(2026) 01 KL CK 1702

In the High Court Of Kerala

Case No : Criminal Appeal No.1892 Of 2005

V.S.Suresh Kumar APPELLANT

Vs

C.B.I.Cochin Represented By The Standing Counsel, High Court Of Kerala RESPONDENT

Date of Decision : 19-01-2026

Acts Referred:
Code of Criminal Procedure, 1973 — Section 428
Prevention of Corruption Act, 1988 — Section 7, 12, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20

Citation : (2026) 01 KL CK 1702

Hon'ble Judges : A.badharudeen, J

Bench : Single Bench

Advocate : Anil K.Muhamed, R.Anil, Delvin Jacob Mathews, George Philip, Raju Radhakrishnan

Final Decision : Partly Allowed

Judgement

A.Badharudeen, J

1. The sole accused in C.C No.2 of 2004 on the files of the Special Judge (SPE/CBI)-I, Ernakulam has filed this Criminal Appeal.

2. Heard the learned counsel for the appellant/accused and the learned Special Public Prosecutor appearing for the CBI and perused the records.

3. In this case, the prosecution alleges commission of offences under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (‘PC Act, 1988’ for short hereinafter) by the accused. The specific allegation is that the accused who held the post of Enforcement Officer of the Employees Provident Fund Organisation, Kochi from 18.6.2003 to 12.12.2003, while holding the post he had demanded Rs.30,000/- as illegal gratification from M/s Paradigam IT Pvt. Ltd when they wanted to remit EPF dues in Cochin office due to shifting of their office from Chennai to Kochi. According to the prosecution, on 10.12.2003, the accused

reached M/s Paradigam IT Pvt. Ltd and met PWs 1 and 2 and collected documents and demanded Rs.30,000/- for processing the request. Thereafter on 12.12.2003, when the accused demanded and accepted Rs.30,000/-, as illegal gratification. Then he was nabbed with bribe money.

4. The Special Court framed charge for the said offences and tried the matter. During trial, PW1 to PW13 were examined, Exts.P1 to P50 and MO1 to MO14 were marked on the side of the petitioner. Exts.D1 and D2 were marked on the side of the prosecution. Thereafter, the Special Court found that the accused committed offences punishable under Sections 7 and 13 (2) r/w 13(1)(d) of the PC Act, 1988. Accordingly, he was sentenced as under:-

“In the result, the accused is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.25,000/- in default, to undergo simple imprisonment for one more year, under Section 7 of the Prevention of Corruption Act, 1988. The accused is further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for one more year, under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. The substantive sentences of the imprisonments shall run concurrently. It is made clear that the accused is entitled to get set off, of the period of detention, if any, undergone by him in connection with the investigation, inquiry and trial of this case under Section 428 Cr.P.C. The accused is committed to the Central Prison, Thiruvananthapuram to undergo the sentence imposed.”

5. The learned counsel for the appellant/accused fervently argued that the allegation of the prosecution that the appellant/accused visited the office on 10.12.2003 is false and the same is not supported by any evidence. It is pointed out that even though MO4 casette was also placed during the trap proceedings to record the conversation between the accused as well as PWs1 and 2, in Ext.P48 conversation, the same is stated as telephonic conversation and in support of the same, the conversation in Exhibit P9 would depict the words ‘Hello Hello Hello’. Thus it is argued that the authenticity of MO4 and Ext.P48 report was not properly proved and the same could not be relied on. It is also pointed out that since Exts.P9 and P48 are not believable, the evidence of PWs 1, 2 and 4 supporting demand and acceptance of Rs.30,000/- by the accused also cannot be believed and therefore the conviction and sentence could not stand. As such the same would require interference.

6. The learned counsel also argued that now the appellant has been undergoing treatment for cancer and he is in a very pathetic condition, therefore in the event of confirming conviction, sentence may be reduced to least minimum possible.

7. The learned Special Public Prosecutor argued that going by the evidence of PWs 1, 2 and 4 supported by Exts.P9, P48, P7 entrustment mahazar, Ext.P12 Recovery Mahazar, recovery of MO12 series soon after the trap and positive Phenolphthalein test result on the hands of the accused, substantially proved the

ingredients for the offences alleged to be committed by the accused. Therefore, the conviction and sentence would not require any interference.

