

**January 2026**

---

**Current's**  
**ALL INDIA**  
**CORRUPTION CASES**

---

**Mode of Citation : AICC**

**CURRENT DIGITECH**

*Published and Printed by:*

Amit Nanda

**for CURRENT DIGITECH**

Ground Floor, Karanjia Building, 651 J.S.S Road,

Marine Lines (E), Mumbai - 400 002

Tel.: 9323540291

E-mail: jainabook@gmail.com

© Current Digitech

**Yearly Subscription : Rs. 3600**

**Registered Post Charges : Rs. 240 (Optional)**

**Web Store : [www.currentpublications.com](http://www.currentpublications.com)**

**Mobile App : 'Current Publications'**

**Please Note :**

Complaint of Non-Receipt of Issue will be considered if Complaint is received within Three Months from the Month of Despatch

**IMPORTANT**

Although every care has been taken to avoid errors or omissions, this publication is being sold on the condition and understanding that information given in this Magazine is merely for reference and must not be taken as having authority of or binding in any way on the Authors, Editors, Publishers and sellers who do not owe any responsibility for any damage or loss to any person, a purchaser of this publication or not, for the result of any action taken on the basis of this work. The publishers shall be highly obliged if mistakes are brought to their notice for carrying out corrections.

*Published and Printed by Amit Nanda on behalf of Current Digitech. Ground Floor, Karanjia Building, 651 J.S.S Road, Marine Lines (E), Mumbai - 400002 Tel.: (022) 22012143 \* 22018485 E-mail: jainabook@gmail.com*

---



---

**TABLE OF CASES**

---



---

<b>Sr. No.</b>		<b>Date</b>	<b>Page Nos.</b>
1.	A Salahudeen; O Azeez vs. State of Kerala; Deputy Superintendent of Police [ <b>Kerala High Court</b> ]	06/11/2025	117
2.	Bhupinder Singh Hooda vs. Central Bureau of Investigation [ <b>Punjab And Haryana High Court</b> ]	07/11/2025	113
3.	Biju Kareem S/o Kareem; Sunilkumar T R S/o Ramakrishnan; Jilse S/o Kumaran; Jutha Bhaskar W/o Biju; Sreelatha W/o Jilse vs. State of Kerala; Pradeep S/o Krishnankutty [ <b>Kerala High Court</b> ]	25/11/2025	75
4.	Bikram Singh Majithia vs. State of Punjab [ <b>Punjab And Haryana High Court</b> ]	04/12/2025	39
5.	Central Bureau of Investigation vs. Sarvodaya Highways Ltd and Ors [ <b>Supreme Court Of India</b> ]	11/11/2025	19
6.	Devenbhai Dhanabhai Chavda vs. State of Gujarat [ <b>Gujarat High Court</b> ]	11/12/2025	30
7.	K Manoharan vs. State of Kerala [ <b>Kerala High Court</b> ]	03/12/2025	51
8.	M Gunasekharan S/o E Mannangatty; Central Bureau of Investigation Acb Cochin vs. Central Bureau of Investigation, Spe Kochi; J Ashok Shivaram; M Gunasekharan S/o E Mannangatty [ <b>Kerala High Court</b> ]	05/11/2025	123
9.	Sainalabdheen @ Sine S/o Shamsudheen; Raju K Abraham S/o Babykutty vs. State of Kerala; Deputy Superintendent of Police Vigilance and Anti Corruption Bureau [ <b>Kerala High Court</b> ]	24/11/2025	97
10.	State of Maharashtra vs. Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad [ <b>Bombay High Court</b> ]	01/12/2025	63
11.	State of Maharashtra vs. Narayan S/o Shri Shivram Mataghare [ <b>Bombay High Court</b> ]	24/11/2025	81
12.	State of West Bengal & Ors vs. Subrata Dutta & Ors [ <b>Calcutta High Court</b> ]	24/11/2025	94

<b>Sr. No.</b>		<b>Date</b>	<b>Page Nos.</b>
13.	State of West Bengal vs. Anil Kumar Dey [ <b>Supreme Court Of India</b> ]	10/12/2025	1
14.	Zahoor Ahmad Pahalwan vs. U T of J & K [ <b>Jammu And Kashmir High Court</b> ]	26/11/2025	73

