



2025:KER:59688

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 8TH DAY OF AUGUST 2025 / 17TH SRAVANA, 1947

CRL.A NO. 509 OF 2008

**AGAINST THE JUDGMENT DATED 14.02.2008 IN C.C. NO.44 OF 2004 ON THE FILES
OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM**

APPELLANT/ACCUSED:

**LUCKOSE JOSEPH
FORMERLY VILLAGE OFFICER, KUNNUMMA VILLAGE, ALAPPUZHA.**

**BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.ANIL K.MUHAMED
SRI.R.ANIL**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA
REP.BY THE PUBLIC PROSECUTOR ,HIGH COURT OF KERALA,
ERNAKULAM.**

**BY ADV PUBLIC PROSECUTOR
SPL PP VACB - RAJESH.A, SR PP VACB - REKHA.S**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17.07.2025, THE
COURT ON 08.08.2025 DELIVERED THE FOLLOWING:**

“C.R”

JUDGMENT

Dated this the 8th day of August, 2025

The sole accused in C.C. No.44/2004 on the files of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, has filed this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 [hereinafter referred as ‘Cr.P.C.’ for short], challenging the conviction and sentence imposed against him by the Special Judge as per the judgment dated 14.02.2008. The State of Kerala, represented by the Public Prosecutor is arrayed as the sole respondent herein.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor, in detail. Perused the verdict under challenge, records of the trial court and the decisions placed by both sides.

3. Parties in this appeal shall be referred as ‘accused’ and ‘prosecution’, hereafter.

4. In this matter, the prosecution case is that, on 27.10.2001, when the complainant went to the Kunnumma

Village Office and met the accused, who was the then Village Officer for the purpose of getting possession certificates in respect of the properties of his father, mother and grand mother, for renewing the agricultural loan availed from State Bank of Travancore, Mankomb Branch, the accused then told the complainant that applications and tax receipts were necessary for giving possession certificates and directed him to come with the same on 29.10.2001. Accordingly, the complainant went to the Kunnumma Village Office with the tax receipts and applications of his father, mother and grand mother and gave the same to the accused. Then the accused said that the title deed of the wet lands also was necessary and on this premise, he returned the applications and tax receipts to the complainant. On 30.10.2001, the complainant again went to the Village Office with the title deed and met the accused and then the accused told him that, since the properties were not owned by the complainant, the owners of the properties should come for getting the possession certificates. The complainant informed the accused that his father, who was a daily labourer, had gone for work. Then the accused

demanded Rs. 250/- to give the possession certificates and told him that if that sum was given, the possession certificates would be issued. As the complainant was not willing to pay such sum, he went to the VACB Alappuzha Unit on 31.10.2001 and gave Ext.P1 statement at about 11.30 a.m. Soon, the then Dy.S.P. of Alappuzha Vigilance Unit recorded Ext.P1 statement given by PW1 and registered a case vide crime No.11/2001 and Ext.P2 is the FIR. Thereafter, on completion of pre-trap proceedings, the Vigilance party along with the official witnesses and the complainant reached the Village Office. Then, the accused demanded Rs.250/- as bribe and accepted the same. The said notes were recovered from him. On this premise, the prosecution alleges commission of offences punishable under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act' for short], by the accused.

5. After, framing charge for the offences under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act, the Special court recorded evidence and tried the matter. PWs 1 to 10 were examined, Exts.P1 to 19, Exts.X1 to X3 and MOs 1

to 5 were marked on the side of the prosecution. After questioning the accused under Section 313(1)(b) of Cr.P.C, DW1 was examined and Exts.D1 to D3 were marked on the side of the accused.

6. On appreciation of evidence, the Special Court found that the accused was guilty for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act and was convicted for the said offences. Accordingly, the accused was sentenced as under:

“The accused is sentenced to undergo rigorous imprisonment for a term of three years and in addition he shall pay a fine of Rs.7,500/- (Rupees Seven thousand and five hundred only) and in default of such payment of fine, he shall undergo rigorous imprisonment for a term of six months and for the conviction entered against him under S.7 of P.C. Act, 1988, he shall undergo rigorous imprisonment for a term of two years. The period of detention undergone by the accused for the period from 31.10.2001 to 8.11.2001 shall be given set off as provided by S.428 Crl.P.C. The substantive sentences shall run concurrently.”

