
(2026) 01 KL CK 1701

In the High Court Of Kerala

Case No : Criminal Appeal No. 1670 O Of 2013

K.Ibrahim Sub Inspector Of Police

APPELLANT

Vs

Dy.S.P.Vigilance & Anti Corruption Bureau Unit-1

RESPONDENT

Date of Decision : 21-01-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 428

Indian Penal Code, 1860 — Section 120B

Prevention of Corruption Act, 1988 — Section 7, 12, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 19(1)(a), 19(1)(b), 19(1)(c), 20

Citation : (2026) 01 KL CK 1701

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

Advocate : P.V.Anoop, Rajesh A, Rekha.S

Final Decision : Partly Allowed

Judgement

A.Badharudeen, J

1. The 1st accused in C.C.No.19/2005 on the files of the Enquiry Commissioner and Special Judge, Kozhikode, is the appellant, who assails judgment dated 19.11.2013 rendered in the above case.

2. Heard the learned counsel for the appellant/1st accused and the learned Special Public Prosecutor. Perused the relevant records.

3. Here, the prosecution alleges commission of offences punishable under Sections 7, 12 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988' hereinafter) as well as under Section 120B of the Indian Penal Code (for short, 'the IPC' hereinafter), by the appellant/1st accused.

4. The case of the prosecution is that accused Nos.1 and 2, being public servants, while working as Sub Inspector of Police and Police Constable, respectively, at Karikkottakkari Police Station, abused their official position and hatched criminal conspiracy between themselves. In furtherance of the said

criminal conspiracy, they had committed acts of criminal misconduct. It is alleged that at about 12.00 midnight on 02.05.2003, while PW1 was driving an autorickshaw in which one Sheena, who was personally known to him, was travelling from the Meditation Centre at Anapanthi to her house, the 1st accused arrived in a police jeep driven by the 2nd accused, intercepted the autorickshaw, and directed PW1 to drop Sheena at her house and thereafter to bring the autorickshaw to the Police Station, alleging wickedness in the conduct of PW1. After PW1 dropped Sheena at her house and while he was proceeding in the autorickshaw, the 1st accused, who was following him in the police vehicle driven by the 2nd accused, again stopped the autorickshaw and directed PW1 to meet the 2nd accused. When PW1 met the 2nd accused, he demanded a bribe of ₹ 5,000 from PW1 for and on behalf of the 1st accused. When PW1 stated that he had no cash with him, the 2nd accused consulted the 1st accused and reduced the bribe amount to ₹ 3,000, which was again demanded from PW1. As PW1 reiterated that he had no cash with him, the 1st accused seized the vehicle documents from PW1 and directed him to pay the amount on the next day before 5.00 p.m., threatening that failure to do so would result in PW1 being taken into custody. On 04.05.2003, when PW1 met the 1st accused at his quarters and informed him that he had no money, the 1st accused directed PW1 to keep the autorickshaw in his compound. The 2nd accused, who was present there, told PW1 that if the amount would not be paid, the 1st accused would not leave him alone, and directed PW1 to bring the amount on the next day. Thus, the 2nd accused demanded a bribe of ₹ 3,000 from PW1 for and on behalf of the 1st accused and thereby abetted the commission of the offence under Section 7 of the PC Act, 1988. Consequently, the 2nd accused committed offences punishable under Sections 7 and 12 of the PC Act, 1988 and under Section 120B of the IPC r/w Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988. Subsequently, the 1st accused repeated the demand for bribe from PW1 at 7.00 p.m. on 06.05.2003 and again at 7.30 p.m. on 11.05.2003 when PW1 contacted the 1st accused over the phone, he threatened PW1 that a case would be registered against PW1 if the amount would not be paid. In pursuance of the said demand, the 1st accused demanded and accepted ₹ 3,000 from PW1 at 4.00 p.m. on 12.05.2003 at his quarters. Thereby, the 1st accused obtained undue pecuniary advantage by adopting corrupt and illegal means and committed offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, 1988 and under Section 120B of the IPC.