---

---

## SUBJECT INDEX

---

---

Sr. No.			Page Nos.
1.	BANK ACCOUNT SEIZURE	CAL	94
2.	BANK LOAN FRAUD	SC	20
3.	BRIBE DEMAND PROOF	BHC	82
4.	BRIBE TRAP	KER	117
5.	BRIBE TRAP IN PANCHAYAT	KER	51
6.	BRIBERY CONVICTION CHALLENGE	KER	98
7.	COOPERATIVE BANK FRAUD	KER	76
8.	DEMAND OF BRIBE	BHC	63
9.	FREEZING OF BANK ACCOUNTS	SC	1
10.	HABITUAL BRIBERY	KER	124
11.	PASSPORT NOC REQUEST	JK	73
12.	POSTPONEMENT OF TRIAL	PH	113
13.	REGULAR BAIL	PH	39
14.	SANCTION FOR PROSECUTION	GHC	30

---

---

## ACT AND SECTION INDEX

---

---

	<b>Page Nos.</b>
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528	20
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528, Sec. 346	113
Code of Criminal Procedure, 1973 Sec. 102	1
Code of Criminal Procedure, 1973 Sec. 102	95
Code of Criminal Procedure, 1973 Sec. 313	63
Code of Criminal Procedure, 1973 Sec. 374, Sec. 428	98
Code of Criminal Procedure, 1973 Sec. 397, Sec. 306, Sec. 401	124
Code of Criminal Procedure, 1973 Sec. 482	20
Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 397, Sec. 309	113
Indian Penal Code, 1860 Sec. 109	1
Indian Penal Code, 1860 Sec. 120B	117
Indian Penal Code, 1860 Sec. 34, Sec. 120B	98
Indian Penal Code, 1860 Sec. 409, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 120B, Sec. 418	74
Indian Penal Code, 1860 Sec. 420, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 120B	113
Indian Penal Code, 1860 Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B, Sec. 406	20
Indian Penal Code, 1860 Sec. 423, Sec. 477A, Sec. 34, Sec. 420, Sec. 409, Sec. 468, Sec. 465, Sec. 471, Sec. 120B, Sec. 406	76
Indian Penal Code, 1860 Sec. 477A, Sec. 420, Sec. 409, Sec. 468, Sec. 471, Sec. 467, Sec. 120B	95
Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 27A, Sec. 25	39
Prevention of Corruption Act, 1988 Sec. 13	20
Prevention of Corruption Act, 1988 Sec. 13	39
Prevention of Corruption Act, 1988 Sec. 13	76
Prevention of Corruption Act, 1988 Sec. 13	95
Prevention of Corruption Act, 1988 Sec. 13	113

---

	<b>Page Nos.</b>
Prevention of Corruption Act, 1988 Sec. 13, Sec. 14, Sec. 9, Sec. 8, Sec. 12	124
Prevention of Corruption Act, 1988 Sec. 13, Sec. 18A	1
Prevention of Corruption Act, 1988 Sec. 13, Sec. 20, Sec. 7	51
Prevention of Corruption Act, 1988 Sec. 13, Sec. 20, Sec. 7	98
Prevention of Corruption Act, 1988 Sec. 13, Sec. 7	30
Prevention of Corruption Act, 1988 Sec. 13, Sec. 7	82
Prevention of Corruption Act, 1988 Sec. 13, Sec. 7	117
Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12	63
Prevention of Corruption Act, 1988 Sec. 8, Sec. 7A, Sec. 13, Sec. 12	74

---

---

## TOPICAL INDEX

---

---

### **BANK ACCOUNT SEIZURE**

Bank Account Seizure - Appeal preferred by State against order quashing seizure of respondent's bank accounts - Seizure challenged on ground of delayed filing of report under Section 102(3) of Code of Criminal Procedure - Contention raised that delay vitiated seizure - State submitted delay due to multiple investigating officers and procedural oversight - Reference made to Shento Varghese decision clarifying that delay in filing report does not invalidate seizure - Explanation for delay accepted as plausible - Court held that impugned order misapplied ratio of Shento Varghese - Seizure upheld though disciplinary action may be taken against erring officer - Impugned judgment set aside - Appeal Allowed [*State of West Bengal & Ors vs. Subrata Dutta & Ors* (CALCUTTA HIGH COURT) 2026(1)AICC94]

