(2018) 06 GAU CK 0055

In the Gauhati High Court

Case No : Criminal Appeal No. 17 of 2008

Vinay Kumar APPELLANT

Vs

C B I RESPONDENT

Date of Decision : 13-06-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7, 13(2), 13(1)(d), 20
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 06 GAU CK 0055

Hon'ble Judges : HITESH KUMAR SARMA, J

Bench : Single Bench

Advocate : Z Kamar, SC Keyal, D Talukdar

Final Decision : Allowed

Judgement

[1] This is an appeal, against the judgment and order, dated 31.12.2017, passed by the learned Special Judge, CBI, Assam in Special Case No. 4/2005,

convicting the accusedappellant under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (herein after referred to as

the PC Act) and sentencing him to rigorous imprisonment for 2 (two) years with a fine of Rs. 10,000/- with a default clause for offence under Section

7 of the PC Act and rigorous imprisonment for 2 (two) years with a fine of Rs. 10,000/- with a default clause with a default clause for offence under

Section 13(2) read with Section 13(1)(d) of the PC Act. Both the sentences are ordered to be run concurrently.

[2] I have heard Mr. Z Kamar, learned senior counsel, assisted by Mr. D Talukdar, learned counsel, appearing for the accused-appellant as well as

Mr. SC Keyal, learned Standing Counsel, CBI.

[3] M/s PS Enterprise of Jorhat being a firm registered with the Military

Engineering Service, Jorhat entrusted with contractual work by the Military

Engineering Service of Jorhat in the year 2003, vide an official work order, dated 18.01.2003. The work was supposed to be completed, as per the

order, on or before 21.07.2003. The contractual value of the work was Rs.11,78,986/- on completion of 75% to 80% of work, the aforesaid firm was

paid an amount of Rs. 7,26,002/-, as remaining bill, against its claim for Rs. 8,66,000/-through a bill, dated 25.05.2003. The accused-appellant was the

Executive Engineer, Garrison Engineer, Military Engineering Service, Jorhat. The proprietor of the aforesaid firm, Mr. P Singha, lodged a complaint

before the Superintendent of Police, CBI, ACB, Guwahati alleging that the said accused-appellant had demanded an amount of Rs. 1,20,000/- as his

commissionagainst the work entrusted to him @ 10% of the total value of the contractual work. The complainant, Mr. Singha, requested the accused-

appellant to allow him to complete the work on 07.07.2003. But, the accused-appellant asked him to satisfy his demand first to which the complainant

aforesaid disagreed. Then, the accused-appellant asked him to pay an amount of Rs. 50,000/- immediately with a further direction to pay the remaining

amount on completion of the entire work. The complainant was not inclined to oblige the accused-appellant and therefore he lodged the complaint,

aforesaid, marked as Ext. 10.

[4] The SP, CBI, Guwahati forwarded the complaint to the Deputy, SP, CBI for necessary action. Thereafter, an FIR was drawn on the complaint

aforesaid, marked as Ext.4, and after necessary verification laid a trap to nab the accused-appellant and also investigated the case.

[5] On 10.07.2003, the trap was laid around the accused-appellant with the help of the complainant and other trap team members. The trap team

witnessed the accusedappellant demanding bribe in presence of some of its members and also of receiving bribe money on being paid by the

complainant. Immediately the trap team caught the accusedappellant red handed and recovered the money from his possession. The notes, which

were recovered from the accused-appellant were found to be the notes which the complainant gave to him in his office chamber, few minutes before.

The accused-appellant was arrested and taken to custody by the Investigating Officer of the CBI. He was also granted bail by the investigating

authority without being produced in the Court.

[6] After completion of investigation, charge-sheet was laid against the accusedappellant, after obtaining sanction from the competent authority, under

Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, (hereinafter referred to as the PC Act).

[7] After exhausting all the required formalities, a formal charge against the accusedappellant was framed under the aforesaid provisions of law to

which the accused-appellant pleaded not guilty. Therefore, the trial commenced.

[8] During the trial, prosecution examined as many as 12 (twelve) witnesses including the complainant and the Investigating Officer who were

subjected to cross-examination by the defence at length. Thereafter, statement of the accused-appellant was recorded under Section 313 of the

Cr.PC. The accused-appellant pleaded total denial of the accusations. No evidence was laid by the accused-appellant in his defence. After conclusion

of the trial, the learned trial court convicted and sentenced the accused-appellant as aforesaid.