8. Having addressed the rival contentions, the points arise for consideration are

(i) Whether the Special Court went wrong in finding that the accused committed offence under Section 7 of the of the PC Act, 1988?

(ii) Whether the Special Court went wrong in finding that the accused committed offence under Section 13(2) r/w 13(1)(d) of the of the PC Act, 1988?

(iii) Is it necessary to interfere with the verdict under challenge or reliefs can be granted?

Point Nos.(i) to (iii)

9. The prosecution mainly relied on the evidence of PWs 1, 2 and 4 to see the demand and acceptance of bribe by the accused as on 12.12.2003, the date of trap. The Investigating Officer also supported the evidence of the prosecution in the matter of demand and acceptance of Rs.30,000/-. In this case, Ext.P50 sanction to prosecute the accused was issued by PW13, the Central Provident Fund Commissioner and no dispute was raised as to its sanctity. Therefore, there was proper sanction to prosecute the accused.

10. First of all, the evidence of PW1 to be addressed. According to PW1, he was the Accountant of M/s. Paradigm IT Pvt. Ltd and that he had joined this company originally in October 1997. Its registered office was in Chennai. PW2 was the Director of the Said company. He identified the accused and deposed that on 12.12.2003 he had lodged Ext. P1 complaint against the accused with the CBI, Cochin. M/s. Paradigam IT Pvt. Ltd. had a branch office at Panampilly Nagar, Kochi since September 2001 and the company was planning to shift its business gradually to Kerala as PW2 was a native of Kerala. Ext.P2 is the true copy of the Board Resolution of the company for starting a branch in Kochi. Even before his joining at Chennai, the company was covered by EPF and the said account was maintained at the Chennai Office of EPF up to September 2003. According to PW1, he was looking after the EPF remittances. Even prior to his transfer to Kochi office in October 2003, he went to the Chennai office of the EPF and enquired about the formalities of shifting EPF account to Kochi. They had directed him to approach the Chennai office of EPF. After his joining duty at the office in Kochi, he visited the EPF office at Kochi in November, 2003 and when he met the PRO there he was told that the Commissioner was not present and was directed to come to the office after one week with an application. On 21.11.2003 he went with the application to the EPF office, Kochi and met PW8 Assistant Commissioner and handed over Ext.P3 application to him. PW8 told him that he would depute an inspector for verification. As nobody turned up for a week, PW1 again visited the EPF office, Cochin and met PW8. Then PW8 told him that after Ramzan, somebody would come. Even after Ramzan, nobody turned up and thereupon PW1 again contacted PW8 over the phone. At that time, he was

informed that he had already deputed an inspector to visit the office. PW1 deposed further that on 10.12.2003, his receptionist (got examined as PW3) informed him that one Mr. Suresh Kumar from EPF had came and thereupon he went to the reception and after introduction, took the said Suresh Kumar to his room. He identified the said suresh Kumar as the accused at the dock. The accused asked PW1 about the purpose. PW1 explained the purpose and showed him the copy of Ext. P3 also. Then the accused told him that a coverage proforma had to be filled up. Then PW1 took the accused to PW2 who was sitting in the first floor and introduced the accused to him, and PW1 returned to his room along with the accused/appellant.

11. PW1 testified further that after lunch at 1.45 p.m, PW1 and the accused came to the room of PW1 and filled up the proforma for coverage and verified the contributions for October and November, 2003. The accused dictated the covering letter and a declaration letter which were also prepared. Then the accused asked PW1 to take a DD for the contribution of October and November, 2003. As the bank time was over PW1 told the accused that it would be furnished on the next day itself. According to PW1, then the accused told him, 'other than the regular contribution, you have to pay something to me and my officers' and the accused told him that in Kerala there was such a practice when new coverage would be considered. According to PW1, he understood that the accused was demanding bribe. PW1 told the accused that they had never paid any money to any Department and that they had never paid any such money at EPF office in Chennai also. Then the accused replied that Kerala is not like Tamil Nadu and in Tamil Nadu many companies were there and in Kerala only a few companies and hence there was such a practice. PW1 told the accused that he was not the decision making authority and that he would convey this demand to PW2. As all the papers were ready for the signature of PW2, he took the papers and went to the office room of PW2, who signed the same and he told PW2 that the DD could be taken only on the next day.

