

(2011) 12 CHH CK 0038
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 977 of 1996

V. Raghav Rao and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 394(2)
Evidence Act, 1872 — Section 114, 4
Penal Code, 1860 (IPC) — Section 161, 165
Prevention of Corruption Act, 1988 — Section 11, 13, 13(1)(d), 13(2), 2

Citation : (2012) CriLJ 2874

Hon'ble Judges : R.S. Sharma, J

Bench : Division Bench

Advocate : Rajeev Shrivastava, for the Appellant; Santosh Kumar Tiwari for C.B.I., for the Respondent

Final Decision : Dismissed

Judgement

Radhe Shyam Sharma, J.—The instant appeal preferred by accused/appellant V. Raghav Rao is directed against judgment dated 21st May, 1996 passed by 5th Additional Sessions Judge, and Special Judge (CBI), Jabalpur in Special Case No. 29/93, whereby the learned Special Judge has convicted the accused/appellant under Sections 7 and 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (henceforth "the Act, 1988") and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 2,000/- and to undergo rigorous imprisonment for two years and to pay fine of Rs. 4,000/-, respectively. In default of payment of fine, the accused/ appellant has been sentenced to further undergo rigorous imprisonment for six months and one year, respectively. During pendency of the appeal, accused/appellant V. Raghav Rao has died on 26-9-2005 and his legal representatives have filed application u/s 394(2) Cr. P. C. for their substitution in place of the deceased/appellant and continuation of the appeal. By order dated 4-4-2011, the legal representatives of the accused/appellant have been ordered to be brought on record and they have been permitted to

continue the appeal.

2. Case of the prosecution, in brief, is as under:

The accused was functioning as Senior Welfare Inspector in South Eastern Railway at DRM's Office, Bilaspur during the year 1991-92. Complainant Hiralal (PW-3) made a complaint (Ex-P/2) to Dy. Superintendent of Police, CBI, Jabalpur on 27-8-92 stating that the accused demanded Rs. 1,000/- from him as bribe for preparing and forwarding the papers for his medical test for compassionate appointment. N.K. Dubey, Dy. Superintendent of Police, CBI forwarded the complaint to Inspector Binay Kumar (PW-6) for taking necessary action and arranging trap proceedings. Binay Kumar (PW-6) called for two panch witnesses A.A. Khan (PW-4) and V.K. Shrivastava (PW-5). A pretrap demonstration was arranged, wherein solution of sodium carbonate was prepared in a glass. On dip of a water paper in it, colour of the solution did not change. Thereafter, another piece of paper containing phenolphthalein powder was again dipped in the solution of sodium carbonate, colour of which turned pink. Panchnama of pre-trap was prepared vide Ex-P/3. After giving the demonstration, complainant Hiralal (PW-3) was asked to present currency notes of Rs. 1,000/-. The complainant submitted currency notes of Rs. 1,000/- in the denomination of Rs. 50/-. Numbers of the notes were recorded in the pre-trap Panchnama. After submission of the notes, phenolphthalein powder was smeared thereon and the notes were kept in the pocket of complainant Hiralal (PW-3). The complainant and V.K. Shrivastava (PW-5) were informed and guided as to how the trap would be arranged and as to role which they were required to play in the trap proceedings. After preparing pre-trap Panchnama (Ex-P/3) and arranging pre-trap proceedings, the trap team proceeded to the house of the accused. Complainant Hiralal (PW-3) and V.K. Shrivastava (PW-5) were asked by the trap team to proceed to the house of the accused for giving the bribe and members of the trap team gathered around the house of the accused at different places in order to witness the incident. Complainant Hiralal (PW-3) gave Rs. 1,000/- (20 notes in the denomination of Rs. 50/-) to the accused. The accused kept the money in the pocket of his kurta. After receiving the trap signal, members of the trap team rushed the spot immediately and caught hands of the accused. The trap team seized the currency notes from the accused. Numbers of the currency notes seized from the accused were compared with the numbers mentioned in the pre-trap Panchnama (Ex. P/3), which were found similar. Solution of sodium carbonate was prepared and right hand of the accused was washed in that solution, colour of which turned pink. Thereafter, the solution was kept in a bottle and sealed. Another solution of sodium carbonate was prepared, in which, pocket of the kurta of the accused was dipped, colour of which also turned pink. Thereafter, the solution was kept in another bottle and sealed. Kurta of the accused was seized and currency notes were also seized. Thereafter, another solution of sodium carbonate was prepared, in which hands of the complainant were washed, colour of which turned pink. The solution was kept in another bottle and sealed. Trap-Panchnama was prepared on the spot. Three passport