5. The Special Court proceeded with trial after framing charge for the said offences. PW1 to PW12 were examined and Exts.P1 to P31 as well as MO1 to MO4 were marked on the side of prosecution. Exts.X1 to X2 were also marked. DW1 was examined and Exts.D1 to D23 were marked on the side of the defence.

6. The learned Special Judge appreciated the evidence and finally found that the 1st accused is guilty for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988, while acquitting the 2nd accused. Accordingly, the 1st accused was sentenced as under:

"In the result, A-1 is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo Rigorous Imprisonment for a period of one month for the offence under Section 7 of Prevention of Corruption Act, 1988. He is also sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo Rigorous Imprisonment for a period of one month for the offence under Section 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988. A-1 is entitled to get set off under Section 428 of Criminal Procedure Code regarding the period of detention undergone by him, if any. The substantial portion of the sentence shall run concurrently. MO-1 series currency notes shall be returned to PW-1 and MO-2 to MO-4 bottles shall be destroyed as valueless after the expiry of the period of appeal. Bail bond executed by A-1 stands cancelled."

7. According to the learned counsel for the appellant/1st accused, the 1st accused caught PW1 along with a girl at odd hours of the night in an autorickshaw. Since, the news had spread in the locality, PW1 got insulted. Because of this enmity, the entire case had been foisted. Thus, the evidence of PW1 is not believable. Suppression of an original complaint dated 03.05.2003 by PW1 also is highlighted while impeaching the veracity of the judgment of the same court. It is also submitted that the Special Court wrongly applied the presumption under Section 20 of the PC Act, 1988 in a case where the prosecution failed to prove the twin ingredients for the offences punishable under Sections 7 and 13(1) (d) r/w 13(2) of the PC Act, 1988.

8. Whereas, it is submitted by the learned Special Public Prosecutor that the evidence available as that of PW1, supported by the evidence of the decoy witness and the Investigating Officer sufficiently established the pre as well as post trap proceedings and also demand and acceptance of bribe by the 1st accused from PW1. In such a case, no interference with the impugned verdict is warranted.

9. Having appraised the rival submissions, the points arise for consideration are;

(i) Whether the Special Court was right in holding that the appellant/1st accused committed offence punishable under Section 7 of the PC Act, 1988?

(ii) Whether the Special Court was right in holding that the appellant/1st accused committed offence punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act, 1988?

(iii) Whether the verdict would require interference?

(iv) The order to be passed?

10. Point Nos.(i) to (iv)

Before entering upon the merits of the rival submissions and recording findings on the points framed for consideration, it is necessary to have a careful

scrutiny of the oral and documentary evidence adduced in the case.

11. In this matter, the prosecution mainly relied on the evidence of PW1. PW1 deposed that he had given a complaint before the Vigilance authorities against the accused persons. According to him, Ext.P1 was the statement given by him to the Vigilance officials and as per this First Information Statement given by him on 12.05.2003, FIR was registered. PW1 testified further that on 02.05.2003 he had gone to the Meditation Centre at Anapanthi for picking up his mother. While he was waiting there, one Sheena, who was known to him, requested him to take her to her house in his autorickshaw. While he was driving the autorickshaw with Sheena as a traveller, a police jeep came and stopped his Autorickshaw. The Sub Inspector of Police of Karikkottakkari Police Station and a policeman were present in the police jeep. The Sub Inspector scolded him alleging that he was taking Sheena for immoral activities. When PW1 gave the address of Sheena, the Sub Inspector directed him to take her to her house, and accordingly, he took Sheena to her house in the autorickshaw under police escort. PW1 stated that thereafter the Sub Inspector told him that if an amount of ₹ 5,000 would be paid, he would avoid taking the autorickshaw to the Police Station. He further stated that he did not know who was driving the police jeep. According to him, the Sub Inspector had not asked him to meet the driver of the vehicle and the driver had never demanded him to pay ₹ 5,000 to the Sub Inspector. At that stage, PW1 was declared hostile and permission was granted to the Additional Legal Adviser to put questions to him as permissible in cross-examination. In the cross-examination by the Additional Legal Adviser, PW1 stated that when he informed the Sub Inspector that he had no cash with him, the Sub Inspector told him that the amount had to be paid on the next day. He further deposed that the Sub Inspector took photocopies of the Registration Certificate and Driving License and also took possession of the original Insurance Policy, Tax Receipt, and Pollution Control Certificate. He stated that the Sub Inspector threatened him that if the amount was not paid before 5.00 p.m. on the next day, he would be taken into custody from the town in the presence of the public. PW1 further stated that he had not gone to meet the Sub Inspector on 04.05.2003. He deposed that he came to know that on 06.05.2003 the Sub Inspector had come to the town and enquired about him and accordingly, he contacted the Sub Inspector on the night of 06.05.2003, when the Sub Inspector told him that if ₹ 3,000 would not be paid, he would be implicated in a criminal case. He further stated that on 08.05.2003 the Sub Inspector again came to the town and enquired about him with autorickshaw drivers and nearby shop owners. PW1 deposed that on 11.05.2003 he contacted the Sub Inspector over phone and was informed that if ₹ 3,000 would be paid on the next day, all the problems would be settled. Since he was not willing to pay any bribe, he had given a complaint to the Vigilance officials on 12.05.2003. PW1 further deposed that two gazetted officers came to the room of the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Kannur Unit, and were introduced to him. He entrusted six currency notes of ₹ 500 denomination to the Deputy Superintendent of Police. The