12. PW1 deposed further that the accused then told PW2 that he would come on 16.12.2003 and asked him to keep the DD ready on that day. Then PW1 told PW2 in the presence of the accused that the accused was demanding some other payment. PW2 asked PW1 as to "what is that other payment?" accused told PW2 in Malayalam which PW1 could understand. According to PW1, the accused forwarded the same demand to PW2 also in Malayalam. PW2 told the accused that they would not make any such extra payment. PW2 directed PW1 to take the accused to the room of PW1 and to explain the position. PW1 took the accused again to his room and then also the accused repeated the very same demand. Then PW1 asked the accused “what is your expectation sir?”. The accused told him that including himself there were three people were involved, namely, Assistant Commissioner, Regional Commissioner and himself. Then PW1 told the accused that when he met PW8 he had not made any such demand. The accused replied that PW8 would not ask PW1 directly as PW1 was a new person and that PW8 would collect it through his subordinates only. When PW1 asked

the accused "what is your expectation?' the accused asked PW1 Rs. 10,000/- each for three officers including himself. PW1 was really shocked to hear such a demand for Rs. 10,000/- each for three persons. Then the accused told PW1 to think about the grade of the officers and stated that anything less than Rs. 10,000/-would be too bad. Once again PW1 told the accused that he would tell the same to PW2 again. PW1 stated that the accused had asked him whether the part payment could be made at that time itself when PW1 informed him that they were making cheque payment and they had no money in cash with them. Then the accused asked PW1 whether the DD and other payment could be made on 12.12.2003 to which PW1 replied that he would consult PW2 and would make it ready on 12.12.2003. Further, according to PW1, the accused told him that the accused would come at 1 p.m on 12.12.2003 and reminded him to keep the DD and the amount ready. PW1 collected the mobile number of the accused and further gave him the originals as well as the photocopies of the papers required to obtain the new coverage. The accused left the office of PW1.

13. PW1 testified further that, Immediately after the departure of the accused, PW1 met PW2 and informed him about the demand of Rs.30,000/- by the accused. PW2 was also really shocked to hear the same. Then PW2 told PW1 that they should not leave such people and in this regard a complaint to be lodged. At 6 p.m on that day PW2 came to the room of PW1, showed him Ext.P4 the copy of the print out of a complaint addressed to the Central Vigilance Commission (CVC), and told him that they would wait for the response from the CVC. There was no response from the CVC till 4.30 p.m on 11.12.2003. According to PW1, the date noted in Ext.P4 as '12.10.2003' was in American style which they followed the month would come first and the date would come next and therefore, the correct date is '10.12.2003'. At 4.30 p.m on 11.12.2003 PW2 came to the room of PW1 at the office and told him that they would go to the office of the Vigilance o lodge the complaint. They went to the Vigilance-cum-Anti Corruption Office near the North Railway Station,Kochi and met one inspector and told him about the complaint. Then they were advised to approach the CBI office with the complaint as the accused was a Central Government Officer. As it was late they decided to make the complaint to the CBI on the next day. They returned to office and drafted Ext. P1 complaint in which PW1 affixed his signature as PW2 had to make frequent visits to foreign countries. On 12-12-2003, PW1 and PW2 went to the CBI Office, Kochi at 9 a.m and met the SP and lodged Ext.P1 complaint, who inturn called PW11 Additional SP and introduced them to PW11 and asked PW11 to discuss the matter with them. PW11 took them to his room, read Ext. P1 complaint and put questions to them. As PW2 had to leave urgently for official matters, he sought leave from PW11 and left. According to PW1, he explained everything to PW11. PW11 told PW1 to produce the bribe amount by 10.30 a.m. PW1 immediately went to the office and then to the Bank and arranged the DD and the cash. PW1 proved Ext.P5 application for the pay order and Ext.P6 series cheques of the pay order and cash. After collecting the DD and the cash, PW1 went to his office, handed over

the DD to PW3 receptionist, and came back to the CBI office with the cash.