7. While challenging the conviction and sentence, the prime contention raised by the learned counsel for the

accused is that, in this case, Ext.P12 sanction to prosecute the accused issued by PW7 is not legal, since he is not the competent authority to issue the sanction. In this connection, the learned counsel for the accused placed judgments of this Court in W.P.C No.31122/2005 dated 06.12.2005 and W.A. No.2681/2005 dated 24.01.2006. As per the judgment dated 06.12.2005 in W.P.C No.31122/2005, the learned Single Judge of this Court found in paragraph No.6 that, *on a perusal of Exts.R2(a), R2(b) and R2(c) it is seen that none of those orders was issued in exercise of the power conferred on the Government under Rule 10(1) of the Rules, or Section 4(1) of the Kerala Board of Revenue Abolition Act. 1996. A glance through the above orders would further show that the Addl. Commissioner of Land Revenue was empowered to exercise day-to-day administrative powers, and subsequently, the post of Addl. Commissioner of Land Revenue was redesignated as Deputy Land Revenue Commissioner. I am not able to accept the contention that by virtue of or on the strength of Exts.R2(a), (b) & (c) orders, the 2nd respondent gets the statutory power under a notification issued or to be issued as per Rule 10(1) of the Rules or under Section 4(2) of*

the Kerala Board of Revenue Abolition Act. As already stated, no notification issued by the Government under Rule 10(1) of the Rules empowering the 2nd respondent-Deputy Commissioner to exercise the powers of the disciplinary authority or appointing authority or as an authority subordinate to that of appointing authority empowered by the Government to suspend the employees has neither been produced nor any pleading to effect made in the counter affidavit.

8. When an appeal was filed challenging the judgment dated 06.12.2005 in W.P.C No.31122/2005, the finding of the learned Single Judge was upheld by the Division Bench holding the view that, Land Revenue Commissioner is the competent authority to appoint and remove Upper Division Clerk working in Revenue Divisional Office.

9. The learned counsel for the accused placed decision of this Court in ***A.R.Raphel v. State of Kerala - Rep. By the Public Prosecutor, High Court of Kerala*** reported in ***[2015 Supreme (Ker) 624]***, wherein a Single Judge of this Court found that, in a case involving

prosecution sanction granted by a wrong authority, the accused is entitled for clean acquittal, whatever be the findings of facts. The scope for remand of the said case also was negated by this Court on the said ground.

10. Since the Single Judge as well as the Division Bench judgments referred by the learned counsel for the accused have been discussed in the impugned judgment along with two judgments of the Apex Court to negative the impropriety of the sanction, the above decisions as well as the subsequent decisions also required to be referred. The Special Court referred decisions of the Apex Court reported in **[2007 (2) KHC 400 : JT 2007 (5) SC 525 : 2007 (2) KLT 529] Paul Varghese v. State of Kerala and Another** and **[(2004) 7 Supreme Court Cases 763] State by Police Inspector v. T.Venkatesh Murthy**, to hold that the validity of sanction does not affect the validity of the proceedings unless the court records a satisfaction that such error, omission or irregularity has resulted in a failure of justice.

11. In **Paul Varghese's** case (supra), the Apex Court held that, *in cases covered under the Act, in respect of*

public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to S.197 of the Code, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of S.19 of the Act.

12. In **T.Venkatesh Murthy's** case (supra), the Apex Court considered the validity of sanction with reference to sub sections (3) and (4) of Section 19 of the P.C. Act and also referred Sections 462 and 460 of Cr.P.C. and held in paragraph Nos.7 and 8 as under:

7. A combined reading of sub-sections (3) and (4) of Section 19 of the Prevention of Corruption Act, 1988 makes the position clear that notwithstanding anything contained in the Criminal Procedure Code, 1973, no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.

8. Clause (b) of sub-section (3) shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in

the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

13. It could be gathered that, in the decision of the Apex Court reported in **[2005 KHC 1803 : 2005 (4) KLT SN 87 : 2005 (8) SCC 130 : AIR 2005 SC 3606] State of Goa v. Babu Thomas**, the Apex Court distinguished the decision in **T.Venkatesh Murthy's** case (supra) and held in paragraph No.11 as under:

11. Referring to the aforesaid provisions, it is contended by learned counsel for the appellant that the Court should not, in appeal, reverse or alter any finding, sentence or order passed by a Special Judge on the ground of the absence of any error, omission or irregularity in the sanction required under sub-s. (1), unless the Court finds that a failure of justice has in fact been occasioned thereby. In this connection, a reference was made to the decision of this Court rendered in the case of State v. T. Venkatesh Murthy (2004 (7) SCC 763: 2004 SCC (Cri) 2140). Reference was also made to the decision of this Court in the case of Durga Dass v. State of H.P. (1973 (2) SCC 213: 1973 SCC (Cri) 762) where this Court has taken the view that the Court should not interfere in the finding or sentence or order passed by a Special Judge and reverse or alter

the same on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-s.(1), unless the Court finds that a failure of justice has in fact been occasioned thereby. According to the counsel for the appellant no failure of justice has occasioned merely because there was an error, omission or irregularity in the sanction required because evidence is yet to start and in that view the High Court has not considered this aspect of the matter and it is a fit case to intervene by this Court. We are unable to accept this contention of the counsel. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub-s.(1) of S.19 of the Act. It goes to the root of the prosecution case. Sub-s.(1) of S.19 clearly prohibits that the Court shall not take cognizance of an offence punishable under S.7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction as stated in clauses (a), (b) and (c).