size photographs and bunch of papers were seized from complainant Hiralal (PW-3) vide Ex. P/5. Almirah of the accused was searched and relevant papers were seized and a search list was prepared vide Ex. P/7. Thereafter, First Information Report (Ex-P/27) was registered. The sealed solution and other seized articles were sent for chemical examination. Report (Ex. P/28) was received from Forensic Science Laboratory (FSL). In the report (Ex. P/ 28), it is mentioned that test of phenolphthalein was found positive.

After completion of investigation and after obtaining sanction for prosecution (Ex-P/1) against the accused, charge-sheet was filed against him before Special Judge, CBI, Jabalpur.

The learned Special Judge, Jabalpur framed charges against the accused under Sections 7 and 13(1)(d)/13(2) of the Act, 1988. After appreciation of the evidence available on record, the learned Special Judge has convicted and sentenced the accused as mentioned above.

3. Shri Rajeev Shrivastava, learned counsel appearing for the accused/appellant argued that the prosecution has failed to prove demand of illegal gratification by reliable and cogent evidence, which is sine qua non for convicting the accused under Sections 7 and 13(1)(d)/13(2) of the Act, 1988. To prove the same, presumption cannot be drawn against the accused. He further submitted that at the time of incident, the accused was transferred and he had handed over charge of his office and he was relieved to join new place of posting. It is necessary for the prosecution to satisfy and establish that all the ingredients of Sections 7 and 13(1)(d)/13(2) of the Act 1988 have been made out before convicting the accused. Evidence of Hiralal (PW-3) is full of contradictions. Recovery of amount is also doubtful. In one place, Hiralal (PW-3) deposed that the amount was recovered from the shirt of the accused and in another place, he deposed that the amount was recovered from the pocket of the kurta of the accused. The date and time of recovery are also contrary. The evidence of Hiralal (PW-3) is unreliable and conviction cannot be based on his testimony. Demand of money was not proved by the prosecution. He further submitted that the impugned judgment is not sustainable in the eyes of law. He placed reliance on *Mohmoodkhan Mahboobkhan Pathan Vs. State of Maharashtra*,) and *Smt. Meena Hemke Vs. The State of Maharashtra*,

4. On the other hand, Shri Santosh Kumar Tiwari, learned Standing Counsel appearing for the respondent/CBI, supporting the impugned judgment, submitted that the prosecution has adduced cogent and reliable evidence against the accused. Bribe money was recovered from the accused. Right hand of the accused was washed in the solution of sodium carbonate, colour of which had turned pink. Pocket of the kurta of the accused was also dipped in the solution of sodium carbonate, colour of which also turned pink. Acceptance of the amount is not disputed by the accused, therefore, presumption u/s 20 of the Act, 1988 is made out against the accused. Hence, the accused is liable to be convicted.

5. The learned Special Judge, after appreciation of the evidence available on record, held that the accused had demanded Rs. 1,000/- from the complainant for the purpose of issuing medical test form regarding his compassionate appointment, which is illegal gratification. The learned Special Judge has convicted the accused under Sections 7 and 13(1)(d)/13(2) of the Act, 1988.