14. The evidence of PW1 would show that at 10.30 a.m on 12.12.2003, he went to the CBI office with the bribe amount of Rs.30,000/-and met PW11. At that time some other officers were also present there. Around 11 am, PW4 and CW4 also came and they were introduced to him. PW1 read out the copy of Ext. P1 complaint and explained it to all there. Thereafter the demonstration of Sodium Carbonate Phenolphthalein test was conducted. Sodium Carbonate solution was prepared and the same was colourless. PW11 asked PW1 to produce the bribe amount. When he produced the same, the CBI officials smeared phenolphthalein powder on the said currency notes and CW4 was asked to count the currency notes. After his counting the currency notes, he was again asked to dip his right hand fingers in the fresh sodium carbonate solution. When he did so, the solution turned pink. The resultant solution was preserved, sealed and the signatures of the witnesses were obtained on the same. The same was identified as MO1. The CBI officials search the body of PW1 and recorded his belongings. Then the powder coated currency notes were placed in the left side of the pocket of the pants of PW1 and prior to that they had noted the denomination and serial numbers of the currency notes. PW11 directed PW1 not to touch the currency notes unless and until demanded by the accused. He was also directed to take PW4 along with him by his scooter and take him to his office room and permit PW4 to sit in his office room and to introduce PW4 to the accused as his company staff. PW11 further instructed PW1 to come out of room and to scratch his head with his fingers on the demand and acceptance of bribe by the accused. PW11 showed PW1 a micro cassette recorder and a brand new micro cassette and played the same. The said micro cassette was empty. Then PW1 recorded his voice first introducing him. Then PW1 introduced himself. Then PW4 and CW4 also introduced themselves and those voice were recorded. The recorder was switched off and PW1 was instructed how to operate it and same was given to him. He put the micro cassette recorder in his shirt's pocket. The same was entrusted to him for recording the voice of the accused when accepting the bribe. PW1 was instructed to keep the recorder in his room during the conversations. Ext. P7 mahazar in respect of all these proceedings was drawn up in which the witnesses affixed their signatures. The denomination and numbers of the currency notes smeared with Phenolphthalein powder were also mentioned in Ext.P7.

15. Then PW1 went to his office with PW4 on his scooter. They reached there before 1 pm and PW1 took PW4, to his room. PW4 sat in the room facing the computer. After a few minutes, PW11 came to the room for examining the arrangements. He placed the tape recorder in a plastic tray and put some papers over it and placed it on the table. PW11 instructed PW1 to switch on it immediately before the accused entering the room and to switch off the AC and open the window slightly and cover it with the curtain. Even though the accused told that he would come at 1 pm, he did not come at 1 pm. PW1 and PW4 waited in the room till 2.30 pm then they went to the near by shop and had some cool

drinks. According to PW1, then he thought it fit to call the accused. He made a call to the accused from the STD booth at the cool drinks shop to the mobile phone of the accused. The accused told him that he was in Vyttila in a hotel an had ordered for some food and would be coming after the lunch. Then PW1 and PW4 returned to the room of PW1 at the office and waited. PW4 sat before the computer and was facing south. PW1 sat by facing north in front of the table of PW1, there were two chairs. By 3.30 p.m, PW3 receptionist called PW1 over the intercom and told him that the accused had come. He immediately switched on the tape recorder and asked PW3 to let the accused in. By pushing the door, the accused entered to the room of PW1. The accused had to push the door strongly as the door was little tight. The accused sat in front of the table of PW1 facing him and told him that when he had called him, he was in a hotel and also that there was traffic jam. The accused asked PW1 whether DD was taken. Then PW1 told him that DD was ready. PW1 asked PW3 over the intercom to bring the DD. PW3 brought the DD, and he handed over it to the accused. The accused further asked PW1 whether it was for two months contribution and then PW1 told the accused that it was for the months of October and November, 2003 and that they had paid the contribution at Chennai for the period up to September, 2003. When the accused looked at PW4, PW1 told him that he was the office staff and that he was under training for proceeding to the Chennai office. Then PW1 asked the accused whether "anything other than DD?” and the accused said "nothing". Then PW1 asked the accused "what else"?. The accused answered "ball is in your court". According to PW1, by asking "anything other than DD", what he meant was whether any other document was necessary for registration.

