IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]
****

PRESENT: HON'BLE JUSTICE APURBA SINHA RAY

CRA/7/2025
(IA NO: CRAN/1/2025)

The State ... *Petitioner*

Versus

Shri M. Hari Krishna ... *Respondent*

For the petitioner/State	: Mr. Sumit Kumar Karmakar
For the Respondent	: Mr. Rakesh Pal Gobind Mr. T. Harish Kumar
Heard on	: 30.01.2026
Judgment on	: 06.02.2026

APURBA SINHA RAY, J.

1. Mr. Sumit Kumar Karmakar, learned Counsel appearing for the State has submitted that the respondent/accused was a Revenue Officer and Patwari. He was charged with demand and receipt of illegal gratification from the complainant who filed an application for mutation of land in his name along with others. The accused demanded Rs. 5,000/- from the Complainant for performance of his public duties. The complainant informed the Anti Corruption Unit and thereafter all formalities were complied with for laying tracking evidence and ultimately the accused was caught red handed.

2. Mr. Karmakar has argued that the prosecution adduced 12 witnesses in support of its case and there is no infirmity in the evidence of those prosecution witnesses apart from some minor contradictions. However the learned Special Judge did not consider the evidence of the prosecution witnesses and other materials on record in proper perspective and the order of acquittal of the accused from charges of the case that is under Section 7 of the Prevention of Corruption Act, 1988 read with Section 7/13(2) and13(1)(d) of the Prevention of Corruption Act, 1988 is not sustainable in law.

3. Mr. Rakesh Pal Gobind, appearing as the learned Counsel for the defence/respondent has submitted that from the cross-examination of PW-1, the complainant, it appears that he never approached the office for mutation. The complaint was made after mutation was done. No mutation certificate was seized. It appears from the materials on record that all the formalities in connection with Form 'K' were done before lodging of complaint. The record shows that mutation of the record took place on 23.02.2006 whereas the relevant complaint was lodged on 09.03.2006. The shadow witnesses, being PW-2 and PW-3 did not support the prosecution case. Demand and acceptance of illegal gratification was not proved in accordance with law. The post trap memorandum was not detailed at the spot. The

shadow witness being PW-2 was declared hostile. Another shadow witness being PW-3 did not say anything about the seizure or demand or acceptance of bribe at the instance of the respondent. Those witnesses have admitted that they signed the documents at the police station and not at the spot. Not a single witness saw the respondent to demand and accept the illegal gratification. The evidence of other witnesses is also not very much convincing. Although PW-10 had stated that he received signal from complainant being PW-1, the PW-1 did not depose anything in this regard.

4. The learned Counsel for the respondent has cited several judgments namely *2015 0 Supreme (SC) 71 C. Sukumaran – versus – State of Kerala, 2015 0 Supreme (SC) 871 P. Satyanarayana Murthy – versus – The Dist. Inspector of Police and Another, 2022 0 Supreme (SC) 154 K. Shanthamma – versus – The state of Telangana, 2024 Supreme (SC) 567 Mir Mustafa Ali Hasmi – versus – The State of A.P., 2025 0 Supreme (SC) 1864 P. Somaraju – versus – State of Andhra Pradesh and CRA No. 418 of 2016 Shri N. Rajendran – versus – The State*, of this Hon'ble Court in support of his contention that when demand and acceptance of gratification was not proved out, the accused is entitled to acquittal.

5. I have gone through the impugned judgment wherein the learned Special Judge has discussed the evidence of the prosecution witnesses and also exhibits brought on record.

6. Section 7 of the Prevention of Corruption Act, 1988 is :

> *"**7. Offence relating to public servant being bribed** - Any public servant who,-*
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> *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
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> *(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
>
> *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person.*
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> *shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.".*

7. From the above it appears that the ingredients of the offence under Section 7 of the Prevention of Corruption Act are ;

a) That the person accepting the gratification should be a public servant;

b) That he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act etc.

8. In this type of case the prosecution is under a heavy duty to prove both demand and acceptance of bribes. In the case in hand we find that although the PW-2 and PW-3 were depicted as shadow witnesses, they did not say that they saw the respondent to demand bribe from the complainant and in pursuance of such demand, the complainant delivered the bribe and the respondent received the same.

9. The PW-2 was declared hostile. Although the PW-3 was not declared hostile, his evidence does not show that he saw the accused to demand and receive illegal gratification from the complainant.

10. In *2015 0 Supreme (SC) 71 (Supra)*, the Hon'ble Supreme Court has been pleased to hold that demand of illegal gratification is sine qua non for constituting an offence under Section 7 and 13 (1)(d) of the Prevention of Corruption Act. If the demand of bribe and acceptance thereof is not established, conviction under Section 13(2) of the Act is not sustainable.

11. In *2015 0 Supreme (SC) 871 (Supra)* the Hon'ble Apex Court has been pleased to observe as hereunder :

> *"21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.*

> *22. As a corollary, failure of the prosecution to prove the demand for illegal -gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.".*

12. In *2022 0 Supreme (SC) 154 (Supra),* the Hon'ble Supreme Court has reiterated that proof of demand of bribes by public servants and its acceptance by them is sine qua non for establishing offence under Section 7 of Prevention of Corruption Act. In the said case demand which is sine qua non for establishing offence under Section 7 of the Act was not established and as a result the impugned judgment passed by the Hon'ble High Court was set aside and the appellant was acquitted.

