006, PW1 has produced the receipt given to him, when he remitted ₹10, which is marked as Ext.P2 and Form No.6 Notice given to him, which is marked as Ext.P4 by the Vigilance officials and they were seized as per Ext.P5 Mahazar. Ext.P6 is the copy of Document No. 1398/2006 which was produced along with the application. Ext.P7 was Form No.6 Notice signed by himself and his father. Ext.P8 was Form No.7 which was signed by him and his father. His father is laid up due to illness. Ext.P9 was the Calendar in which the accused had written the name and telephone number of PW1.

11. During cross-examination by the counsel for the accused, PW1 testified that 30 cents of land was given by his father to him. On two boundaries of that property,



2026:KER:1885

CRL.A.NO.1063 OF 2013

14

property of his father was situated. In one boundary there was road and in another boundary was the property of Jacob. He had given application for transferring the Jama right to Koshy Thomas. When the application was given, Koshy Thomas told him that the property had to be measured. He had not prepared any sketch of 30 cents of land through a Surveyor. He did not know whether sketch had to be prepared for transferring the Jama right. He had gone to the Village Office at least 15 times between 22.06.2006 to 11.09.2006 and had met Koshy Thomas and accused. On 11.09.2006 he met the accused. On that day, he met the Village Officer and requested to take necessary steps for receiving Land Revenue for the property from him as he had to take loan from the bank. At that time, the Village Officer called the accused and asked him what could be done in this matter. Then the accused told him that he would measure the property after 2 pm and the Village Officer was there. The



2026:KER:1885

CRL.A.NO.1063 OF 2013

15

accused had not told that he would measure the property after 2 pm in the presence of the Village Officer. He had not stated to the Police that accused has told that he would measure the property after 2 pm in the presence of the Village Officer. On scrutiny of the evidence brought during cross-examination of PW1 nothing elicited to disbelieve his version in the matter of demand and acceptance of bribe money by the accused for transferring Jama rights.

12. PW2 examined in this case is the decoy witness who accompanied the trap team. He testified that on 04.10.2006, while working as Research Officer in Economics and Statistics, Wayanad, he went to the Vigilance Office, Wayanad, in accordance with the instructions given by the District Collector. When he reached the Vigilance Office, the Senior Superintendent of Sarva Shiksha Abhiyan, Wayanad, Radhakrishnan and Complainant (PW1) were also present in the room of the Dy.S.P. The Dy.S.P. told him that he was



2026:KER:1885

CRL.A.NO.1063 OF 2013

16

called to the Office of Dy.S.P. to assist him in the action to be taken against a Government employee who had demanded bribe from the complainant. PW1 who is the complainant had handed over MO1 series currency notes to the Dy.S.P. and the Dy.S.P. put 'V' mark on those currency notes and noted the serial numbers of those notes in the Mahazar, demonstration of phenolphthalein test was conducted using a 10/- rupee note by Policeman having name Raju and the sample of the Sodium Carbonate Solution was taken in a bottle and sealed and labeled and that was seized and marked as MO-2. 10/- rupee note used for demonstration was seized and marked as MO-3. Phenolphthalein powder was smeared on MO-1 series currency notes by Policeman Raju and they were put in the pocket of PW-1 with an instruction that amount shall be given to the Government employee only if he demands bribe. Ext.P3 Entrustment Mahazar was prepared and himself, PW1, Radhakrishnan



2026:KER:1885

CRL.A.NO.1063 OF 2013

17

and the Dy.S.P. had signed in it. Trap party reached near the Village Office, Payyampally by 3'O clock. Vehicle in which the Dy.S.P. and trap party travelled was parked in a church compound near the Village Office. PW1 and the Policeman who had to pass the signal given by PW1 were sent to the Village Office. On receiving signal, trap party went to the Village Office. At that time, a person was standing on the varanda of the Village Office. The Dy.S.P. asked his name. He said that his name was Chandran. The Dy.S.P. introduced himself, PW2 and CW3 to Chandran. At that time, Chandran tried to ran away. The Dy.S.P. prevented the same and he was taken to his seat inside the office. The Dy.S.P. asked the accused, where he had kept the money received from PW1. The accused took currency notes from his pocket using his right hand and showed it to the Dy.S.P. The Dy.S.P. asked PW2 to verify those currency notes. On verification, it was found to be MO-1 series