16. Then PW1 told the accused that he had discussed with his Director about the payment, and the Director was not ready for such payment as they never paid anything to any other departments in Chennai and further told him that PW8 had not asked him anything when he met him. Then the accused told PW1 that PW8 had not asked PW1 directly; but would collect through the accused only. Further PW1 asked the accused as to whom else other than the Assistant Commissioner payment should be made. The accused told that Regional Commissioner should be paid and further said "only three persons". Then the accused asked PW1" is it ready?", PW1 told the accused that it was ready. Then accused looked at PW1 and PW1 took the said phenolphthalein smeared currency notes and gave the same to the accused. Then the accused asked "how much is this?" PW1 replied "thirty.” PW1 further told the accused that for the convenience of the accused he brought it in thousands and asked him to count the same. Then the accused answered "for what purpose?”. PW1 told him that it was not in bundles, it was loose and it was better to count the notes. Then the accused asked PW1 a cover, which PW1 gave. The PW1 told the accused that as the money was handed over to the accused, the accused had to do the work very fast. At that time the accused replied “don’t worry, it is my responsibility, my senior officers are also involved in this, it will be done immediately.”

17. According to PW1, the accused asked for two more covers and told him “why

should I keep this much money in my brief case. I can give it to my officers also today itself. It is Friday, they can take it to their home”. PW1 gave two more covers to the accused. The accused counted the currency notes and separated it as three groups of Rs. 10,000/- each and placed it in three separate covers. The accused put one cover containing Rs.10,000/- in the portion of 'MO2' brief case and the other two covers in the outer pocket of MO2 brief case. According to PW1, whatever conversations he had narrated above was not word by word conversation but those were from his memory. According to PW1, the accused had asked him not to account this money as commission paid; but to account it like some allowances to staff. PW1 identified the said three covers which he had given to the accused as M03 series.

18. According to PW1, thereafter the accused asked him whether he could meet PW2. Then PW1 told him that PW2 was busy with some projects. Then the accused asked his visiting card and he gave the same. The accused by stating that "everything O.K", went out of the room with MO2 brief case and PW1 followed him. On seeing one CBI Officer standing outside his room, PW1 gave the pre-arranged signal by scratching his hair. Then other CBI officers along with PW11 came there and stopped the accused. PW11 asked the accused to go inside the room of PW1. Along with the accused all of them went inside the room of PW1. Then PW11 revealed his identity to the accused and asked him whether he had taken Rs. 30,000/-bribe money. The accused was shocked for sometime and could not speak for sometime. Again the question was repeated by PW11 and then the accused nodded his head to the effect that he had accepted the bribe amount. PW11 asked the accused as to for whom he collected the money and where it was kept. The accused replied that Rs.10,000/- was for his Assistant Commissioner, Rs. 10,000/- was for his Regional Commissioner and Rs.10,000/- was for himself and stated that the amount was kept in his MO2 brief case. PW11 switched off the tape recorder kept on the table. PW1 identified MO4 as the micro cassette used for recording the conversations. MO4 cassette was checked and it was understood that the conversation was recorded. Fresh Sodium Carbon solution was prepared. The accused was asked to dip his right hand finger in the solution and on doing so, the colourless solution turned pink. The same was preserved, sealed, and marked, which was identified as MO5. Likewise, the left hand fingers of the accused were also tested and when he dipped his left hand fingers in the colourless sodium carbonate solution, it turned pink and the same was also preserved, sealed and marked. The same was identified as MO6.

19. PW11 arrested the accused and asked the accused to produce the bribe money. The accused opened the outer zip of MO2 and took two covers and handed over it to PW11. PW4 and CW4 were asked to take out the currency from the said covers and to verify the same. They compared currency notes and found it tallying with the numbers noted in Ext. P7. Then PW11 asked the accused to produce the money. The accused opened the main portion of MO2 and took out one cover and handed over to PW11. The witnesses were asked to take out the currency notes from it and to verify It. On verification it was found that its