6. Inspector Binay Kumar (PW-6) deposed that on 27-8-1992, he had stayed at Anand Hotel, Bilaspur with N.K. Dubey, Deputy Superintendent of Police. On that day, complainant Hiralal (PW-3) came there and submitted his complaint (Ex. P/2) to Deputy Superintendent of Police N.K. Dubey. N.K. Dubey forwarded the complaint (Ex. P/2) to him. At that time, complainant Hiralal (PW-3) was present there. He asked Hiralal (PW-3) regarding his complainant, called A.A. Khan (PW-4) and V.K. Shrivastava (PW-5) and introduced them with complainant Hiralal (PW-3). Thereafter, the witnesses read the complaint (Ex. P-2) of the complainant. Thereafter, trap proceedings were arranged. A pre-trap demonstration was arranged, wherein a solution of sodium carbonate was prepared in a glass. A paper was dipped in the solution, but colour of the solution did not change. Thereafter, another piece of paper smeared with phenolphthalein powder was dipped in the solution, colour of which turned pink. Pre-trap Panchnama was prepared vide Ex. P/3. After giving the demonstration, complainant Hiralal (PW-3) was asked to produce currency notes of Rs. 1,000/-. The complainant submitted Rs. 1,000/- (20 notes in the denomination of Rs. 50/-), on which, phenolphthalein powder was smeared and thereafter the said notes were kept in the pocket of complainant Hiralal (PW-3). The complainant was informed and guided as to how the trap would be arranged and about the role which he had to play during trap proceedings.

7. Hiralal (PW-3) deposed that his father had died on 13-3-1992. His father died during his employment. After 15 days of death of his father, he had submitted an application for employment in PW1 office, Balod. After about 11/2 months of submission of the application, he had received a call letter for interview from the office of Senior D. R. M., Bilaspur. After appearing in the interview, he had received a registered envelope relating to employment on 12-8-1992. After receiving the said envelope relating to the employment, he had gone to DPO Office, Bilaspur and met accused Raghav Rao there. On showing him the papers relating to the employment, he had told him that he will have to appear for medical examination, and thereafter, he will get the employment. The accused told him that medical paper will be given by him and for getting the medical paper, he will have to pay him Rs. 1,000/-. He said to the accused that he does not have money and he is a poor person. He had gone to the house of the accused for obtaining the medical paper. The accused had again demanded the money and told him that only on giving the money he will give him the medical paper. The accused had asked him to come with Rs. 1000/- at his house on that day at 7 p.m. and said that on receiving money he will give the medical paper and his all work will be completed. He did not want to give money to the accused, therefore, he made a complaint to the CBI (Central Bureau of

Investigation) vide Ex. P-2. The CBI Personnel had met him in Anand Hotel, Bilaspur. CBI Personnel Dubey, Pandey and others had met him there. On receiving his complaint, CBI Personnel had called for two witnesses. One of the witnesses was one Shrivastava and another was one Khan. He was introduced with both the witnesses. He was also introduced with other personnel of the CBI. His complaint was given to both the witnesses for their perusal. After perusing the complaint, the witnesses had enquired him about the demand. He had told them about the demand of bribe of Rs. 1,000/- by the accused.