2026:KER:1885

CRL.A.NO.1063 OF 2013

18

currency notes. The right hand of the accused was dipped in Sodium Carbonate Solution and the solution turned pink. MO-4 sample was taken from that solution. The left hand of the accused was dipped in Sodium Carbonate Solution and there was no colour change for the solution. MO-5 sample was taken from that solution. Sodium Carbonate Solution was sprinkled on the pocket portion of the shirt worn by the accused and that portion turned pink. Shirt worn by the accused was taken into custody and it was marked as MO-7. There was a piece of scale inside the pocket of the accused. It was seized and marked as MO-8. Subsequently, the accused was arrested. The Village Officer was called by the Dy.S.P. She had produced the application given by PW1 and that was seized by the Dy.S.P. The accused had produced the documents kept by him in the almirah to the Dy.S.P. Exts.P6 to P8 are included in those documents. The accused had produced 2 sets of copies of Field No.438 and Block



2026:KER:1885

CRL.A.NO.1063 OF 2013

19

No.27 which were marked as Ext.P10 series. Ext.P11 series are the photostat copy of Ext.P10 series documents. Calendar which was kept in his office was also seized by the Dy.S.P. Ext.P-9 is the Calendar. Ext.P12 recovery mahazar was prepared and it was signed by the Dy.S.P., CW3 and PW1. The person who was arrested on that day is the accused who is present in the Court.

13. During cross-examination, PW2 had stated that the currency notes were folded 2 times before the same were put in the pocket of PW1. In order to count those notes, both hands have to be used. A policeman was standing in between the Village Office and the place where the Dy.S.P. and other members were standing. He saw the signal given by the Policeman. When they entered the Village Office, the complainant was returning from the Village Office and he passed them. The accused was standing in varanda situated outside the Village Office. At that time, two persons who



2026:KER:1885

CRL.A.NO.1063 OF 2013

20

came from outside was present inside the Village Office. He denied the suggestion that the accused was running after PW1, when the trap party saw him. When the Dy.S.P. and the trap party were standing in front of the accused, he had to go towards the back side of the office in order to reach near the accused. The Dy.S.P. had not asked the accused the circumstance under which he had received the cash from the accused. The Dy.S.P., Village Officer, CW3 himself and members of the trap party alone were present inside the Village Office till the proceedings of the trap were completed. In re-examination, he had stated that when they reached the Village Office, Village Officer was sitting inside her room.

14. According to the learned counsel for the accused, the evidence of PW3, the then Village Officer who worked along with the accused, supported the case of the accused. On perusal of the evidence of PW3, it is seen that she had given evidence that she was the Village Officer when the



2026:KER:1885

CRL.A.NO.1063 OF 2013

21

accused worked as Village Assistant during the period of occurrence. According to her, when application for mutation would be filed, further steps would be taken by the Special Village Officer and Village Assistant and in such cases, tax would be accepted only after measuring the properties after inspecting the same. According to her, the accused was arrested by the Vigilance on the allegation that he had demanded and accepted ₹500 from PW1. According to her, Ext.P13 is the receipt book No.82855 and the same would show that ₹10 was collected from PW1-Shaji towards the mutation fee and Ext.P2 is a part of Ext.P13(a) to be given to the party and the same was seized by the Vigilance as per Ext.P9. During cross-examination, PW3 stated that, in order to accept tax from PW1, his property had to be measured, and that the property ought to have been measured by PW5, Koshy Thomas. According to PW3, the duty of the village man was to issue notices and to assist the other officials in



2026:KER:1885

CRL.A.NO.1063 OF 2013

22

the office. The evidence of PW3 in this line has been pointed out by the learned counsel for the accused to show that the village man (the accused herein) had no duty to measure out the property. However, the evidence of PW3 would show that the duties of the Village Man would include assisting the officers of the Village Office. PW4, who was the village assistant during the relevant time in Payyampally village, given evidence that during the period of trap, the accused was working as village man.

15. Coming to the evidence of PW5, the Special Village Officer, who worked in Payyampally Village during the relevant period, his evidence is that PW1 lodged application to him on 22.06.2006 and he accepted the same and he had issued the receipt after remittance of ₹10 as fee and the receipt is Ext.P2 and the carbon copy of Ext.P2 is Ext.P13(a). The handwriting and signature in Ext.P2 were admitted by PW5. He also admitted issuance of Ext.P4 notice so as to



2026:KER:1885

CRL.A.NO.1063 OF 2013

23

measure the property on 19th or after 19th. But he would not go for measurement due to engagement in other work. He also stated that during the period between 16.08.2006 to 14.09.2006, he was on leave. He also deposed that in order to mutate the property, an application would be filed to the Village Officer and he did not take any action on applications for mutation during July 2006 to September, 2006. He also gave evidence that, in his absence, the Village Assistant usually went for measurements.