numbers were also tallying with the numbers noted in Ext.P7. PW11 tested MO3 series covers also with sodium carbonate solution which was poured in to it. On doing so the colour of the solution showed pink colour change. Each covers were separately marked and the solution was separately collected and sealed. MO7 got identified as the solution taken and preserved from 'X' cover. MO8 got identified as the solution taken and preserved from 'Y' cover. MO9 got identified as the solution taken and preserved from 'Z' cover. The body of the accused was searched. In his shirt pocket there were some papers and the visiting card given by PW1. PW1 identified the said visiting card as M010. The name "Ravi George M.D” is written by the accused in M010. Thereafter they searched MO2 and Ext.P8 DD which was given by PW1 to the accused was seized from MO2 brief case. The photocopy of the DD was taken and got it attested by the independent witnesses. After retaining the said copy, the original of the DD was returned to PW1. From MO2, along with other papers, MO11 identity card of the accused was also seized. Ext.P8 was subsequently cancelled by them and they remitted the amount in Madras.

20. Thereafter the tape recorder was played and the transcription of the communication was made. The transcription got marked as Ext.P9. In Ext. P9, non-audible portions were kept blank. Ext. P10 sketch of the room of PW1 was prepared. Ext. P11 sketch of the ground floor of the office building also was prepared. Ext.P12 detailed mahazar regarding the recovery was prepared. PW1 also affixed his signature along with other witnesses in Ext.P12. The application for allotment code number given by PW1 to the accused on 10.12.2003 got marked as Ext.P13 series. The declarations given by him got marked as Ext.P14 series.The profoma given by PW1 to the accused got marked as Ext.P15 series. The challan copies of the payments made for August and September 2003 were also handed over to the accused by PW1 on 10.12.2003 and the same marked as Ext.P16 series. Further, according to PW1, his specimen voice was taken during investigation, for which Ext. P17 mahazar was prepared. He identified the trap amount as MO12 series.

21. According to PW2, he was the MD of M/s. Paradigm IT Pvt. Ltd., at Panampilly Nagar at Ernakulam having registered office in Chennai. He was an M Tech holder from the IIT Madras who passed out in 1991. According to him in M/s. Paradigm Technologies Pvt. Ltd., Chennai, himself and his friend and classmate Mr. Chandrasekhar were the Directors. They started a branch of M/s. Paradigm Technologies Pvt. Ltd. as well as M/s. Paradigm IT Pvt. in Kochi in 2001. The Directors of the same were himself, his wife, Chandrasekhar and Mr. Tom Vansteelandt. Originally there were only Directors. During the period between 2001-2002, PW2 was made the Managing Director. According to him, being a Keralite he wanted to move to Kochi. PW1 was the accountant in M/s. Paradigm IT Pvt. Ltd. and he was maintaining their EPF accounts at Chennai. When PW1 moved to Kochi, he wanted to shift the EPF account to Kochi. Ext.P3 letter was issued by PW2 in this connection. According to him, he asked PW1 to do the formalities for shifting the accounts and it was therefore Ext.P3 was issued.

22. According to PW2, after repeated attempts by PW1, somebody from the EPF departments visited his office and had first came and met PW1. Then PW1 introduced him to PW2. PW2 identified the accused as the said person. According to him, after meeting the accused first, he (PW2) went for lunch and then at about 3.30 p.m PW1 along with the accused again came to the room of PW2. They had in the meantime prepared all the necessary forms for transfer of account and they brought all those papers for signature. PW2 affixed his signature in Ext. P13 series, P14 series, P15 series and P18 series. These documents were placed for his signature by PW1 in the presence of the accused. Then PW1 told him that a pay order for around Rs.65,000/- also to be taken for remitting the contribution for two months and since banking hours were over, he said that, it could be taken later. Then PW1 told PW2 that the accused was saying about some more payments also and then PW2 asked PW1 as to 'what was that'. At that time, the accused told PW1 in Malayalam 'there are some other formalities also.' Then the PW2 asked the accused as to 'what is the formality?', as PW2 could understand that the accused was asking for bribe. Then the accused told him that 'there is a formality of paying an amount to the officers of the Provident Fund Office when starting a new PF account like this.' Then PW2 told the accused that fom 1999 they were contributing at Chennai and they used to pay only their dues and they did never make any extra payment at Chennai and as they are following all the Rules and Regulations correctly they need not pay any extra amount. According to PW2, what the accused told him next was the main thing that annoyed him much, the accused told "Kerala is not like Tamil Nadu, Kerala has a peculiarity". According to PW2, the accused told him that some extra payment should definitely made to him and his bosses. As PW2 became annoyed hearing all these, he did not elaborate much and asked PW1 take the accused to his room and to explain their stand. So he was taken by PW1. PW2 was busy with his work. On the day at 4.30 pm PW1 again came to his room and told him that the accused was demanding Rs. 30,000/- for him and his bosses. PW2 immediately told PW1 that "it is outrageous and such people cannot be left alone". It was a wednesday. PW1 told him that the accused would come to collect the amount on friday ie, 12.12.2003. Then PW2 told PW1 'you go, I will take care of this matter.' Then PW2 searched the internet, obtained the address of the Central Vigilance Commission (CVC) and sent a complaint to CVC by email. The copy of the said e-mail got marked as Ext.P4. He took a print out of it and showed it to PW1. Till He took a print out of it and showed it to PW1. Till about noon next day nobody responded. The crime branch office was next to his office at Panampailly Nagar.