### **BANK LOAN FRAUD**

Bank Loan Fraud - Bank sanctioned large credit facility on representation of company engaged in construction works - Inquiry revealed company and bank official connived to obtain loan using forged work orders and fabricated stock statements - Account declared non-performing and fraud detected - Company entered one-time settlement with bank and High Court quashed proceedings under inherent jurisdiction citing settlement - CBI contended offences involved fabrication, cheating and corruption impacting public funds - Court held economic offences against public institutions affect society and cannot be quashed on settlement - Criminal proceedings restored - High Court order set aside - Appeals Allowed [*Central Bureau of Investigation vs. Sarvodaya Highways Ltd and Ors* (SUPREME COURT OF INDIA) 2026(1)AICC20]

### **BRIBE DEMAND PROOF**

Bribe Demand Proof - Appeal challenged acquittal of accused charged for accepting illegal gratification during mutation entry process - Complainant alleged demand and acceptance during trap by Anti-Corruption Bureau - Trial Court found inconsistencies, contradictions, and lack of independent corroboration - Appellate Court examined evidence of demand and acceptance and considered double presumption of innocence in acquittal appeals - Found prosecution failed to establish clear demand forming foundation of offence - Procedural irregularities and doubtful witness conduct weakened case - View of trial court not perverse - Acquittal confirmed - Appeal Dismissed [*State of Maharashtra vs. Narayan S/o Shri Shivram Mataghare* (BOMBAY HIGH COURT) 2026(1)AICC82]

### **BRIBE TRAP**

Bribe Trap - Accused public officials convicted for accepting bribe - Defence argued no proof of demand and complainant deceased - Evidence from son and officer insufficient - Tape recording missing - Prosecution failed to prove essential ingredient

of demand - Court found conviction based on suspicion - Absence of direct evidence fatal to prosecution - Conviction set aside and appeals Allowed - Appeals Allowed [*A Salahudeen; O Azeez vs. State of Kerala; Deputy Superintendent of Police (KERALA HIGH COURT) 2026(1)AICC117*]

### **BRIBE TRAP IN PANCHAYAT**

Bribe Trap in Panchayat - Appeal against conviction under Prevention of Corruption Act - Accused Secretary of Grama Panchayat alleged to have demanded and accepted bribe for approving revised house plan - Trap conducted by Vigilance Bureau recovered tainted note from drawer of accused's table - Defence claimed money planted and phenolphthalein test negative on hands - Evidence of complainant, decoy witness and officers consistent proving demand and acceptance - Recovery corroborated documentary proof and surrounding circumstances - Non-detection of colour on hands immaterial when demand and recovery proved beyond doubt - Trial court properly applied presumption under Section 20 - Conviction confirmed - Appeal Dismissed [*K Manoharan vs. State of Kerala (KERALA HIGH COURT) 2026(1)AICC51*]

### **BRIBERY CONVICTION CHALLENGE**

Bribery Conviction Challenge - Appeals filed by Village Officer and Village Assistant challenging conviction for demanding and accepting bribe for mutation of property - Defence contended no credible proof of demand and acceptance of illegal gratification - Attendance register revealed first accused on leave on alleged date of demand - Defence relied on official documents showing mutation process already completed before trap - Court found prosecution failed to establish essential chain of demand, acceptance and recovery - Mere recovery of money insufficient without proof of initial demand - Investigation found to have lapses and contradictions - Court extended benefit of doubt to accused - Conviction recorded by trial court set aside - Appeals Allowed [*Sainalabdheen @ Sine S/o Shamsudheen; Raju K Abraham S/o Babykutty vs. State of Kerala; Deputy Superintendent of Police Vigilance and Anti Corruption Bureau (KERALA HIGH COURT) 2026(1)AICC98*]