numbers of those currency notes were noted down by the Deputy Superintendent of Police in the presence of the official witnesses. He stated that a demonstration of the phenolphthalein test was conducted using a ₹ 10 note. Thereafter, phenolphthalein powder was smeared on the entrusted currency notes and the same were returned to him with specific direction to hand over the notes to the Sub Inspector only, if there was demand from the 1st accused. Ext.P2 mahazar was prepared at the Vigilance Office, and he signed the same. PW1 deposed that they reached near the quarters of the Sub Inspector at about 4.00 p.m. He went to the quarters of the Sub Inspector, who asked him whether he had brought the amount. PW1 replied that he had brought ₹ 3,000 and handed over the currency notes to the Sub Inspector. According to PW1, the Sub Inspector received the amount and kept it on the desk near the cot on which he was sitting. PW1 further stated that thereafter he came out of the quarters and gave the pre-arranged signal by rubbing his head. The Vigilance party then entered the quarters of the Sub Inspector. Subsequently, the Deputy Superintendent of Police called PW1 inside and asked him whether the Sub Inspector had received any amount. PW1 narrated the incidents that occurred inside the quarters. According to PW1, Deputy Superintendent of Police and the official witnesses found the currency notes given by him near the suitcase of the Sub Inspector. Thereafter, the Sub Inspector was arrested and the trap party returned by about 6.30 p.m. He further stated that the Vigilance officials questioned him and recorded his statement. PW1 reiterated that the Sub Inspector had demanded bribe from him and that he was not willing to pay any bribe.

12. When PW1 was cross-examined by the counsel for the 2nd accused, PW1 stated that he could identify the Sub Inspector and the policeman based on the difference in their uniforms. He further stated that the driver of the police jeep and the policeman inside the jeep had not demanded any amount from him and had not asked him to pay any amount to anybody.

13. Apart from PW1, prosecution examined PW2, an official witness and a gazetted officer, who had been working as Special Officer (RBI) at the Kannur District Industries Centre at the relevant time and who participated in the pre-trap and post-trap proceedings. PW2 deposed that on 12.05.2003, while he was working as Special Officer (RBI) at the Kannur District Industries Centre, he went to the office of the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Kannur Unit, as per the instructions of the General Manager of the District Industries Centre. When he reached the said office, CW3 Balan, who was working as Assistant Education Officer, was also present there. PW1 was also present in the office at that time. PW2 stated that the Deputy Superintendent of Police explained to them the details of the complaint given by PW1. He deposed that the Deputy Superintendent of Police received six currency notes of ₹ 500 denomination handed over by PW1 and recorded the numbers of those currency notes. After putting a mark "V" on the notes, the same were identified as MO1 series. According to PW2, a demonstration of the