8. A.A. Khan (PW-4) deposed that on 27-8-1992, he was instructed by his Chief Vigilance Officer to visit CBI Personnel staying at Anand Hotel, Bilaspur in regard to some necessary action. Under the instructions of the Chief Vigilance Officer, he and V.K. Shrivastava (PW-5) went to Anand Hotel, Bilaspur and met the CBI Team there at Room No. 58. He met there CBI Personnel, namely, Dubey, Binay Kumar, Chouhan and others. He also met complainant Hiralal there. CBI Personnel told him there that accused Raghav Rao had made demand of bribe of Rs. 1,000/- from the complainant for giving medical paper. Therefore, he was required to accompany them and play role of an independent witness. CBI Personnel Binay Kumar had shown him the complaint made by the complainant. After perusing the complaint, he had enquired the complainant about the complaint. The complainant told him that the accused had demanded bribe from him for giving medical paper and, therefore, he made the complaint vide Ex. P-2. On being asked by Binay Kumar, the complainant had submitted 20 currency notes in the denomination of Rs. 50/- each, whose numbers were noted in the Panchnama. Thereafter, those currency notes were smeared with phenolphthalein powder. Demonstration of sodium carbonate solution and phenolphthalein power solution was made there. That solution had turned into pink colour. That solution was sealed in an empty bottle. That solution was named as article "G". The currency notes, smeared with phenolphthalein powder, were kept in top pocket of shirt of the complainant. The complainant was asked not to touch the currency notes until the accused makes demand therefor. V.K. Shrivastava (PW-5), who was also instructed by the Chief Vigilance Officer to visit CBI Personnel staying at Anand Hotel, Bilaspur, deposed in similar fashion.

9. Binay Kumar (PW-6) deposed that he directed Hiralal (PW-3) and V.K. Shrivastava (PW-5) to meet the accused. Hiralal (PW-3) and V.K. Shrivastava (PW-5) went to the house of the accused. They reached the house of the accused and spread nearby the house. He further deposed that he directed A.A. Khan (PW-4) to stay near the window of the house of the accused and to try to hear the talks between the accused and complainant Hiralal (PW-3). He further deposed that Hiralal (PW-3) and V.K. Shrivastava (PW-5) entered the house of the accused and after sometime, V.K. Shrivastava (PW-5) came out of the house of the accused and rubbing his head, transmitted signal to the waiting trap-team.

10. V.K. Shrivastava (PW-5) deposed that he and Hiralal (PW-3) were asked by the members of the trap team to proceed to the house of the accused to give the

bribe money and three photographs, of Hiralal (PW-3) were kept in the pocket of Hiralal (PW-3). They proceeded to the house of the accused by a rickshaw. After entering the house of the accused, Hiralal (PW-3) gave his three photographs and Rs. 1,000/- to the accused. The accused took the money in his right hand and kept the same in the pocket of his kurta and thereafter he told Hiralal (PW-3) that his work will be done. After receiving the signal, Inspector Binay Kumar (PW-6), other CBI Personnel and A.A. Khan (PW-4) rushed there and caught hands of the accused. Solution of sodium carbonate was prepared and right hand of the accused was washed in that solution, colour of which turned pink. The solution was kept in a bottle and sealed. Currency notes were seized and numbers thereof were compared with the numbers mentioned in pre-trap Panchnama (Ex. P/3). which were found similar. Right hand side pocket of the kurta of the accused was also washed in the sodium carbonate solution, colour of which turned pink. The solution was kept in another bottle and sealed. Binay Kumar (PW-6) deposed in similar fashion in paragraphs 3 and 4 of his deposition and A. A. Khan (PW-4) also deposed in similar fashion.

11. V. Koteswar Rao (DW-1) deposed that in August, 1992, the accused was posted as Welfare Inspector in the office of Senior DPO, South Eastern Railway, Bilaspur. In the month of August, 1992, at about 6:45 P.M., he had gone to the house of the accused. At that time, the accused had not returned home from the office. He had some talks with wife of the accused. After sometime, the accused came home and told him that he was not feeling well and after getting fresh, he went to garden of the house. He further deposed that after sometime, he heard some noise from outside. When he came out, he saw that two persons had caught hold of hands of the accused. On being asked, they told him that they were officers of the Central Bureau of investigation and had made trap against the accused.

12. Learned counsel for the accused/appellant argued that on 27-8-1992, the accused was not posted at the relevant office and he was already transferred and relieved from there to join new place of posting, therefore, the accused was not competent to carry out the work of the complainant and issue any medical test form in his favour. This argument is not acceptable.