[9] On reading the oral as well as documentary evidence on record, this Court is of the view that the culpability or otherwise of the accused-appellant

can be decided on the basis of the answers to the following queries:-

i. Whether around the period between 07.07.2003 and 10.07.2003 the accused demandedmoney from the complainant as bribe?

ii. Whether on 10.07.2003, in the afternoon, the accused accepted the same from thecomplainant?

iii. Whether such money was recovered from the possession of the accused, moment aftersame was handed over to the accused person? and

iv. Whether such money was demanded as a consideration for his showing some favour tothe complainant?

[10] The evidence of the complainant, examined as PW2, Mr. P Singha is that against completion of 75% to 80% of the work allotted to him, vide

Ext.-3, he submitted a running bill for Rs. 8,66,000/-, out of which, an amount of Rs. 7,20,000/- was paid to him by cheque on 27.05.2003 after

deducting the security money, etc. Ext-9 by the PW2/complainant, is the said cheque. After receipt of the Ext-9, on 27.05.2003, the accused-appellant

demanded an amount of Rs.1,20,000/- from him being commission @ 10% for the entire contractual work and told him that if he refuses to pay the

amount, he would not be allowed to â??work furtherâ??. But, in his evidence he further stated that he was called by the accused-appellant on

07.07.2003 and demanded Rs. 1,20,000/- being commission and the PW2 expressed his inability to pay the said amount. Then, the accused-appellant

told him that he would not be allowed to undertake the â??remaining workâ??. The accused-appellant also came down on his demand to Rs. 50,000/-

and demanded to pay the remaining amount, out of Rs.1,20,000/-, after completion of the work. There are three statements found in the evidence of

PW2 connected with the demand of the bribe, as aforesaid. The first statement is that the accused-appellant told him that if Rs. 1,20,000/- is not paid

he would not be allowed to â??work furtherâ??. The second statement made by him, in the same breathe, is that if the said amount is not paid the

accused-appellant would not allow him â??to undertake the remaining workâ?. The third statement is that he should pay the remaining demanded

amount of Rs. 1,20,000 after â??completion of the workâ??. The admitted evidence is that the complainant/PW2 has been working, as a contractor,

under the accused-appellant since before the present contract work and there is no allegation pertaining to any contract works carried out by him

since 1997 till 2003. His statement in evidence that he would not be allowed to â??work furtherâ?, in the considered view of this Court, means that he

will not be allotted any more work and his second statement is to that effect that he would not be allowed by the accused-appellant to undertake

remaining work means to say that only on satisfying the demand for Rs. 1,20,000/he would be allowed to complete the work already assigned to him,

vide the work order, Ext.3. But, he himself stated, in his third statement, referred to above, that he was asked to pay the remaining amount after

completion of the work. But, the fact remains that since 1997 till the date of the present complaint he has been working, as contractor, under the

accusedappellant since before the year 2003, and there is no allegation against him of demanding any bribe for any contractual work.The fact that the

alleged demand of bribe was made after completion of 75% to 80% of the allotted work and that too after about 2 (two) months of issuance of the

cheque, Ext.9, appears to be not believable in view of the fact that in normal circumstances, the demand would have been made at the time or

immediately after allotment of the contractual work to the complainant/PW2 and not after lapse of so much of time after completion of 75% to 80% of the work as well as issuance of the cheque, Ext.9, being payment of the running bill aforesaid. On the other hand, the complainant/PW2, admittedly,

wrote a letter to accused-appellant about shortage of some materials, and this letter was, admittedly, responded to by the accused-appellant, vide his

letter dated 24-062003, asking him to collect the materials. Such materials were also collected by the accusedappellant pursuant to the said letter. Such

admitted evidence makes it clearly appear that had there been any intention on the part of the accused-appellant to stop the work he would not have

allowed him to collect materials for completion of the work. The evidence of the PW5, Md. Altaf Hussain, Subedar, that the accused-appellant had

the power to stop the contract work had the contractor failed to complete the work according to the specification. The work diary shows the progress

of the day to day work of the work in question. There is no allegation of the work not progressing as per specification and as per the stipulated time

schedule.