phenolphthalein test was conducted using a ₹ 10 currency note. Thereafter, phenolphthalein powder was smeared on MO1 series notes entrusted by PW1 and the same were re-entrusted to PW1 with instruction to hand over the same to the accused only if there was demand by the 1st accused. PW2 deposed that Ext.P2 mahazar was prepared incorporating the details of the procedures conducted in the Vigilance Office and that the said mahazar was signed by the Deputy Superintendent of Police, PW2 himself, CW3, and PW1. PW2 further stated that the Vigilance party reached near the quarters of the Sub Inspector at about 3.45 p.m. PW1 was sent to the quarters of the Sub Inspector with instructions to give a pre-arranged signal by rubbing his head if the Sub Inspector would receive the amount. The remaining members of the trap party waited outside the quarters. PW2 deposed that upon receipt of the signal, the trap party entered the quarters of the Sub Inspector. At that time, the 1st accused was standing near the door on the eastern side of the room. PW2 stated that when the 1st accused saw the Deputy Superintendent of Police, he appeared perplexed and rubbed his hands on the lungi worn by him. The Deputy Superintendent of Police directed him not to do so. PW2 stated that the Deputy Superintendent of Police introduced the members of the trap party to the 1st accused and asked him whether he had received any amount from Saji, (PW1). However, the 1st accused denied receipt of any amount. Thereafter, the Deputy Superintendent of Police called PW1, who was waiting outside the quarters. PW1 narrated the incidents that had occurred inside the quarters after he entered the room. PW2 further deposed that on verification of the place pointed out by PW1, the currency notes were found near the suitcase placed on the desk inside the room. The fingers of the Deputy Superintendent of Police and the official witnesses were dipped in sodium carbonate solution and no colour change was noticed, the said sample solution was collected and marked as MO2. PW2 deposed further that thereafter the fingers of both hands of the 1st accused were dipped in the sodium carbonate solution and the solution showed pink colour change. The said solution was collected and marked as MO3. CW3 verified the currency notes found on the desk and confirmed that they were MO1 series currency notes. The said currency notes were dipped in sodium carbonate solution and there was pink colour change. The sample was collected and marked as MO4. PW2 further deposed that the 1st accused was arrested by the Deputy Superintendent of Police after preparing Ext.P4 arrest memo and Ext.P5 inspection memo. Ext.P6 recovery mahazar was prepared detailing the incidents that occurred inside the quarters of the 1st accused, and the same was signed by PW2, CW3, the Deputy Superintendent of Police, and other witnesses. Thereafter, the accused was taken to the office of the Deputy Superintendent of Police by the Vigilance party. PW2 finally identified the person arrested on that day as the 1st accused at the dock.

14. PW3 who had been working as Writer in the Office of the Circle Inspector of Police, Iritty, at the relevant time. PW3 deposed that at the relevant time. He stated that on 20.05.2003, he produced before the Vigilance officials the carbon

copy of the joining report of the 1st accused. The said document was marked as Ext.P8 and was seized under Ext.P7 mahazar. PW3 further deposed that as per Ext.P7, the 1st accused had taken charge as Sub Inspector of Police, Karikkottakkari Police Station as on 03.01.2003. PW4, who had been working as Head Constable at Karikkottakkari Police Station at the relevant time. According to him, on 12.05.2003, he was put in charge of station duty. He further deposed that he saw the 1st accused leaving the Police Station for patrol duty in the police jeep at about 9.45 a.m. The vehicle was driven by the 2nd accused, as there was no regular driver attached to the Police Station at that time. According to PW4, the Superintendent of Police had authorised the 2nd accused to drive the police vehicle in the absence of a driver. PW4 further deposed that after some time, the 2nd accused returned to the Police Station with the police jeep, but the 1st accused did not return. He stated that later in the afternoon he came to know that the 1st accused was arrested by the Vigilance Police for allegedly demanding and accepting illegal gratification of ₹ 3,000. PW4 further stated that on 23.05.2003, he handed over the General Diary of the Police Station from 30.03.2003 onwards, which was marked as Ext.P11, and the posting order of the 1st accused, which was marked as Ext.P10, to the Vigilance Circle Inspector. According to PW4, the said documents were seized as per Ext.P9 mahazar. During cross-examination by the counsel for the 1st accused, PW4 stated that he had worked along with the 1st accused for about three months. He also stated that he did not know whether the number of suo motu registered cases had increased after the 1st accused took charge of the Police Station.