13. In *Dhaneshwar Narain Saxena v. The Delhi Administration*, AIR 1962 SC 195, the Hon"ble Supreme Court held thus:

3....."The offence under this provision consists of criminal misconduct in the discharge of his duty. In order, therefore, that this offence is committed there should be misconduct by the public servant in the discharge of his duty. In other words, the public servant must do something in connection with his own duty and thereby obtain money for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. If a public servant takes money from a third person in order to corrupt some other public servant and there is no question of his misconducting himself in the discharge of his own duty, that action may be an offence under S. 161 of the Indian Penal Code but

would not be an offence under S. 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act. The essence of an offence under S. 5(2) read with S. 5(1)(d) is that the public servant should do something in the discharge of his own duty and thereby obtain any valuable thing or pecuniary advantage for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. The words "by otherwise abusing his position" read along with the words "in the discharge of his duty" appearing in S. 5(1)(d) make it quite clear that an offence under that section requires that the public servant should misconduct himself in the discharge of his own duty....

14. In *Dalpat Singh and another v. State of Rajasthan*, AIR 1969 SC 17, the Hon'ble Supreme Court observed that the words "in the discharge of his duty" occurring in S. 5(1) of the Prevention of Corruption Act do not constitute an essential ingredient of the offence under S. 5(1)(d) of the Act. The ingredients of the offence under S. 5(1)(d) are: (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant, (3) that he should have obtained a valuable thing or pecuniary advantage and (4) for himself or any other person. Therefore to bring home an offence under S. 5(1)(d), it is not necessary to prove that the acts complained of were done by the accused in the discharge of their official duties. Therefore, if it is proved that the accused had by illegal means or by otherwise abusing their position as public servants obtained for themselves money or other valuable things, then, they can be said to have committed the offence of criminal misconduct in the discharge of their official duties.

15. In the light of above principles, it is erroneous to hold that the essence of an offence u/s 13(1)(d) read with Section 13(2) of the Act, 1988 is that the public servant must do something in connection with his own duty and thereby obtain any valuable thing or pecuniary advantage. It is also erroneous to hold that the essence of an offence u/s 13(1)(d) read with Section 13(2) of the Act, 1988 is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage. It is necessary that an accused person, while misconducting himself, should have done in the discharge of duty and thereby obtained any pecuniary advantage. In the instant case, the accused was posted as a Welfare Inspector in Recruitment Section in South Eastern Railway at Bilaspur and the complainant had earlier met with him for the purpose of getting medical test from him for his compassionate appointment. In this situation, even if the accused would have been transferred from the recruitment section of the Railway at Bilaspur to new place of posting, the complainant was under impression and belief that the accused could carry out his work relating to issuance of medical test form and, therefore, the complainant had met with him for the said purpose.

16. It is evident that complainant Hiralal (PW-3) had gone to the house of the accused along with V.K. Shrivastava (PW-5). V.K. Shrivastava (PW-5) transmitted signal to the waiting trap-team and the trap-team, on receiving the signal,

reached the spot immediately and caught hands of the accused. After getting hands of the accused washed in the solution of sodium carbonate, the test of phenolphthalein was found positive. Currency notes were also recovered from the pocket of the accused and their numbers were compared with the numbers mentioned in the pre-trap Panchnama (Ex. P-3), which were found similar.

17. In *M. Narsinga Rao Vs. State of Andhra Pradesh*, the Hon''ble Supreme Court observed thus :

22. In *Raghubir Singh Vs. State of Haryana*, V.R. Krishna Iyer, J. speaking for a three-Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is "res ipsa loquitur". In this context the decision of a two-Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ.) in *Hazari Lal Vs. State (Delhi Administration)*, can usefully be referred to. A police constable was convicted u/s 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs. 60/- from one Sriram who was examined as PW-3 in that case. In the trial Court, PW-3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version. The Court found that phenolphthalein-smeared currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption u/s 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two-Judge Bench observed as follows : (SCC p. 396, para 10)

It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW-3. u/s 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the Court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW-3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW-3, the presumption u/s 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The

accused was, therefore, rightly convicted by the Courts below.