[11] That apart, the evidence, indicated above, shows that the demand was first made on the date of issuance and receipt of the cheque, Ext.-9 by the

said complainant/PW2, i.e. 27.05.2003 as per PW2 himself, meaning thereby, that the payment of the running bill, as aforesaid, has been received by

the complainant/PW2. That being so, it does not appear to be probable that on 10.07.2003, i.e., nearly one and a half month after receipt of the said

cheque, the accused-appellant would have called him to demand 10% of the value of the work as commission which he could have bargained with him

prior to issuance of the cheque and which would have been believable. The accused-appellant completed the work within the stipulated time is an

admitted position from the evidence of the PW5 as well as from the work diary. Therefore, the first two statements made by the PW2/complainant in

his evidence, referred to above, are found to be belied by himself. The third statement of the PW2/complainant, referred to above, is also not found

believable for the reason that if the accused-appellant asked him to pay the remaining amount after completion of the work, then he would have

demanded the amount after 21.07.2003, i.e., the date of completion of the work. But, the alleged demand, finally, was made on 10.07.2003.

[12] Then, the question is whether such demand was made on 10.07.2003. On receipt of the complaint, at the instance of the SP, CID, the PW9,

Deputy SP of CBI, went to Jorhat, collected two witnesses, namely, PW3 and PW4, Sri. Dipak Gogoi and Sri. Debeswar Borah, respectively, who

were employees of BSNL, Jorhat. They were brought to the circuit house, Jorhat and organised a pre-trap demonstration in the circuit house itself

which was conducted to acquaint the trap team members as to how phenolphthalein powder is used in trap-laying proceeding, how the solution of

sodium carbonate reacted towards phenolphthalein powder. A practical demonstration was also held. The demonstration was held to inform them as

to what they should do when trap-laying operation is on progress. This was done on 10.07.2003.

But, prior to the pre-trap demonstration, the complainant/PW2 and the PW4, Sri Debeswar Borah went to meet the accused-appellant in his office in

the morning of 10.07.2003 itself. While both of them went to the office of the accused-appellant, the complainant/PW2 entered into his office room

while PW4 was waiting outside. As per the evidence of the complainant/PW2, the demand for Rs.1,20,000/-, as bribe, was made on 27.05.2003 first,

and thereafter, the demand was reiterated on 07.07.2003. On 07.07.2003, the accused-appellant came down on his demand from Rs.1,20,000/- to Rs.

50,000/- to be paid immediately and the remaining amount to be paid later on. As soon as the complainant/PW2 entered into the office of the accused-

appellant, the accused-appellant enquired from him as to whether he brought the amount demanded to which he answered that he could arrange only

Rs. 30,000/at that moment. Then, the accused-appellant told him to pay Rs. 50,000/- first and the remaining amount in the â??next monthâ?? to which

the complainant/PW2 agreed. Thereafter, he came back along with PW4, the independent witness, Sri Debeswar Bora. After coming back, to the

Circuit House, the PW4 submitted a verification report, vide Ext. 16, wherein the conversation between the complainant/PW2 and the accused-

appellant, during his visit to the office of the accused-appellant, in the morning, prior to laying of the trap, has been reproduced. The relevant portion of

such reproduced conversation, which is in Hindi but written in English alphabets, is as follows:

â??V.Kumar: Jaise maine do din pahle bola tha aise panchas hazar (fifty thousand) abhi de do baki next month de dena.

P.Singha:Sir, me koshis korta hoon.

V.Kumar : Koshis kya karega aj lunch se pahle pahle mujhe fifty thousand dena hoga.

P.Singha: Thik he Sir.

V.Kumar : Tum ishko clear karne ke bad dushra kam bhi de dongaâ??

However, the evidence of the PW4, on oath, before the Court, in his examination-inchief, is that while he went to the office of the accused-appellant

along with the complainant/PW2, and the complainant/PW2 entered into the office room of the accusedappellant, the accused-appellant enquired from

him as to whether he had brought the money demanded and the complainant replied that he was ready to pay Rs.50,000/- first and to pay the

remaining later on. But, as per the conversation, vide Ext.16, the accused-appellant enquired as to whether the complainant has brought Rs.50,000/- as

told to him 2 (two) days before and the accused-appellant replied that he would try. Such conversation, is reproduced in Ext.16. But, the

complainant/PW2 himself deposed that he told the accused-appellant that he could arrange Rs.30,000/- only, but the accused-appellant told him to pay

Rs.50,000/- first and the remaining amount next month. The admitted evidence of the PW2/complainant is also that Rs. 50,000/- was settled on

07.07.2003 itself, and therefore, the evidence of the PW4 that the accused-appellant enquired whether the demanded money was brought and the

reply of the PW2/complainant that he was ready to pay Rs. 50,000/- first and the remaining later on does not arise at all. So, the conversation which

took place between the accusedappellant and the complainant/PW2 and the conversation between them which the PW4 heard and reproduced in