### **COOPERATIVE BANK FRAUD**

Cooperative Bank Fraud - Anticipatory bail sought by accused in large scale misappropriation from cooperative bank - Allegation that officials and directors conspired to create fake loan files by forging documents and misappropriated huge sum - Properties of accused used to obtain fraudulent loans and proceeds diverted - Prosecution opposed bail citing ongoing investigation and seriousness of offence affecting public confidence in cooperative sector - Defence claimed documents executed voluntarily and loans genuine - Court found magnitude of scam and organized criminality requiring custodial interrogation - Observed that granting bail would impair investigation and affect faith of public depositors - Held that custodial interrogation necessary for tracing misappropriated funds - Considering gravity and

public interest - Anticipatory Bail Rejected [*Biju Kareem S/o Kareem; Sunilkumar T R S/o Ramakrishnan; Jilse S/o Kumaran; Jutha Bhaskar W/o Biju; Sreelatha W/o Jilse vs. State of Kerala; Pradeep S/o Krishnankutty* (KERALA HIGH COURT) 2026(1)AICC76]

### **DEMAND OF BRIBE**

Demand of Bribe - Appeal filed against acquittal order under Prevention of Corruption Act - Allegation that public servant demanded illegal gratification for passing order in mutation entry - Trap laid by Anti-Corruption Bureau and recovery made - Trial Court acquitted accused on ground of lack of corroboration and absence of proof of conscious acceptance - Evidence of complainant and panch witnesses considered not credible - Appellate Court observed that double presumption of innocence operates in case of acquittal and interference permissible only if findings are perverse or unreasonable - Evidence reappreciated showing that prosecution failed to prove demand and acceptance beyond reasonable doubt - Held that mere recovery not sufficient to convict without proof of demand and voluntary acceptance - Acquittal based on proper appreciation of evidence - Acquittal confirmed - Criminal Appeal Dismissed [*State of Maharashtra vs. Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad* (BOMBAY HIGH COURT) 2026(1)AICC63]

### **FREEZING OF BANK ACCOUNTS**

Freezing of Bank Accounts - Investigation under Prevention of Corruption Act against public servant led to freezing of accounts of relatives under Sec. 102 CrPC - High Court held such freezing impermissible as attachment procedure governed exclusively by Sec. 18A of PC Act - State contended powers under Sec. 102 CrPC and Sec. 18A PC Act are co-existent - Supreme Court observed that power to seize property under Sec. 102 CrPC meant to secure evidence during investigation distinct from attachment under Sec. 18A - Both provisions operate in different spheres and are not mutually exclusive - Investigating agency competent to exercise power of seizure where property suspected to be connected with offence pending formal attachment - High Court order directing de-freezing set aside - Appeal Allowed [*State of West Bengal vs. Anil Kumar Dey* (SUPREME COURT OF INDIA) 2026(1)AICC1]

### **HABITUAL BRIBERY**

Habitual Bribery - Revisions filed challenging discharge orders under Prevention of Corruption Act - Allegation that accused habitually abetted public servant by repeated payments as bribe - Trial court partly discharged - Evidence included bank documents, forensic report and approver statements - Consideration of statutory meaning of habitual offence under Sec.14 - Held that repeated payments alone insufficient to constitute habitual offence unless prior conviction or declaration established - Discharge for habitual offence upheld - Refusal of discharge for abetment proper - Partial Discharge Confirmed [*M Gunasekharan S/o E Mannangatty; Central Bureau of Investigation Acb Cochin vs. Central Bureau of Investigation, Spe Kochi; J Ashok*

*Shivaram; M Gunasekharan S/o E Mannangatty* (KERALA HIGH COURT) 2026(1)AICC124]

### **PASSPORT NOC REQUEST**

Passport NOC Request - Petitioner facing corruption trial sought NOC for passport renewal - Trial court rejected plea citing existing NOC validity and lack of necessity for foreign travel - Court held right to hold passport forms part of personal liberty under Article 21 - Need for travel not required to seek NOC - Only consideration is whether accused will be available to face trial - Rejection based on speculative grounds unsustainable - Order set aside and matter remanded for fresh consideration - Petition Allowed for Reconsideration [*Zahoor Ahmad Pahalwan vs. U T of J & K* (JAMMU AND KASHMIR HIGH COURT) 2026(1)AICC73]