25. We, therefore, agree with the finding of the trial Court as well as the High Court that prosecution has proved that the appellant has received gratification from PW-1. In such a situation, the Court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward or doing the public duty. Of course, the appellant made a serious endeavour to rebut the said presumption through two modes. One is to make PW-1 and PW-2 speak to the version of the appellant and the other is by examining two witnesses on the defence side. True PW-1 and PW-2 obliged the appellant. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the date when the alleged demand was made by PW-1. But the trial Court and the High Court have held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The concurrent finding made by the two Courts does not require any interference by this Court.

18. In *T. Shankar Prasad Vs. State of Andhra Pradesh*, , the Hon"ble Supreme Court observed thus :

8. For appreciating rival stands it would be proper to quote Section 20(1) of the Act, which in essence and substance is the same as Section 4(1) of the previous Act of 1947 and which read as follows:

4. (1) Presumption where public servant accepts gratification other than legal remuneration.- (1) Where in any trial or an offence punishable u/s 161 or Section 165 of the Indian Penal Code, or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under the sub-section (2) thereof, 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 the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

9. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). The presumption falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression "shall be presumed" is employed in Section 4(1) of the 1947 Act and Section 20 of the Act, it must have the same import of compulsion.

10. When the sub-section deals with legal presumption, it is to be understood as in *terrorem* i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing

to do any official act etc. if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption u/s 4 of the 1947 Act is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. (See M. Narsinga Rao Vs. State of Andhra Pradesh,

19. At this juncture, we must also express as to how the presumption was completely ignored by the High Court. Section 20 of the Act provides :

20. Presumption where public servant accepts gratification other than legal remuneration.- (1) Where, in any trial of an offence punishable u/s 7 or 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) (Not relevant)

(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 inference of corruption may fairly be drawn."

It was argued, though feebly, that the presumption could not be drawn as the charge in this case was u/s 13(2) read with Section 13(1)(d) of the Act.

21. It was pointed out by the learned counsel for the respondent accused that Section 13(1)(d) did not attract the presumption u/s 20 of the Act. What is being ignored by the learned counsel for the respondent-accused is that the charge was not only u/s 13(1)(d), but also u/s 7 of the Act. Section 7 of the Act is as under:

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 six months but which may extend to five years and shall be liable to fine.

20. In Subbu Singh Vs. State by Public Prosecutor, , the Hon''ble Supreme Court held that once it is proved by the prosecution that the money was demanded as bribe and the same was received from PW-2, Section 20 of PC Act comes into play. Once there is a presumption as contemplated u/s 20, it is for the appellant to establish that the amount was not received as bribe. It is to be noted that the appellant was alone in his room for sometime holding the currency notes before PW-26 and other officer entered into the house. Therefore, as rightly observed by the High Court, the possibility of the appellant counting the money with the help of right hand cannot be ruled out.

21. In the instant case, currency notes of Rs. 1,000/- were recovered from the accused and the numbers thereof were compared with the numbers mentioned in the pre-trap Panchnama (Ex. P-3), which were found to be similar. The accused did not give any proper and plausible explanation for recovery of money from him. It is proved that money was recovered from the accused, therefore, on the facts and circumstances of the case, presumption can be drawn against him that he demanded and accepted illegal gratification. In such a situation, this Court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty.

22. I have perused all the judgments cited by learned counsel appearing for the accused/ appellant, however, I find that the same are not relevant to the facts involved in the instant case.

23. For the foregoing reasons, I am of the considered opinion that the conviction of the accused /appellant is based upon reliable and credible evidence. I do not find any illegality or irregularity in the impugned judgment. Therefore, the impugned judgment is affirmed and the appeal is dismissed.