15. PW5, who had been working as a Police Constable at Karikkottakkari Police Station at the relevant time, testified that on 02.05.2003, while he was working as a Police Constable at Karikkottakkari Police Station, he went along with the 1st accused, who was the Sub Inspector of the said Police Station, for patrol duty at about 11.30 p.m. He stated that the police jeep was driven by the 2nd accused. PW5 further deposed that when they reached near St.Jude Church, they saw an autorickshaw stationed on the roadside near the river shore, and a girl was found inside the autorickshaw. On questioning, they were informed that the persons had come for meditation. PW5 deposed that the Sub Inspector directed that the girl be taken to her house in the autorickshaw, and the police jeep accompanied the autorickshaw. PW5 stated that after the girl was dropped at her house, the 1st accused directed that the autorickshaw be taken to the Police Station. While the autorickshaw was proceeding towards the Police Station, the 1st accused stopped the vehicle and seized the documents of the autorickshaw. He further stated that the 1st accused spoke to the autorickshaw driver, and that the 2nd accused also spoke to the autorickshaw driver. After some time, the autorickshaw was released. PW5 deposed that he did not know the nature of the conversation between the Sub Inspector, the 2nd accused, and the autorickshaw driver.

16. The prosecution sanction in this case was proved through PW7, who had been working as Deputy Inspector General of Police, Kannur Range, at the relevant time. PW7 deposed that on 09.07.2004, while he was working as Deputy

Inspector General of Police, Kannur Range, he had issued Ext.P13 prosecution sanction order for prosecuting accused Nos.1 and 2 in this case. He stated that he was the authority competent to remove the accused persons from service. PW7 further deposed that he issued Ext.P13 sanction order after perusing the case records, applying his mind, and being satisfied that the accused persons were liable to be prosecuted. When PW7 was cross-examined by the counsel for the 1st accused, PW7 denied the suggestion that he had not complied with the essential formalities before issuing the sanction order.

17. PW8 is an official witness, who had been working as Sub Inspector of Police at the Motor Transport Office, A.R. Camp, Kannur, at the relevant time. PW8 deposed that while he was working as Sub Inspector of Police at the Motor Transport Office, A.R. Camp, Kannur, he produced the vehicle diary of the police jeep bearing registration No. KL-01-D-3764 attached to Karikkottakkari Police Station for the period from 01.05.2003 to 31.05.2003. The said document was marked as Ext.P15. PW8 further deposed that he also produced the authorisation order issued by the Superintendent of Police, Kannur, permitting the 2nd accused to drive the departmental vehicle, which was marked as Ext.P16. Both documents were seized under Ext.P14 mahazar.

18. PW9 deposed that while he was working as U.D. Clerk at the District Police Office, Kannur, he produced the service book of the 2nd accused before the Vigilance officials on 23.07.2003. The same was seized under Ext.P17 mahazar. PW9 further deposed that the original service book was returned to him after executing Ext.P17(a) kychit and that Ext.P18 was the attested copy of four pages of the service book of the 2nd accused. He further stated that the service book of the 1st accused had been sent to the Superintendent of Police, Wayanad District, and therefore could not be produced before the Vigilance officials.

19. PW10 is the trap laying officer, i.e., Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Kannur. PW10 deposed that on 12.05.2003, PW1 came to his office and gave a statement regarding his complaint. The statement was recorded and PW1's signature was obtained. Ext.P1 was the First Information Statement given by PW1. Based on the said complaint, crime No. V.C.6/2003/Kannur was registered under Section 7 of the PC Act, 1988, and Ext.P1(a) FIR was registered by him. PW10 further deposed that requisitions were sent to the District Education Officer, Kannur, and the General Manager, District Industries Centre, Kannur, seeking the assistance of gazetted officers. CW2 and CW3 reported at his office. He introduced PW1 to them and explained the complaint. PW10 stated that PW1 handed over six currency notes of ₹ 500 denomination, which he received and recorded the serial numbers thereof in the seizure mahazar and marked them with the letter "V". The said currency notes were marked as MO1 series. A demonstration of the phenolphthalein test was conducted using a ₹ 10 note. Thereafter, phenolphthalein powder was smeared on MO1 series and the notes were entrusted to PW1 with instructions to hand them over only if a demand was