Ext.16 not only does not tally but also found to be in great variance, which means that he did not hear the conversation, otherwise, there is no reason

of such a great variance of statements made by the complainant/PW2 and the accused-appellant with respect to the conversation which took place

between them. About the fact of arrangement of Rs.30,000/- only and also about coming back while asked for Rs.50,000/- etc. are not there in the

reproduced conversation at Ext.16 which was prepared with a view to ascertain the fact of demand of bribe by the accused-appellant. Therefore, the

evidence of the PW4 does not appear to be truthful, as the person, i.e., the complainant/PW2, who had the conversation with the accused-appellant

himself is not found to have subscribed to the conversation which has been reproduced in Ext. 16. Therefore, such evidence does not prove, beyond

reasonable doubt, the demand of bribe by the accused-appellant. So it appears from this conversation that the accused-appellant enquired from the

complainant/PW2 as to whether he has brought Rs. 50,000/- as told to him two days before. This verification report, containing the conversation, is

dated 10.07.2003 and â??two days beforeâ? appearing in the conversation, means 08.07.2003. Admittedly, on 08.07.2003, the accused-appellant

came to CBI office, Guwahati for filing the complaint and there is also no instance in the evidence on record to show that on 08.07.2003 he visited the

office of the accused-appellant.

[13] Now, we will discuss about taking of bribe in the second visit of the complainant/PW2 to the office of the accused-appellant on 10.07.2003. It has

already come out from the above discussions of the evidence that, finally, the alleged demand was for Rs. 50,000/- at a time to be paid, as per the

discussions on 07.07.2003, which the complainant/PW2 agreed to pay. This amount the complainant/PW2 was supposed to pay on 10.07.2003 in his

visit to the office of the accused-appellant. The complainant/PW2 had the instructions, at the pre-trap demonstration, that as soon as he hands over the

money to the accused-appellant, he would touch his head with his hand. When he entered the office chamber of the accused-appellant, the accused-

appellant enquired from him whether he has brought the amount demanded earlier to which the complainant/PW2 answered in the positive. The

money he carried in his right pocket was handed over to the accused-appellant who received it with his right hand and then transferred it to his left

hand and then kept the said money in his brief case which was beside him at that time. Thereafter, as instructed earlier, complainant/PW2 touched his

head with his hand. This was noticed by the PW4, and accordingly, as arranged earlier, he communicated the same to the CBI trap team standing

outside. Then, they came an entered into the chamber of the accused-appellant and the Deputy SP, CBI/PW9 accompanied by another caught hold of

the hands of the accusedappellant and introduced themselves to be CBI personnel. The PW4 deposed that while the complainant/PW2 was inside the

chamber of the accused-appellant, he was standing next to the door outside the room and the door was partially opened. The door was made of glass

which was transparent and one can see inside the room through the glasses. He was standing at a distance of about 8 feet from the table of the

accused-appellant and could hear the conversation that took place inside the office room of the accused-appellant. He heard that â??the moment

complainant entered into the room of accused person, he enquired. Did complainant brought the money, he demanded and complainant replied that he

was ready to pay Rs. 50,000/- first and pay the remaining amount later-onâ?. But, such evidence received no corroboration from the

complainant/PW2 himself, as he never said in his evidence that Rs 50,000/- was settled in the morning visit to the accused-appellant. His evidence, as

discussed earlier, is that on 07.07.2003 itself it was decided that Rs. 50,000/- is to be paid immediately and the remaining amount later on. The

PW2/complainant himself stated, in his evidence, that he came prepared with Rs. 30,000/-.

But, the evidence of the PW4, on oath, and as per the Ext-16, are completely different from PW2/complainant. Such evidence of PW4 means to show

that either he exaggerated the fact in respect of the demand of the bribe for the fear of being disbelieved or he did not hear the conversation between

the accused-appellant and the complainant/PW2 as claimed by him. That apart, the PW4 stated in his evidence that he had seen the transaction

between the accused-appellant and the complainant/PW2 through the slightly opened door as well as through the glass fitted in the door. His evidence,

in examination-in-chief, is that the glass fitted in the door was transparent. The door was fitted with hydraulic door closure and it automatically gets

closed once a person enters into the room. But, the evidence of PW7, in his examination-in-chief, makes it appear that the door of the office room of

the accusedappellant remained always closed. He is an employee, as Cashier, in the office of the accusedappellant and his duty is to pay salary to the

staff and issue cheques to the contractors after completing the office formalities. This witness was declared hostile by the prosecution and he was