### **POSTPONEMENT OF TRIAL**

Postponement of Trial - Petition under Sec. 528 BNSS filed for quashing order refusing postponement of trial - FIR registered alleging conspiracy to drop land acquisition proceedings causing wrongful gain to private entities - Application seeking adjournment rejected by Special Judge - Contention raised that in absence of stay against co-conspirators charge cannot be framed - Court observed petitioner never challenged earlier order refusing discharge and same attained finality - Stay granted to co-accused does not entitle petitioner to same benefit - Proceedings against petitioner can continue separately - Trial under Prevention of Corruption Act cannot be stayed under Sec. 19(3)(c) PC Act - Petition devoid of merit - Petition Dismissed [*Bhupinder Singh Hooda vs. Central Bureau of Investigation* (PUNJAB AND HARYANA HIGH COURT) 2026(1)AICC113]

### **REGULAR BAIL**

Regular Bail - Petition filed for regular bail in case under Prevention of Corruption Act alleging accumulation of assets disproportionate to known income - FIR registered based on findings of Special Investigation Team in earlier NDPS case revealing large unexplained wealth - Petitioner argued FIR illegal being political vendetta and based on same material already considered - State contended evidence shows illicit enrichment through benami companies and foreign entities - Court noted serious economic offences involving public funds and ongoing investigation into complex financial network - Found possibility of tampering with evidence and influencing witnesses if released - Observed registration of second FIR permissible when new facts reveal larger conspiracy - Held bail not justified at current stage considering gravity and extent of offences - Directed completion of investigation within fixed period to enable later consideration of bail - Bail Petition Dismissed [*Bikram Singh Majithia vs. State of Punjab* (PUNJAB AND HARYANA HIGH COURT) 2026(1)AICC39]

## **SANCTION FOR PROSECUTION**

Sanction for Prosecution - Applicant police officer sought discharge in corruption case on ground of absence of prior sanction under Sec.17A of Prevention of Corruption Act - Authority contended no sanction needed when public servant commits criminal act - Court held Sec.17A protects honest officers acting in discharge of official duty and requires prior approval before investigation - However, demand or acceptance of bribe not part of official function - Offence alleged being independent criminal act, absence of sanction does not vitiate proceedings - Application for discharge rightly rejected - Revision Dismissed [*Devenbhai Dhanabhai Chavda vs. State of Gujarat* (GUJARAT HIGH COURT) 2026(1)AICC30]

-----

---

---

**ALL INDIA CORRUPTION CASES**

---

---

2026(1)AICC1

**IN THE SUPREME COURT OF INDIA**

[From CALCUTTA HIGH COURT]

(Hon'ble Judge: Sanjay Karol; Prashant Kumar Mishra)

Criminal Appeal No 5373 of 2025 dated 10/12/2025

*State of West Bengal*

**Versus**

*Anil Kumar Dey*

**FREEZING OF BANK ACCOUNTS**

Indian Penal Code, 1860 Sec. 109 - Code of Criminal Procedure, 1973 Sec. 102 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 18A - Freezing of Bank Accounts - Investigation under Prevention of Corruption Act against public servant led to freezing of accounts of relatives under Sec. 102 CrPC - High Court held such freezing impermissible as attachment procedure governed exclusively by Sec. 18A of PC Act - State contended powers under Sec. 102 CrPC and Sec. 18A PC Act are co-existent - Supreme Court observed that power to seize property under Sec. 102 CrPC meant to secure evidence during investigation distinct from attachment under Sec. 18A - Both provisions operate in different spheres and are not mutually exclusive - Investigating agency competent to exercise power of seizure where property suspected to be connected with offence pending formal attachment - High Court order directing de-freezing set aside - Appeal Allowed

**Law Point: Section 102 of Code of Criminal Procedure empowers investigating officer to freeze or seize property suspected of involvement in offence even in corruption cases - Such power independent of attachment under Section 18A of Prevention of Corruption Act which operates post-judicial satisfaction.**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 109

Code of Criminal Procedure, 1973 Sec. 102

Prevention of Corruption Act, 1988 Sec. 13, Sec. 18A

**JUDGEMENT**

**Sanjay Karol, J.- [1]** For ease and clarity, this judgment is divided as follows:

**I N D E X**

QUESTION TO BE CONSIDERED.....