23. PW2 deposed that next day afternoon ie, 11.12.2003 he went to the Crime Branch office and asked somebody regarding this. There he was directed to approach the Kerala Government Vigilance Office and therefore, he along with PW1 came to the Vigilance office in the evening on the same day, from where he was to approach the CBI with the complaint as the accused is a Central Government Officer. Then they came back to their office and drafted a complaint

to the SP, CBI, Cochin. As it was late, they left home and on the next morning at about 9 am they visited the CBI office. According to PW2, that was an extremely busy period for him as it was December. They were sent to the SP, CBI from the reception. After hearing them, the SP called PW11 to his room. PW11 came and he along with PW1 went to the room of PW11. PW2 once again explained PW11 briefly and sought excuse as he was very busy. PW2 went to his office after entrusting the matter with PW1 and PW11. Ext.P1 is the complaint given to the CBI. On 12.12.2003 he was available in his office for the whole day. He issued Ext.P6 series cheques to PW1. PW1 came to him after 10 am, obtained Ext. P6 series cheques, went away and brought the DD and the cash. After entrusting the DD with the receptionist, PW1 went back to the CBI office. At around 1 p.m, PW1 gave him an intercom call from his room in the office and stated that CBI has taken up the matter. After 3 p.m one of his staff came and told him that the accused came and obtained the bribe and the CBI people caught the accused. PW4 also fully supported the versions of PW1 and PW2.

24. In this case, crime was registered based on Ext.P1 complaint lodged by PW1 and Ext.P7 is the entrustment mahazar whereby the complainant entrusted Rs.30,000/- to the detecting officer and he in turn gave back the same to PW1 to give the same to the accused.

25. Even though the accused raised a contention that he did not visit M/s Paradigam IT Pvt. Ltd on 12.12.2003, the evidence of PW3, the receptionist of M/s Paradigam IT Pvt. Ltd, is clear to the point that the accused visited M/s Paradigam IT Pvt.Ltd.

26. It is true that MO4 micro casette was placed at the time of trap and the recordings were stated as 'Hello Hello Hello' as could be seen from Ext.P48. But before that there was introduction by K.Senthil Kumar, Simon P.J and K.Sreekumar who are PWs 1, 2 and 4 and it was thereafter a pause' Hello Hello Hello,' Yes sir, Note it.' Even though in Ext.P48 the expert stated that he had examined Q1, recorded telephonic conversation and in fact the same is not telephonic conversation and it is the direct conversation. Merely because the expert stated that the conversation as a telephonic conversation, the same is not a reason to disbelieve Ext.P9 and Ext.P48 report suggesting that the voice marked as Ext.Q1(A) is the voice of the same person whose specimen voice marked as S1(A) (Sri.K.Senthil Kumar) and voice marked as Q2(A) is the voice of same person whose specimen voice is recorded and marked as Ext.S-2A (Sri.Suresh Kumar) beyond reasonable doubt.