14. The learned counsel for the accused also placed decision of the Apex Court reported in **[(2015) 14 Supreme Court Cases 186] Nanjappa v. State of Karnataka** and in paragraph No.22, the Apex Court held as under:

22. The legal position regarding the importance of sanction under Section 19 of the

Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

15. The learned counsel for the accused also pointed out subsequent decision of the Apex Court reported in **[(2023) 17 Supreme Court Cases 699 : 2023 SCC OnLine SC 911] State of Karnataka Lokayukta Police v. S.Subbegowda**. In paragraph Nos.22 and 23 of the same, the Apex Court held as under:

22. *In the instant case, the Special Judge proceeded with the trial, on the second application for discharge filed by the respondent having not been pressed for by him. The Special Judge, while dismissing the third application filed by the respondent seeking discharge after examination of 17 witnesses by the prosecution, specifically held that the sanction accorded by the Government which was a superior authority to the Karnataka Water Supply Board, of which the respondent was an employee, was proper and valid. Such findings recorded by the Special Judge could not have been and should not have been reversed or altered by the High Court in the petition filed by the respondent challenging the said order of the Special Judge, in view of the specific bar contained in sub-section (3) of Section 19, and that too without recording any opinion as to how a failure of justice had in fact been occasioned to the respondent-accused as contemplated in the said sub-section (3). As a matter of fact, neither the respondent had pleaded nor the High Court opined whether any failure of justice had occasioned to the respondent, on account of error if any, occurred in granting the sanction by the authority.*

23. *As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable. Once the cognizance was taken by the Special Judge and the*

charge was framed against the accused, the trial could neither have been stayed nor scuttled in the midst of it in view of Section 19(3) of the said Act. In the instant case, though the issue of validity of sanction was raised at the earlier point of time, the same was not pressed for. The only stage open to the respondent-accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.

16. The learned counsel for the accused placed another decision of the High Court of Bombay in ***Sudhir v. State of Maharashtra, through Police Station Officer*** reported in ***[2025 SCC OnLine Bom 1782]*** and the decision of the High Court of Allahabad in ***Rajendra Singh Verma v. C.B.I.*** reported in ***[2024 : AHC : 110653]***, to buttress his point that the ratio in ***Nanjappa's*** case (supra) has been followed by the High Courts of Bombay as well as Allahabad.

17. At this juncture, the learned Public Prosecutor placed decision of the Apex Court in ***[MANU/SC/1319/2024 : 2025 (265) AIC 165 : 2024 INSC 952] Central Bureau of Investigation v. Jagat Ram***, with reference to paragraph No.6, to contend that, it is clear that under Sub-

section 3(a) of Section 19 of the Act, no finding, sentence or order by a Special Judge shall be reversed by a court of appeal on the ground of absence, error, omission or irregularity in the sanction. This is the first principle. However, such a restraint against reversal or alteration is always subject to the opinion of the court that failure of justice has in fact been occasioned thereby. Sub-section (4) of Section 19 of the Act further provides that while construing whether the absence, error, omission or irregularity has occasioned or resulted in failure of justice, the court will examine the fact that whether an objection could and should have been raised at an earlier stage in the proceedings.

18. Paragraph No.7, 9 and 12 of ***Jagat Ram's case*** (supra) appears to be relevant and the same are extracted as under:

7. Failure of Justice, what it entails and the scope of such enquiry was explained by this Court in C.B.I. v. Ashok Kumar Aggarwal in the following terms:

18.....The failure of justice would be relatable to error, omission or irregularity in the grant of sanction. However, a mere error, omission or

irregularity in sanction is not considered to be fatal unless it has resulted in the failure of justice or has been occasioned thereby.

19. The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression "failure of justice" is an extremely pliable or facile an expression which can be made to fit into any case. The court must endeavour to find out the truth. There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the Accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the Accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the Accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the

Accused can seek relief from the court.

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9. Apart from the clear statutory prescription of Section 19 of the Act, as informed by relevant court precedents, the High Court has also lost sight of Section 465 of the Code of Criminal Procedure, 1973, which provides that a sentence or an order passed by the court of competent jurisdiction shall not be reversed or altered by a court of appeal, confirmation or revision on account of any error or irregularity in any sanction for the prosecution unless in the opinion of the court, a failure of justice has in fact been occasioned thereby. Section 465 of the Code of Criminal Procedure is as under:

Section 465 Finding or sentence when reversible by reason of error, omission or irregularity:
(1) Subject to the provisions hereinbefore contained, on finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or

any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

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12. Justice Gogoi, (as he then was) has explained this position in State of Bihar (supra):

6. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided this Court in State v. T. Venkatesh Murthy MANU/SC/0731/2004: 2004: INSC:510: (2004) 7 SCC 763: 2004 SCC (Cri) 2140 paras 10 and 11, SCC p. 767, para 14 wherein it has been inter alia observed that:

14. ... Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction

that such error, omission or irregularity has resulted in failure of justice.