FACTUAL AND LEGAL BACKDROP.....	
IMPUGNED JUDGMENT.....	
RELEVANT PROVISIONS.....	
BRIEF SUBMISSIONS.....	
CONSIDERATION.....	
CONCLUSION.....	

Leave granted.

### **QUESTION TO BE CONSIDERED**

[2] The short but significant question that arises in this appeal is whether, when proceedings initiated against a person are only under the provisions of the Prevention of Corruption Act 1988 [Hereinafter referred to as 'PC Act'], would it be open for the investigating authorities (police) to freeze the accounts of the accused persons under Section 102 of the Code of Criminal Procedure 1973 [Hereinafter referred to as 'CrPC']. In other words, are the powers under Section 18A of the PC Act, which prescribes the application of the Criminal Law Amendment Ordinance, 1944 [Hereinafter referred to as 'Ordinance ' ] insofar as the proceedings of attachment are concerned, and the power under Section 102 Cr.P.C., i.e., the power of a police officer to seize certain property, co-existent or mutually exclusive.

### **FACTUAL AND LEGAL BACKDROP**

[3] The facts in which the question framed above arises are that:

a) Kalyan Mandal, Sub-Inspector of Police posted at the Directorate of Anti-Corruption Branch, West Bengal, conducted a preliminary enquiry against the Respondent's son, Mr. Prabir Kumar Dey Sarkar, and asked, vide complaint dated 30th July 2019 addressed to the Superintendent of Police, Directorate of Anti-Corruption Branch, West Bengal, that a case be registered under Section 13(2) read with 13(1)(b) of the PC Act. The relevant extracts thereof are extracted hereinbelow:

"...During enquiry, it could be revealed that Sri Prabir Kumar Dey Sarkar, S/O- Sri Anil Kumar Dey Sarkar residing at GA-130, Rajdanga Main Road, PS-Kasba, Kolkata-700107 had joined as Constable of Police in 1979 and was promoted to the rank of Wireless Operator in the year 1984. Subsequently, he joined as Sub Inspector in the year 1991 and was promoted to the rank of Inspector of Police in the year 2011. During his tenure at different Police Stations, he earned huge illegal money thereby creating enormous movable/immovable properties, channelizing the said illegal money in the name of his relatives which have been found disproportionate to his known sources of income. He, being a Police Officer (SI in 1991) had drawn net salary for the check period from 2007 to 2017 to the tune of Rs.40,08,090/- (approximately) and kitchen expenditure for the said check

period will be 1-3rd of his Net Salary i.e., Rs. 13,36,030/-. Thus, his likely savings for the said check period could be Rs. 26,72,060/-

But during the enquiry, available documents revealed that the total movable/immovable properties acquired by Sri Prabir Kumar Dey Sarkar in his name as well as in the name of his relatives, together with the expenditure incurred during the said check period, comes around Rs. 1,49,18,628/- [One Crore Forty-nine lakh eighteen thousand six hundred & twenty-eight]. The said amount of Rs. 1,49,18,628/- comprises (a) construction cost, labour cost and KMC fees of building (G+3) OF GA-130, Rajdanga Main Road, (b) liquid cash seized from the premises of GA-130, Rajdanga Main Road, (c) value of gold ornaments seized from the residence of P.K. Dey Sarkar at GA-130, Rajdanga Main Road, (d) cost of a Flat at P.Majumdar Road, (e) landed property at Chak Kalar Khal measuring about four cottahs, (f) premium for LICI and (g) fees paid to the Heritage School for his daughter.