made by the 1st accused. Ext.P2 entrustment mahazar was prepared incorporating all these details and was signed by PW1, the official witnesses, and PW10. PW10 further deposed that the trap party left the Vigilance Office at about 2.30 p.m. and reached near Karikkottakkari Police Station at about 3.55 p.m. The vehicle was changed at Edoor Junction, and thereafter they proceeded in an autorickshaw. PW1 was sent to the quarters of the Sub Inspector. At about 4.05 p.m., the pre-arranged signal was received, following which the trap party entered the quarters through both entrances. PW10 stated that the 1st accused was standing near the eastern door of his quarters. On seeing PW10, the 1st accused appeared perplexed and rubbed his hands on his lungi. He was instructed not to do so. PW10 introduced himself and asked the 1st accused whether he had received any amount from PW1. The 1st accused denied the same. PW1 was then called inside and he narrated the incidents that occurred inside the quarters and stated that the currency notes were kept on the desk near a suitcase. PW10 deposed that on searching the said place, the currency notes were found. The 1st accused offered no explanation for their presence. The hands of PW10 and the official witnesses were dipped in sodium carbonate solution, which showed no colour change, and MO2 sample was collected. Thereafter, the hands of the 1st accused were dipped in the solution, which turned pink, and MO3 sample was collected. Portions of the currency notes were also dipped in sodium carbonate solution, which turned pink, and MO4 sample was collected. PW10 further deposed that the 1st accused was arrested after preparing Ext.P4 arrest memo and Ext.P5 inspection memo. Recovery mahazar was prepared and signed by the accused, official witnesses, and PW10. The accused was produced before court along with Ext.P19 remand report. The seized properties were produced before court on 13.05.2003 under Ext.P20 property list. Ext.P21 report was submitted for adding Sections 13(1)(d) and 13(2) of the PC Act, 1988. PW10 also deposed that he seized photocopies of the driving licence, registration certificate, permit, and original insurance policy and pollution control certificate produced by the Head Constable of Karikkottakkari Police Station under Ext.P22 mahazar, and the documents were marked as Ext.P23 series. He further stated that these documents were taken from PW1, by the accused. He identified the arrested Sub Inspector as the 1st accused in this case.

20. PW11, who conducted the investigation in this case while working as Inspector of Vigilance and Anti-Corruption Bureau, Kannur, supported the investigation.

21. Now, it is necessary to address the ingredients which are necessary to constitute offences under Section 7 as well as Section 13(1)(d) r/w 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 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) 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.

22. In this connection, it is relevant to refer a 5 Bench decision of the Apex Court in [AIR 2023 SC 330], Neeraj Dutta v. State, where the Apex Court considered when the demand and acceptance under Section 7 of the P.C.Act 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 PC Act, 1988 and in paragraph No.68, it has been held as under :

"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.”

23. Thus, the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act, 1988, is extracted above. Regarding the mode of proof of demand of bribe, if there is an offer to pay bribe 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 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.

24. In this context, it is relevant to refer the decision of this Court in *Sunil Kumar K. v. State of Kerala* reported in [2025 KHC OnLine 983], in Crl.Appeal No.323/2020, dated 12.9.2025, wherein in paragraph No. 12, it was held as under:

“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 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 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."

25. Now, the question arises for consideration is; whether the prosecution is succeed in proving that the appellant/1st accused demanded and accepted the bribe money, for which, the evidence as discussed hereinabove, is sufficient?

26. In this case, apart from generally challenging the appreciation of evidence, the learned counsel for the appellant/1st accused submitted that there was no proper sanction to prosecute the 1st accused. According to him, Ext.P13 sanction, proved through PW7, was issued to prosecute accused Nos.1 and 2 jointly. It was contended that a separate sanction, based on the prosecution records and reflecting due application of mind by the sanctioning authority, ought to have been obtained. Therefore, for want of proper sanction, the entire prosecution is vitiated and the said benefit shall go to the appellant/1st accused.