7. The above view also found reiteration in Parkash Singh Badal v. State of Punjab [MANU/SC/5415/2006: 2006: INSC:960: (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193 (para 29)] wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Parkash Singh Badal [MANU/SC/5415/2006 : 2006: INSC:960: (2007) 1 SCC 1: (2007) 1 SCC (Cri) 193 (para 29)] it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan v. CBI [MANU/SC/1411/2009: 2009: INSC: 1037: (2009) 11 SCC 737: (2010) 1 SCC (Cri) 164]. In fact, a three-Judge Bench in State of M.P. v. Virender Kumar Tripathi [MANU/SC/0668/2009:2009:INSC:611: (2009) 15 SCC 533: (2010) 2 SCC (Cri) 667] while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19(3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the

conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and the evidence is led (para 10 of the report).

8. There is a contrary view of this Court in State of Goa v. Babu Thomas [MANU/SC/0776/2005: 2005:INSC:457: (2005) 8 SCC 130: 2005 SCC (Cri) 1995] holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas [MANU/SC/0776/2005 : 2005:INSC:457 : (2005) 8 SCC 130: 2005 SCC (Cri) 1995] has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in State of M.P. v. Virender Kumar Tripathi [MANU/SC/0668/2009: 2009:INSC:611: (2009) 15 SCC 533: (2010) 2 SCC (Cri) 667].

19. In this connection, it is relevant to refer Section 19 of the P.C. Act and the same reads as under:

19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of

an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of

the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. In this case, evidently, Ext.P12 sanction was granted by PW7, who was the Deputy Land Revenue Commissioner. Going by the Division Bench ruling referred by the learned counsel for the accused, after referring Ext.R2(c) therein viz. G.O.(RT)No.1631/2003/GAD dated 06.03.2003, the Division Bench held that the above G.O would not by itself is not sufficient to confirm the status of appointing authority to the Deputy Land Revenue Commissioner in the Revenue Department. In fact, in ***A.R.Raphel's*** case (supra), as per the judgment dated 25.06.2015, the learned Single Judge of this Court acquitted a Village Officer, who alleged to have committed offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act, finding that the sanction was not issued by the Land Revenue Commissioner.

21. But, the learned Public Prosecutor placed decision of the same Judge in Crl.Rev.Pet. No.3682/2010 dated 10.02.2017, wherein the same learned Single Judge, after referring G.O.(RT)No.1631/2003/GAD dated 06.03.2003, set aside the order of the Special Court, holding the view that Land Revenue Commissioner is not the competent authority

to grant sanction and held that, in view of the above Government Order, the Deputy Land Revenue Commissioner also is competent to grant sanction, being the competent authority. Thus, the learned Single Judge rendered divergent verdicts on the same issue.

22. Coming to the Single Bench and Division Bench rulings referred hereinabove, after referring all the Government Orders on the point, the final finding is that, none of the government orders produced in Exts.R2(a), (b) and (c) referred therein, were issued in exercise of the power conferred on the Government under Rule 10(1) of the Rules or Section 4(1) of the Kerala Board of Revenue Abolition Act, 1996 and therefore, the same have no legal effect. If so, the Land Revenue Commissioner alone is the competent authority to appoint and remove a Government servant in the Revenue Department. At the same time, the Division Bench clarified that, “whatever order passed which had not been duly challenged under appropriate proceedings will remain as such”.

23. While addressing the necessity of valid sanction provided under Section 19(1) of the P.C. Act, taking

cognizance for offences punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction is prohibited. But, sub section (3) to Section 19 carves out two exceptions viz. (a) and (b) as hereinabove extracted. Further in sub-section (4), it has been provided that, in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation (a) to sub section (4) for the purpose of this section, error includes competency of the authority to grant sanction. In the instant case, the competency of the authority (PW7) to grant Ext.P12 sanction is under challenge.

24. Regarding the essentials to constitute offences under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act, the learned counsel for the accused placed two decisions of the Apex Court reported in ***[2025 SCC OnLine 1175] State of Lokayuktha Police, Devanagere v. C.B.Nagaraj*** and ***[(2025) 4 Supreme Court Cases 624] Madan Lal v. State of Rajasthan***, to contend that, demand and acceptance are to

be established to punish an accused under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act and to apply presumption under Section 20 of the P.C. Act. In response to this contention, the learned Public Prosecutor placed Five Bench decision of the Apex Court reported in **[2022 LiveLaw (SC) 1029] Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)**, with reference to paragraph Nos. 65 to 68. The same are extracted hereunder:

65. Learned senior counsel Shri Nagamuthu submitted that when the prosecution examines a witness who does not support the case of the prosecution he cannot be "declared" to be a "hostile witness" and his evidence cannot be discarded as a whole. Although, permission may be given by the Court to such a witness to be cross-examined by the prosecution as per sub-section (2) of Section 154 of the Evidence Act, it is not necessary to declare such a witness as a "hostile witness". This is because a statement of a "hostile witness" can be examined to the extent that it supports the case of prosecutor.