16. 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



2026:KER:1885

CRL.A.NO.1063 OF 2013

24

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)



2026:KER:1885

CRL.A.NO.1063 OF 2013

25

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.

17. 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 (Govt. of N.C.T. of Delhi)**, 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 P.C Act, 1988 and in paragraph 68 it has been held as under :



2026:KER:1885

CRL.A.NO.1063 OF 2013

26

"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:



2026:KER:1885

CRL.A.NO.1063 OF 2013

27

(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.



2026:KER:1885

CRL.A.NO.1063 OF 2013

28

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



2026:KER:1885

CRL.A.NO.1063 OF 2013

29

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



2026:KER:1885

CRL.A.NO.1063 OF 2013

30

latter is discretionary in nature.”

18. 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



2026:KER:1885

CRL.A.NO.1063 OF 2013

31

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.

19. In this connection, it is relevant to refer the latest decision of this Court in **Sunil Kumar K. V. State of Kerala**, reported in **2025 KHC 983**. In paragraph No.12 of the judgment, this Court observed the ingredients as under:



2026:KER:1885

CRL.A.NO.1063 OF 2013

32

“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



2026:KER:1885

CRL.A.NO.1063 OF 2013

33

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



2026:KER:1885

CRL.A.NO.1063 OF 2013

34

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.”

20. Now the crucial question to be addressed is whether the prosecution has succeeded in proving the twin ingredients to find commission of offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988 by the accused/appellant? The Special Court relied on the evidence of PW1, the complainant, supported by the evidence of PW2, the decoy witness, as well as the evidence of Investigating Officer along with other evidence to hold that the ingredients for the above offences were proved by the prosecution. On scrutiny of the evidence discussed in detail hereinabove, the same would categorically show that the evidence of PW1 is convincing to see demand and acceptance of bribe by the accused at 3.15 pm on 04.10.2006 for the purpose of measuring the property of



2026:KER:1885

CRL.A.NO.1063 OF 2013

35

PW1. Though it is contended by the learned counsel for the accused/appellant that measurement of the property by the accused, who is a class IV employee of the village office, is not believable and it was the duty of the Village Officer or the Village Assistant to do the said exercise, in fact, this contention is found to be unsustainable since all persons working in the Village Office usually do the work of measurement for the purpose of identifying the property for which mutation or other activities to be done. Moreover, when a third party, who does not know who is competent to measure the property, approaches the Village Office and a person working in the Village Office would agree to measure the property, the person who approached the Village Office has no other option but to believe the words of the officer who agreed to measure the property and to obey the commands of him to achieve the necessity of the person who approached the Village Office. Therefore, this contention



2026:KER:1885

CRL.A.NO.1063 OF 2013

36

is found to be unsustainable. It is submitted by the learned counsel for the accused/appellant further that there are contradictions in the evidence of PW1 and PW7 in the matter of handing over of money to the accused. In fact, no material contradiction could be noticed in the evidence of PW1 as well as PW7 to disbelieve their evidence and therefore, this contention also must fail. Therefore, this Court is of the view that the Special Court rightly appreciated the evidence and entered into conviction finding that the accused/appellant committed offences punishable under Sections 7 and 13(1) (d) r/w Section 13(2) of the PC Act, 1988. Therefore, the conviction does not require any interference.

21. Coming to the sentence, some leniency can be considered in view of the argument tendered by the learned counsel for the accused/appellant. In view of the above, I am inclined to modify the same to the least minimum possible.

22. In the result, this appeal is allowed in part.



2026:KER:1885

CRL.A.NO.1063 OF 2013

37

Conviction imposed by the Special Court for the offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of PC Act, 1988 is confirmed. The sentence is interfered and modified as under:

1. The accused/appellant is sentenced to undergo rigorous imprisonment for a period of six months and to a pay fine of ₹5,000 (Rupees five thousand only) for the offence punishable under Section 7 of the PC Act, 1988. In default of payment of fine, the accused shall undergo rigorous imprisonment for one month.
2. The accusedappellant is sentenced to undergo rigorous imprisonment for a period of one year and to a pay fine of ₹5,000 (Rupees five thousand only) for the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988. In default of payment of fine, the accused shall undergo rigorous imprisonment for one month.
3. The substantive sentence shall run concurrently and the default sentence shall run separately.



2026:KER:1885

CRL.A.NO.1063 OF 2013

38

4. Set off is also allowed.

23. The order suspending sentence and granting bail to the accused stand cancelled and the bail bond executed by the accused also stand cancelled. The accused is directed to surrender before the Special Court, forthwith, to undergo the modified sentence, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith, without fail, for information and compliance.

**Sd/-
A. BADHARUDEEN
JUDGE**

nkr