27. Repelling this contention, the learned Special Public Prosecutor submitted that this contention is strange and there is no mandate in law that separate sanction to be obtained individually for each accused when more than one accused is involved in one crime. According to the learned Special Public Prosecutor, in the instant case, Ext.P13 sanction was issued by PW7 after verifying the prosecution records after satisfying that the appellant as well as the 2nd accused were liable to be prosecuted. However, on appreciation of the evidence, the learned Special Judge acquitted the 2nd accused for want of evidence.

28. While addressing the said contention, the contention raised by the learned

counsel for the appellant/1st accused found is to be not digestible. It is true that Section 19(1) of the PC Act, 1988 prohibits the taking of cognizance of offences punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction. Section 19(1)(a) to (c) deal with the authority competent to sanction. In the instant case, the sanction obtained appears to be under Section 19(1)(b) of the PC Act, 1988, since the accused was employed in connection with the affairs of the State and are not removable from their office only with the sanction of the Government. It is true that Section 19(1)(c) of the PC Act, 1988 deals with situations not covered under Section 19(1)(a) and (b) of the PC Act, 1988. On perusal of Ext.P13 sanction on par with the evidence of PW7, it could be seen that the sanctioning authority applied its mind, based on the prosecution records and granted sanction to prosecute accused Nos.1 and 2 and the said sanction is in no way found to be illegal. Even otherwise, Section 19(3)(a) of the PC Act, 1988 specifically provides that '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' and this provision operates as an exception to the general provisions under Section 19(1)(a) to (c) of the PC Act, 1988. In view of Section 19(3)(a) of the PC Act, 1988, an appellate court is not expected to reverse or alter any finding, sentence or order on the ground of any error, omission or irregularity in the sanction, unless the court is of the opinion that a failure of justice has been occasioned. In the instant case, no failure of justice could be noticed. In fact, there is no failure of justice and the sanction issued and proved through PW7 is found as proper, since the sanction was issued after verifying the prosecution records by due application of mind by the Sanctioning Authority.

29. Coming to another argument raised by the learned counsel for the appellant/1st accused, it was contended that since the appellant/1st accused caught PW1 along with a girl at odd hours of the night in an autorickshaw and the said incident became known in the locality, PW1, feeling insulted, became inimical towards the accused and he foisted a false case, in fact, this contention appears to be not sustainable, where the categorical evidence of PW1 would show demand and acceptance of bribe by the accused, in view of the evidence discussed in detail. On re-appreciation of the evidence of PW1 with that of PW2 and PW10 supported by other evidence discussed in detail, the prosecution succeeded in proving that the appellant/1st accused demanded and accepted MO1 series notes as illegal gratification from PW1, to avoid implication of him in a case. Thus, none of the contentions raised by the learned counsel for the appellant/1st accused could sustain, and the verdict of the trial court is found to be sustainable.

30. In view of the above, the conviction entered by the Special Court, after properly appreciating the evidence, does not call for any interference. The

learned counsel for the appellant/1st accused argued that leniency may be shown in the matter of sentence by reducing the same to the minimum possible. This argument appears to have force. Therefore, I am inclined to modify the sentence to the statutory minimum, in the interest of justice.

In the result, this appeal is allowed in part. The conviction imposed by the Special Court finding commission of offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988, is confirmed. The sentence stands modified as under:

1. The appellant/1st accused is sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹ 10,000/- for the offence punishable under Section 7 of the PC Act, 1988, and in default of payment of fine, he shall undergo rigorous imprisonment for a period of one month.
2. The appellant/1st accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹ 10,000/- for the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988 and in default of payment of fine, he shall undergo rigorous imprisonment for a period of one month.
3. Set off provided under Section 428 of the Code of Criminal Procedure is allowed.
4. The substantive sentences shall run concurrently and the default sentences shall run separately.
5. The order suspending sentence and granting bail to the appellant/1st accused stands cancelled and the bail bond executed by the appellant/1st accused also stands cancelled. The appellant/1st 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.