27. Coming to substantive evidence, the evidence of PWs 5, 7 and 11 required to be discussed. Here, the evidence of PW5 who had been working as Assistant EPF Commissioner, Kochi would show the procedure for getting remittance of EPF dues and according to him for which code numbers should be allotted by the Assistant Provident Fund Commissioner in charge of Enforcement. In the instant case, PW8 affixed his signature in Ext.P3 letter and PW6 made an endorsement 'Depute Sri.Sureshkumar'. Ext.P30 is the carbon copy of the work assignment

prepared on the basis of Ext.P3 endorsement and Ext.P31 is the coverage in relation to M/s Paradigam IT Pvt. Ltd. PW7 who worked as UD clerk in Enforcement Section-I at the EPF Office, Ernakulam during 2003 gave evidence that Ext.P3 letter reached her through PW6 and she made Ext.P32 office note and the same was put up to PW6 and Exts.P30 and P30(a) were prepared by her. PW8 who was working as Assistant Commissioner to the EPF Office had given evidence. PW11, who was working as an Additional SP also supported Ext.P1 statement given by PW1 and registration of Ext.P1 FIR viz, RC/29/A/2023. He also supported the evidence of PWs 1, 2 and 4 in the matter of pre-trap as well as post-trap proceedings.

28. On a perusal of evidence of PWs 1, 2 and 4 and other witnesses, even though they were subjected to searching cross-examination, nothing extracted to shake their versions. No material contradiction also found to be extracted. Therefore, their evidence found to be wholly reliable. Thus the Special Court rightly found that the prosecution succeeded in proving that the accused while working as Enforcement Officer of the Employees Provident Fund Organisation, Kochi demanded Rs.30,000/- as illegal gratification on 12.12.2003 and in consequence thereof, he accepted the same. That apart, the bribe money marked as MO12 series were recovered from him and when his hands were dipped in Sodium Carbonate solution as part of the Phenolphthalein test, the same showed the pink colour change, strongly supporting the prosecution case.

29. Although it is argued by the learned counsel for the accused/appellant that the conversation between the accused and PW1 for which Ext.P48 expert opinion also was obtained could not be relied on because the same would depict the conversation as that of a telephonic conversation, it appears that in fact mere use of ‘Hello Hello Hello’ during conversation and on misunderstanding, the expert opined that the same as telephonic conversation. Therefore, the same by itself is not a reason to discard expert opinion and recorded conversation which would support the prosecution case. Most importantly, apart from the telephonic conversation, substantive evidence of PW1, PW2 and PW4 supported by the evidence of the other witnesses available sufficiently established the prosecution case, without iota of reasonable doubt. Thus even without the support of the recorded conversation, the prosecution allegations are proved beyond reasonable doubt with the aid of substantial evidence discussed in detail.

30. Now, it is necessary to address the ingredients required to attract the offences under Section 7 and Section 13(1)(d) r/w Section 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.

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."

31. 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 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.

32. To sum up, this Court is of the view that the learned Special Judge rightly entered into conviction finding commission of offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the PC Act, 1988 by the accused/appellant and the said conviction does not require any interference.

33. Coming to the sentence, the medical condition of the petitioner as argued by the learned counsel for the accused/appellant can be considered, but that may not by itself would not be sufficient to reduce the sentence beyond statutory minimum, as such a course of action is not legally permissible since a court has no power to reduce the sentence beyond the statutory minimum unless the penal statute does not provide so.

34. In view of the above, the appeal is allowed in part and the conviction imposed by the Special Court is confirmed and the sentence is modified as under:-

(i) The accused/appellant is sentenced to undergo simple imprisonment for a period of six months for the offence punishable under Section 7 of the PC Act, 1988 and to pay fine of Rs.10,000/-. In default of payment of fine, the appellant/ accused to undergo simple imprisonment for a period of one month.

(ii) The accused/appellant is sentenced to undergo simple imprisonment for a period of one year for the offence punishable under Sections 13(2) r/w 13(1)(d) of the PC Act, 1988 and to pay fine of Rs.5,000/-. In default of payment of fine, the appellant/accused to undergo simple imprisonment for a period of two weeks.

35. The substantive sentence shall run concurrently and the default sentences shall run separately. The accused is entitled to get set off.

36. The order suspending execution of sentence and granting bail to the accused/ appellant is vacated with a direction to the accused/appellant to surrender before the Special Court forthwith to undergo the modified sentence without fail.

Registry is directed to forward a copy of this order to the learned Special Judge for information and execution of the modified sentence.