*66. In this regard, our attention was drawn to **Sat Paul vs. Delhi Administration (1976) 1 SCC 727 ("Sat Paul")** which is a case arising under the 1947 Act wherein this Court speaking through Sarkaria, J. has made pertinent observations regarding the credibility of a hostile witness. It was observed in paragraph 30 of the judgment that the*

terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English law. At Common law, if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not, as a general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. It was observed in paragraph 33 that the rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms "hostile witness" and "unfavourable witness" and by attempting to draw a distinction between the two categories. A "hostile witness" is described as one who is not desirous of telling the truth at the instance of the party calling him, and an "unfavourable witness" is described as one who is not desirous of telling the truth at the instance of the party calling him, and an "unfavourable witness" is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact. In the context of Sections 142 and 154 of the Evidence Act, this Court observed in paragraphs 38 and 52 as under:

"38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given

rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath vs. Prasannamoyi AIR 1922 PC 409. The discretion conferred by Section 154 on the court is unqualified and untrammelled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement, or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of

which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English courts.

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

67. Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off

altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence.

68. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

*(i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*

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

iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification

without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

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

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other

witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

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

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.

25. In view of the rival arguments, the questions arise for consideration are:

1. Whether the contention raised by the learned counsel for the accused that, Ext.P12 sanction issued by PW7 is without competence, is sustainable? and the same would go to the root of the matter?

2. What is the impact of sub section (3)(a) and (b) of Section 19 of the P.C. Act?

3. Whether the Special Court rightly found that the accused committed the offence punishable under Section 7 of the P.C. Act?

4. Whether the Special Court went wrong in holding that the accused committed offences punishable under Section 13(2) read with 13(1)(d) of the P.C. Act?

5. Whether the verdict of the Special Court would require interference?

6. Order to be passed.

26. Point Nos.3 to 5:- In this matter, regarding the occurrence, the evidence of PW1, the complainant and PW3 and PW4, official witnesses are relied on by the Special Court. PW1, the complainant, given evidence that, on 27.10.2001, PW1 met the accused, who was working as the Village Officer at Kunnumma Village Office, for obtaining possession certificates of properties belonged to his father, mother and grand mother, for renewing agricultural loan from the State Bank of Travancore, Mankomb branch. Then, the accused directed PW1 to come with their applications and tax receipts. Accordingly, on 29.10.2001, when PW1

again met the accused with tax receipts and applications, the accused told him that title deeds of the properties were also necessary. On 30.10.2001, when PW1 again went to Village Office and met the accused with applications, tax receipts and title deeds, the accused informed PW1 that for giving possession certificates, the concerned owners of the properties should come. When PW1 stated inconvenience of his father, mother and grand mother, to come to the office, the accused demanded Rs.250/- as bribe, for issuing possession certificate. Since PW1 was not ready to give bribe as demanded by the accused, he informed the matter to the Vigilance Office and the Vigilance Office directed him to come to the Vigilance Office on the next day. On 31.10.2001, PW1 reported the matter to PW9, the Dy.S.P., and he recorded Ext.P1 statement given by PW1 and registered the case on preparing Ext.P2 FIR. PW1 admitted his signature in Exts.P1 and P2. Then, two Government Officials, PW3 and PW4 were also brought by the Dy.S.P. and phenolphthalein demonstration was done. Thereafter, Rs.250/- [two hundred rupee notes and one fifty rupee note] marked as MO1 series, were entrusted to the Dy.S.P. and he inturn returned the

same to PW1, after smearing phenolphthalein. Thereafter, PW1 and Dy.S.P. along with the Vigilance party and Gazetted Officers reached near the Kunnumma Village Office and PW9 directed him to give MO1 series to the accused on demand and on acceptance of the same by the accused, he would show a signal. According to PW1, when he reached the Village Office, the accused demanded Rs.250/- and accepted the amount and the applications for possession certificates were marked and identified by him as Ext.P3 series. PW1 was cross-examined at length, but nothing elicited to disbelieve his version.

27. It is interesting to note that, PW3, who was working as Agricultural Deputy Director, appeared before the Vigilance Office, as per Ext.P14 letter issued by the District Collector directing him to appeal before the Vigilance Dy.S.P. for assisting in the investigation of a case and accordingly he along with PW4 came to the Vigilance Officer. They along with the Vigilance party and PW1 reached near the Village Office. According to PW3, there was phenolphthalein demonstration and entrustment of MO1 series notes by PW9 to PW1. He also deposed about the direction given by PW9 to