subjected to cross-examination. In his cross-examination by the prosecution also, his evidence that the door always remains closed remained

unshaken. But, the PW5, who is the Subedar, working in the office of the accused-appellant, deposed that he could not remember as to the type of the

door of the office room of the Garrison Engineer/accused-appellant. The PW8, who is the Assistant Garrison Engineer, working in the office of the accused-appellant, deposed that he did not visit the office of the accused-appellant on the date of the occurrence and could not say whether on that

day the door was opened or closed. Although in the sketch map of the place of occurrence, vide Ext.-17, the door of the office room of the accused-

appellant is shown slightly opened yet the evidence, as discussed above, does not support this fact, beyond all reasonable doubt, as it is common

knowledge of all us that when a hydraulic door closure is fitted, the door automatically gets closed once a person enters into the room. The PW8

deposed in his evidence that at some point of time the door slightly remained opened as adjustment in the hydraulic door closure was necessary but he

could not say whether on the date of occurrence it was closed or partially opened, meaning thereby, that he did not know whether adjustment, as

required, was already made or not. In the absence of any specific evidence and in the face of the contradictory evidence of the PW3, referred to

above, the claim that the door was partially opened cannot be accepted as reliable. The evidence of the trap witness is the evidence of the interested

witness, which, of course, does not mean that Court cannot act on the uncorroborated testimony of the trap witness in a bribery case, if satisfied that

he is a truthful witness. But, in the instant case, to test the truthfulness of the evidence led by the trap witness, i.e., PW4 and the other trap witnesses,

that the door was partially opened has been tested in the light of evidence led by PW5 and PW7 who are officers in the same office of the accused-

appellant and who did not support the evidence of the fact of remaining the door partially opened. The truthfulness of the evidence of PW4 is tested

on another count also. Although he deposed, in his examination-in-chief, that the glasses fitted in the door were transparent and one can see inside the

room through the glasses yet in the same breathe, in his cross-examination, he belied his such evidence saying that the glasses were not transparent

and there was only a hole in the glass which allowed him to see the inside view of the room. But, in the sketch map, vide Ext-17, there was no hole

shown in the door. Opposite to the evidence of the PW4, the PW9, who arranged the trap, deposed in his examination-in-chief itself that there is a

glass fitted in the door which was coloured and certain percentage of the glass was not coloured through which one can see inside the room. The fact

that the PW4 once said in his evidence that the glass was transparent, then said that the glass was not transparent but there was a hole is belied by the evidence of PW9, the torch bearer of the prosecution, as he deposed that the glass fitted in the door was tainted and only a certain portion thereof was

not tainted through which one can see inside. But, the PW4 speaks of a hole and not of the fact that certain portion of the glass was not coloured. In

the sketch map also, the glass portion of the door through which also the PW4 had seen the accused-appellant receiving the money from the

complainant/PW2 has not said that a portion of the glass in the door was tainted. He said that there was a hole through which he could see. Such

evidence is not supported by the sketch map as well as the oral evidence of the PW9, and therefore, the evidence on this count appears to be

doubtfuland the said trap witness, therefore, cannot taken to be a truthful witness.

[14] Further evidence is that after receipt of the bribe money, amounting to Rs. 50,000/-, with his right hand, the accused-appellant transferred the

same to his left hand and then kept in the brief case by his side. Thereafter, on getting the signal, as demonstrated in the pre-trap demonstration, the

trap team members, led by PW9, entered into the office of the accused-appellant and challenged him of having demanded a bribe of Rs. 50,000/- and

accepted the same from the complainant/PW2. After challenging him, the accused-appellant was caught hold of his left hand by him, and PW10, VL

Hariata, caught hold of his right hand. Such evidence means that both the hands of the accused-appellant were caught hold of by the PW9 and PW10

respectively. Thereafter, both his hands were washed in two separate solutions of sodium carbonate, which were prepared in two separate glass of

water and both the solutions turned pink. Both the pink coloured solutions were then transferred to two separate bottles, which were sealed and signed

by the PW9 and others. After washing his hands, the accused-appellant was asked to produce the bribe money, accepted by him. Then, the accused-

appellant told to him that he should know where the money was and asked him to find out the money. Then, this PW9 instructed the independent

witnesses to look for the money. One of the independent witnesses, Mr. D Borah (PW4), recovered the bribe money of Rs. 50,000/- from the brief

case of the accused-appellant which was same with those given to the accused-appellant by the complainant/PW2. Now, the question is, if the

complainant/PW2 paid the bribe money aforesaid by himself, and the trap witnesses/PW4 saw the transaction between the accused-appellant and the complainant/PW2, what made them to search for the money allegedly received by the accused-appellant. If the evidence that the PW2/complainant

handed over the money, and PW4 had seen the transaction then the money could have been straightway found out in the brief case and there was no

necessity of a query as to where the money was kept. Admittedly, the complainant/PW2, who gave the money, was sitting in the front chair of the

accused-appellant who might have also known as to where the money was kept.