13. In *2024 Supreme (SC) 567 (Supra),* the Hon'ble Apex Court was pleased to observe that the prosecution must prove both the demand and acceptance of bribe beyond reasonable doubt for a conviction under the Prevention of Corruption Act. In the said decision the Hon'ble Apex Court has discussed the observation of the Hon'ble Apex Court in *Neeraj Dutta – versus – State (Government of NCT of Delhi)* reported in *(2023) 4 SCC 731.* For the purpose of understanding the issue in hand, I wish to recapitulate what the Hon'ble Apex Court has laid down in paragraphs 27 and 28 of the said decision:

"27. A Constitution Bench of this Court in the case of Neeraj Dutta v State(Government of NCT of Delhi), (2023) 4 SCC 731 was called upon to answer a reference on the question as to whether the circumstantial evidence can be relied upon to prove the demand of illegal gratification and whether in the absence of evidence of the complainant direct/primary, oral or documentary, would it be permissible to draw an inferential deduction of culpability/guilt of a public servant under Sections 7 and 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution. This Constitution Bench traversed the entire history of the judicial pronouncements on the issue and held as below:-

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

88.1. (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.

88.2. (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.

88.3. (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.

88.4. (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:

(1) If there is an offer to pay by the bribegiver 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 Sections 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 Sections 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 Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (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.

88.6. (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.

88.7. (g) 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. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.*
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> *88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature."*
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> *28. Thus, in addition to answering the primary issue raised in the matter, the Constitution Bench also went on to hold that in order to bring home the guilt of the accused, the prosecution has to prove the demand of illegal gratification and the subsequent acceptance, by either direct or circumstantial evidence."*

14. In *2025 0 Supreme (SC) 1864 (Supra)*, the Hon'ble Apex Court has also laid down that statutory presumption under Section 20 of Prevention of Corruption Act is not automatic and it arises only once foundational facts of demand and acceptance are proved. In the said case, the sole basis of prosecution to prove demand and acceptance is narration of the complainant which reveals serious infirmities. The complainant has no proof other than his own oral statement that he visited the accused, wherein the accused allegedly made his first demand for a bribe. The defence has consistently maintained that alleged demand and acceptance of bribes never took place. The Hon'ble Apex Court observes that unless DWs' evidence is shown to be inherently improbable or contradicted by record, it cannot be

discarded solely because they were professionals who had cause to interact with the appellant's office.

15. In our case it is found that the prosecution was not able to show from the deposition of shadow witnesses that the accused demanded bribes and thereafter received the same from the complainant.

16. Now in view of judicial decision in *Mir Mustafa Ali Hasmi's case (Supra)* and *Neeraj Dutta's case (Supra)*, it is now established that even such witnesses failed to prove the case in favour of the prosecution, the prosecution can prove the same by way of other evidence or circumstantial evidence. Unfortunately if we go through the other materials on record, we shall find that the seizure of solution which turned pink in colour was not properly seized.

17. In this regard, the evidence of CFSL expert being PW-9 Bimal Chandra Purkait is relevant. It appears from his cross-examination that his report does not contain any statement to the effect wherefrom the samples were received for testing. He did not mention in his report that the alamats were in his custody for four months. There is no mention about the specimen seal under which it was forwarded to him. There is no mention of No. i.e. 56/06/C in LSPW. The number of currency notes is not mentioned in his report. He did not mention the

quantum of phenolphthalein and sodium carbonate in each of the currency notes. He did not mention the quantum of phenolphthalein and sodium carbonate in all the alamats. The report does not mention when the bottle was opened and also the date of testing of alamats. The resealing of the seized alamats was not mentioned in his report. At the time of his evidence, the bottles do not contain any pink colour liquid. It is not mentioned in his report about the life of phenolphthalein.

18. It is also found from the record that before lodging of complaint the mutation in respect of the subject land was done but the complaint was lodged after completion of mutation of the land.

19. Undoubtedly, the presumption under Section 20 of the Prevention of Corruption Act arises only on the basis of establishment of foundational facts at the instance of the prosecution. In this case, the prosecution has failed to lay down such foundational facts since none of the independent witnesses have supported the prosecution case. It is a fact that although PW-3 was a shadow witness and was not declared hostile by the prosecution, he says nothing about such demand of bribe and acceptance thereof at the instance of the respondent. As the prosecution has failed to establish those foundational facts, the learned Trial Court Court cannot ask the respondent to rebut

such presumption under Section 20 of the Prevention of Corruption Act.

20. In *Vinod Kumar Garg – versus – State (Government of National Capital Territory of Delhi)* reported in *Criminal Appeal No. 1781 of 2009*, the Hon'ble Supreme Court has been pleased to quote the observations of the Hon'ble Apex Court in *State of U.P. – versus – Dr. G. K. Ghosh (1984) 1 SCC 254 :*

> *"that in a case involving offence of demanding and accepting illegal gratification it may be safe to accept prosecution version on the basis of oral evidence of complainant and official witnesses, even if trap witnesses turned hostile or are found not to be independent. When besides such evidence there is circumstantial evidence which is consistent with guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding conviction."*

21. In this case, although the deposition of PW-2 and PW-3 are not supporting the prosecution case, the prosecution could have proved the case with other materials on record. But unfortunately the seizure of the solution and sending of the said solution for chemical examination is doubtful. The prosecution has also failed to prove the case of the accused with materials on record other than the deposition of independent witnesses.

22. In view of the above, I do not find any infirmity in the relevant judgment of the learned Trial Court and accordingly, the impugned judgment of acquittal passed by the learned Session/Special Judge at Port Blair in connection with Special

Case No. 02/2006 *(The State – versus – Hari Krishna)* is hereby affirmed.

23. The CRA 7 of 2025 is thus dismissed.

24. The criminal application stands disposed of along with all connected application, if any.

25. There shall, however, be no order as to costs.

26. Let the Trial Court Record be sent down immediately to the Learned Trial Court along with copy of this judgment.

27. Urgent photostat certified copy of this judgment, if applied for, may be supplied to the parties upon compliance of usual formalities.

[APURBA SINHA RAY, J.]