PW1 to give the money to the accused on demand. Thereafter, on reaching the Village Office, the members of the party were deployed at various places. Then, PW1 went to the room of the accused and PW3 stood outside the door of that room. Then, PW3 noticed that the accused received the MO1 series from PW1 by using his left hand and put the same in the left pocket of his shirt. On receiving the signal, PW9 along with others entered the office room and introduced himself and the official witnesses. When PW9 asked to PW1, who was standing there regarding the amount, PW1 told him that the accused had demand and accepted the amount from him, for issuing possession certificates. When PW9 asked the accused about the amount received by him, PW3 did not remember whether the accused stated anything. PW3 deposed about phenolphthalein test by dipping the fingers of both hands of PW9 and other official witnesses in sodium carbonate solution and there was no color change. The said sodium carbonate solution was marked as MO2. Then, PW9 directed PW4 to search the pocket of the accused. Accordingly, PW4 searched out MO1 series and also other five hundred rupee

notes along with a recovery notice from the left pocket of the shirt of the accused and the above notes were identified as MO3. Then the left hand fingers of the accused were dipped in sodium carbonate solution and there was color change and the sample of that solution collected in a bottle and taken into custody, got identified by PW4 as MO4. PW3 also deposed about the conduct of phenolphthalein test on MO1 series notes, with color change and the collection of the said solution in custody as MO5. Further, PW3 deposed that the shirt worn by the accused was taken into custody and the same is MO6. He also identified Ext.P7 mahazar regarding the recovery. In fact, no contradictions brought out during cross-examination of PW3, who witnessed the occurrence, supporting the evidence of PW1.

28. PW4, the other Gazetted Officer, who went along with the Vigilance party also supported the pre and post events before the demand and acceptance of MO1 series by the accused. PW5 and PW6 were co-workers of the accused and they supported their assignment and also that the accused was working as a Special Village Officer in Kunnumma Village Office on the date of occurrence.

29. According to the learned counsel for the accused, in the evidence given by PW2, the owner of the land, she admitted that there was some amount due towards the land value in respect of the property and she did not remember whether the said amount was remitted or not. It is pointed out by the learned Public Prosecutor that, evidence given by PW2 in this regard was found in the negative, by the other evidence stating that there was no due insofar as the property is concerned.

30. The prime contention raised by the learned counsel for the accused is that, there was no evidence to prove the demand and acceptance of bribe by the accused for issuing possession certificates and according to him, there was a sum of Rs.675/- due as arrears of purchase price of the property and there was direction from official superiors to recover the said arrears as far as possible. In this attempt, the accused directed PW1 that, atleast Rs.250/- should be paid as part of the said amount and PW1 misconceived the said direction as demand for bribe and the same led to trap proceedings and recovery of MO1 series.

31. Now, it is necessary to address the ingredients

required to attract the offences under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The same are extracted as under:—

Section 7:- Public servant taking gratification other than legal remuneration in respect of an official act. - *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*

Section 13:- Criminal misconduct by a public servant. - *(1) A public servant is said to commit the offence of criminal misconduct,-*

(a) xxxxx

(b) xxxxx

(c) xxxxx

(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.

32. In paragraph No. 12 of the decision of this Court in ***Bharat Raj Meena v. Central Bureau of Investigation, Ernakulam*** reported in ***[2024 (4) KHC 52]***, it has been held that:-

It is trite that proof of demand and acceptance of illegal gratification by a public servant is a prerequisite to establish the guilt of the accused / public servant under Section 7 of the PC Act. Indeed, proof of demand and acceptance of illegal

*gratification by a public servant can also be proved by circumstantial evidence in the absence of direct, oral and documentary evidence [See **Neeraj Dutta v. State (Govt. of NCT of Delhi), 2023 (4) SCC 731**]. Recently, the Supreme Court in **Jagtar Singh v. State of Punjab**, AIR 2023 SC 1567 reiterated the principle that the demand of illegal gratification, at least by circumstantial evidence, is sine qua non to attract the offence under Section 7 or Section 13(1)(d)(i) and (ii) of the PC Act. S.13(1)(a) of the PC Act provides that the prosecution is obliged to prove that the accused accepted or obtained or agreed to accept or agreed to obtain any gratification as a motive or reward as contemplated under Section 7 of the PC Act . Thus, the demand and acceptance by the public servant for illegal gratification must be independently proved by the prosecution as a fact in issue to establish the guilt under Section 7 or 13(1)(a) of the PC Act.*

33. In paragraph No.68(a) to (h) of **Neeraj Dutta's** case (supra), the Five Bench of the Apex Court categorically summarized the essentials to constitute offences under Sections 7 and 13(1)(d) of the P.C. Act, as extracted herein above.

34. In fact, the legal position as held in **Bharat Raj Meena's** case (supra), **Neeraj Dutta's** case (supra), and

Jagtar Singh's case (supra) to the effect that the demand and acceptance of illegal gratification is sine qua non to attract offence under Section 7 of the P.C. Act. That apart, as per Section 13(1)(a) of the PC Act, the prosecution is obliged to prove that the accused accepted obtained, or agreed to accept or agreed to obtain any gratification as a motive or reward as contemplated by Section 7 of the PC Act. There is no doubt that the demand and acceptance—the elements of the offence punishable under Section 7 of the PC Act—can be proved by either direct evidence or, in the absence of direct and documentary evidence, by circumstantial evidence.