[15] The evidence of the PW11, in his cross-examination, makes it appear that, apart from the sketch map, vide Ext-17, there is another similar sketch

map, vide Ext-D and according to him both the sketch maps were prepared by PW12, Mrinal Sarma. What necessitated preparing two sketch maps

has remained unexplained in the evidence on record. But, the statement of the accused-appellant recorded under Section 313 of the Cr.PC shows that

the original sketch map was given to the accused-appellant and thereafter they wanted it back from him although he could not give them the same for

the reasons that he had already handed over the same to his lawyer. If it is so, the original sketch map has not been produced by the prosecution in the

court necessitating preparation of Ext-D which is same with Ext-17. On the other hand, even if the statement of the accused-appellant, made under

Section 313 of the Cr.PC, is not taken into account yet there is no explanation at all as to what for the same sketch map was drawn twice, vide Ext-17

and Ext-D respectively, raising a doubt as to the genuineness of the sketch map itself. Such being the evidence, on record, the allegation against the

accused-appellant in respect of demand and acceptance of bribe itself is clouded with doubt.

[16] It has been submitted by the learned senior counsel for the appellant that, in the pre-trap practical demonstration, PW2 and PW4, also participated

with PW9 and PW10 who are all the members of the trap team. They got themselves acquainted as to how phenolphthalein powder reacted with

solution of sodium carbonate. The two witnesses, i.e., PW9 and PW10, caught hold of one hand each of the accused-appellant for which the pink

colour already in their hands, since the pre-trap practical demonstration, might have caused the hands of the accused-appellant turned pink. The fact

the hands of the accused-appellant turned pink while dipped into the solution is in evidence. But, the further evidence of the PW9 is that the portion of the brief case from which the alleged bribe money was recovered was rubbed with a piece of cloth and then the said cloth was kept in the solution of

sodium carbonate. This solution also turned pink and same was transferred to a bottle which was sealed in presence of witnesses, and after legal

formalities, the same was sent to the CSFL for examination. But, the CSFL authority, vide Ext-26, reported that the exhibit, marked as 78/03/D

contained about 140 cc of colourless liquid with white sediment which is in respect of the sample of the cloth with which the brief case was rubbed.

So, the finding of the CSFL is that they found colourless liquid, and the solution being colourless means that the brief case in which the bribe money

was alleged to have been kept is either false or the solution was improper to connect the accused-appellant with the offence of accepting bribe. In this

regard, reliance has been placed on the judgment of the Honâ??ble Supreme Court, in the case of V Sejappa â?"vs- State by Police Inspector

Lokayukta, Chitradurga, reported in (2016) 12 SCC 150 and submitted by the defence that demand and acceptance of gratification must be proved by

the prosecution to establish an offence under Section 7 of the PC Act andfurther it has been submitted that both these essentials have not been proved

by the prosecution. This decision of the Honâ??ble Supreme Court reiterates the proposition of law that demand and acceptance of gratification must

be proved in an offence under Section 7 of the PC Act. In the instant case, it has already been found that the prosecution has not been able to

establish the demand and acceptance of gratification by the accused-appellant and, therefore, no presumption under Section 20 of the PC Act can be

drawn. On the other hand, since the demand and acceptance of bribe by the accused-appellant has not been established, as aforesaid, consequently

the offence under Section 13(1)(d) of the PC Act is also not established. This position, appearing from the evidence, taken together with the fact as to

how the hands of the accused-appellant might have turned pink, as discussed just above, raises doubt about the veracity of the prosecution version. As

stated above, the prosecution appears to have not been able to prove, beyond all reasonable doubt, about the demand as well as acceptance of alleged

bribe by the accused-appellant from the complainant/PW2.

[17] In view of the discussions made above, and the findings recorded during such discussions, this court is of the considered view that the accused-

appellant deserves acquittal on benefit of doubt. Accordingly, he is acquitted on benefit of doubt.

[18] The appeal is, therefore, allowed.

[19] Send down the LCR alongwith a copy of this judgment.