35. In this matter, the Special Court found that, going by the evidence tendered, there is no reason to disbelieve the demand and acceptance of MO1 series by the accused as bribe for the issuance of possession certificates in respect of the properties of his parents and grand mother. Further, the Special Court found that the accused had no case that Rs.250/- otherwise prescribed as the fee for issuance of possession certificate. Accordingly, the Special Court held that Section 20 of the P.C Act would get attracted in this case. Section 20 of the P.C. Act deals with presumption

where public servant accepts gratification other than legal remuneration and it is provided that, *where, in any trial of an offence punishable under section 7 or under section 11 or clause (a) or clause (b) of sub-section (1) of section 13, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as*

the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate. 3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

36. In this matter, DW1, who entered into service as Clerk and retired as ADM, was examined to prove that, there was arrears of purchase price due from the land and according to DW1, there were directions by higher officials for recovery of the arrears and excess lands acquired by the Government used to be assigned to land less persons, for which they have to pay purchase price for the same in 16 installments to obtain patta. Regarding Ext.D3 produced through DW1, the Special Court addressed the same in paragraph No.21 of the judgment and found that, in the relevant entry in the attested photocopy of thandaper No.212 in the name of PW2, there is no mention that the land obtained by PW2 was assigned by the Government and

there was arrears towards purchase price.

37. The Special Court found that, in Ext.X1 there were many suspicious entries and accordingly the original was retained till completion of trial. In paragraph No.21 of the judgment of the Special Court it has been observed that, *now coming to Ext.X1 it is seen that it contains several suspicious entries. So its original also was directed to be produced and it has been retained with a direction to return the same after disposal of this case. On a careful perusal of this record, it is seen that there is endorsement on stating that the arrears of purchase price and interest have been remitted. On its back side there is another endorsement in red ink in the remarks column that Rs.675/- is due as arrears of purchase price in LA No.41/81. There is also another endorsement stating that Rs.675/- and Rs.690/- have been paid as purchase price and interest 31.10.2001. All these are appear to have been made after this trap occurrence. There are several over writings, scorings etc. on its first page. Even though this register contains the Thandapper Account and details of remittance of tax in respect of other persons who obtained such assigned lands, no similar entries are seen in*

respect of the Thandapper account of such persons. For example, the land owned by one Sasidharan bearing Thandapper No.230 is an assigned land, the details of which are available in the register of lands reserved and assigned. From that register, it is seen that there is arrears of purchase price due from that land. Similar is the case with persons bearing Thandapper Nos. 231, 237 etc. But there are no entries in the Thandapper Account Register as seen in Ext.X1 stating that arrears of purchase price are due from them. On a careful appraisal of all facts and evidence, I am of the view that the above entries contained in Ext.X1 do not appear to be genuine entries and they are surrounded by a thick cloud of suspicion. In the above context, the argument of the learned counsel for the accused that PW9 directed PW6 to furnish the photo copy of first page of Ext.X1 alone with the intention of suppressing the details available on its back page cannot stand to reason. Even assuming that there was some amount due as arrears of purchase price in respect of the land owned by PW2, it cannot be held that the accused had demanded Rs.250/- as part of purchase price. If the accused was anxious to recover such arrears in compliance

of the directions of his official superiors to recover such amounts as far as possible, then he would have demanded and received the whole amount remaining as arrears and would not have limited to Rs.250/.

38. Even though, it is argued by the learned counsel for the accused that, the accused said during preparation of Ext.P7 mahazar that the amount from PW1 was received as stamp value instead of purchase price, which is supported by the evidence of DW1, the Special Court did not give emphasize to the said evidence, holding that the amount received by the accused as MO1 series was demanded and accepted by him from PW1 towards the arrears for issuing possession certificate. In fact, this contention could not succeed, as the evidence of PW1, PW3 and PW9 supported by Exts.X1 and D3 would substantially show that, no arrears due in respect of the property.

39. Points Nos.1 and 2:- Reading Section 19(1) of the P.C. Act, what mandated is that, no court shall take cognizance for offences punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with previous sanction embodied under

Section 19(1)(a) to (c), subject to Section 19(2) of the P.C. Act. Section 19(3) carves out exception to 19(1). Section 19(3)(a) of the P.C. Act emphasizes that, no finding, sentence or order passed by a special judge shall be interfered on the ground of absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of court, a failure of justice occasioned thereby. Section 19(3)(b) provides that, for the same ground, no court shall stay the proceedings under this Act. As per Section 19(4) of the P.C. Act, the absence of, or any error, omission, or irregularity in, sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact that, whether the objection could and should have been raised at an earlier stage of the proceedings. It is relevant to note further that, error includes competency of the authority to grant sanction.

40. Going by the decisions extracted hereinabove, majority of the decisions would emphasize the point that, failure of justice if not occasioned, by way of the absence of, or any error, omission or irregularity in sanction, the same by itself is not a ground to interfere the finding, sentence or

order passed by the Special Judge. It is the fundamental principle of interpretation of statute that, when provisions of a statute are interpreted, the interpretation should be by giving effect to all the provisions, without making any of the provisions redundant or inoperative.

41. In the latest decision of the Apex Court reported in **[2025 INSC 654] Dashrath v. The State of Maharashtra**, the Apex Court referred **Neeraj Dutta's** case (supra) and the decision reported in **[(2015) 2 SCC 33] Manzoor Ali Khan v. Union of India**, and held in paragraph Nos.12 and 13 that, *it is no longer res integra that requirement of sanction has a salutary object. Provisions requiring sanction to prosecute, either under Section 19, PC Act or Section 197 of the (now repealed) Cr. PC or under Section 218 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are intended to protect an innocent public servant against unwarranted and mala fide prosecution. Indubitably, there can be no tolerance to corruption which has the effect of undermining core constitutional values of justice, equality, liberty and fraternity; however, at the same time, the need to prosecute and punish the corrupt is no ground to deny*

*protection to the honest. This is what was held by this Court in its decision in **Manzoor Ali Khan v. Union of India** while repelling a challenge raised in a Public Interest Litigation to the constitutional validity of Section 19 of the PC Act. Even otherwise, merely because there is any omission, error or irregularity in the matter of granting sanction, that does not affect the validity of the proceedings unless the court records its own satisfaction that such error, omission or irregularity has resulted in a failure of justice.*

42. In another decision of the Apex Court reported in **[2025 INSC 50], The State of Punjab v. Hari Kesh**, after referring **S.Subbegowda's** case (supra), the apex Court considered the combine effect of sub-sections (3) and (4) of Section 19 and reiterated that, *in view of sub-section (3) clearly forbids the court in appeal, confirmation or revision, the interference with the order passed by the Special Judge on the ground that the sanction was bad, save and except in cases where the failure of justice had occurred by such invalidity.*

43. Thus, the law emerges is that, in order to take cognizance for the offences under Sections 7, 10, 11, 13 and

15 of the P.C. Act, alleged to have committed by a public servant, sanction is necessary. After taking cognizance, during trial, when considering the validity of sanction on the ground of absence of, any error or omission or irregularity in the sanction, including the incompetency of the authority to grant sanction, a court in appeal, confirmation or revision on the said ground, no finding, sentence or order passed by the special judge shall not be interfered, unless the court finds that such error or omission or irregularity has resulted in a failure of justice. Therefore, even though sanction is necessary to take cognizance for offences under Sections 7, 10, 11, 13 and 15 of the P.C. Act alleged to be committed by a public servant, unless there is no failure of justice in the finding, sentence or order passed by the Special Judge shall not be reversed or altered by a court in appeal, confirmation or revision.

44. No doubt, in the instant case, the challenge is against the sanction, mainly on alleging incompetency of the authority to grant the same. Since explanation to section 19(4) of the P.C. Act specifically provides that, error includes competency of the authority to grant sanction, unless a

failure of justice is not occasioned in the instant case, merely finding error in the sanction, this court cannot interfere with the conviction and sentence under challenge herein. The trial court found on evidence that, there was no failure of justice in this case, merely because sanction was granted by the Deputy Land Revenue Commissioner instead of Land Revenue Commissioner. In the instant case, the evaluation evidence does not show that failure of justice occasioned because a wrong authority issued sanction. Therefore, interference of the verdict impugned, on the said ground would not succeed.

45. On reading the evidence as discussed and considered by the Special Court with the essentials to constitute the offence as already discussed, there is no reason to find that the findings of the Special Court regarding commission of the offences by the accused, otherwise would require interference, since the said findings were entered relying on cogent and convincing evidence available, satisfying the ingredients to find commission of offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act, by the accused. Therefore, the

conviction rendered by the Special Court does not require any interference.

46. Regarding the sentence, some modification can be considered, in view of the facts and circumstances of the case.

47. Point No.6:- Accordingly, this appeal is allowed in part. The conviction stands confirmed and sentence stands modified, whereby the accused is sentenced to undergo rigorous imprisonment for a period of one year (the bare minimum) and to pay fine of Rs.7,500/- (Rupees Seven Thousand and Five Hundred Only) for the offence punishable under Section 13(2) read with 13(1)(d) of the P.C. Act. In default of payment of fine, the accused shall undergo rigorous imprisonment/default imprisonment for a period of twenty days. The accused is sentenced to undergo rigorous imprisonment for a period of six months (the bare minimum) and to pay fine of Rs.10,000/- (Rupees Ten Thousand Only) for the offence punishable under Section 7 of the P.C. Act. In default of payment of fine, the accused shall undergo rigorous imprisonment/default imprisonment for a period of one month.

48. The substantive sentences shall run concurrently and the default sentences shall run separately.

49. The order suspending sentence and granting bail to the appellant shall stand vacated and the bail bond executed by the appellant/accused stands cancelled. The appellant/accused is directed to surrender before the special court and to undergo the sentence within two weeks from today, failing which, the special court shall execute the sentence without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith, for information and compliance.

**Sd/-
A. BADHARUDEEN
JUDGE**

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