During calculation the valuation of: (I) the five storied building at BF-11, Rajdanga Main Road,

(ii) three storied building at GA-97, Rajdanga Main Road, (iii) GB-50, Rajdanga Main Road have not been taken into consideration which may further compound the valuation of the total assets. Considering his income, expenditure, likely savings, Sri Prabir Kumar Dey Sarkar prima facie, has possessed huge assets disproportionate to his known sources of income..."

b) Pursuant to the complaint, FIR No. 09/19 came to be registered. During investigation, certain fixed deposits held by the Respondent (father of the main accused) were frozen. An application was filed before the City Sessions Court, Calcutta [Hereinafter referred to as 'Trial Court'] seeking de-freezing of the said accounts. The same came to be rejected by order dated 28th March 2023. The operative portion is thus:

"..The petitioner by filing his petition has stated that his fixed deposits have been freezed by the police. He is 93 years old and is suffering from various ailments. He has prayed for defreezing the fixed deposits standing in his name. Ld. Spl. P.P. vehemently opposes the petition. A written objection is filed against the petition by the I.O through Ld. Spl. P.P.

It is submitted by Ld. Spl. P.P. that Prabir Kr. Dey Sarkar acquired movable and immovable properties in his name and also in the name of his relatives. The amount he acquired is abnormally disproportionate to his income. That apart, he has also acquired to Benami properties standing in the name of his nearest relatives. This petitioner has six fixed deposits in Axis Bank, Cosba Branch. He also has six fixed deposits in SBI, Rubi Park branch. It is submitted that those are not standing only in his name. Those are standing either jointly in the name of this petitioner and Deepa Dey Sarkar or in the

name of this petitioner and Subrata Dey Sarkar or in the name of this petitioner and other relatives of his family. The petitioner could not give appropriate source of his income where from he deposited this huge amount of money jointly with others. It is further submitted that in course of investigation it revealed that the son of this petitioner has acquired huge disproportionate property. The prosecution apprehends that the same is kept by his son in the name of this petitioner and others. Therefore, according to the prosecution if the fixed deposits are allowed to be defrozeed the prosecution will suffer irreparable loss to prove the case.

I have considered the submissions made by Ld. Spl. P.P. and Ld.

Advocate appearing on behalf of this petitioner. I have examined the CD carefully. I also do not find any CD that the petitioner has been able to show the source of his income where from he fixed the amounts. As the investigation is still in progress, I am unable to entertain the prayer of the petitioner.

The petitioner dated 16.03.2023 filed on behalf of the petitioner, Anil Kr Dey Sarkar to defrozeed the fixed deposits is rejected..."

c) The Home and Hill Affairs Department, Government of West Bengal, by order dated 22nd April 2024, by order of the Hon'ble Governor, granted sanction for prosecution against the son of the respondent.

d) Upon completion of the investigation, chargesheet was presented on 13th May 2024 which named a total of 4 accused persons: Prabir Kumar Dey Sarkar (main accused and son of Respondent herein); Dipa Dey Sarkar (wife of main accused); Anil Kumar Dey Sarkar (Respondent herein); and Subir Kumar Dey Sarkar (brother of main accused and son of Respondent herein). Some of the observations made in the chargesheet against the instant respondent, inter alia, are:

"...Investigation further revealed that business income and house property income of Dipa Dey Sarkar and Anil Kumar Dey Sarkar could not be substantiated in the instant case....

...The circumstances and evidences collected so far in the case substantiated that the construction at BF-11 was solely attributed on Prabir Kumar Dey Sarkar apart from Anil Kumar Dey Sarkar...

...Besides, huge number of Fixed Deposits in the name of accused Anil Kumar Dey Sarkar....

...Investigation revealed that there had been thirty eight nos. of FD accounts lying in the name of Anil Kumar Dey Sarkar, Dipa Dey Sarkar, Subrata Dey Sarkar, Papiya Dey Sarkar and Supriyo Dey Sarkar. Out of thirty eight nos. of FD accounts, twelve FD accounts were still live and twenty six nos. of FD accounts were opened and closed within the check period and benefit of interest of the same was given to the accused persons in case of sixteen nos. of FDs, but in case of ten nos. of FDs, maturity benefit of the same was not provided to the accused persons because those matured FDs were re-invested.

Investigation revealed that prior to the creation of the following FDs were re-invented. Investigation revealed that prior to the creation of the following FDs, there was huge deposition of unexplained cash in the SB accounts of accused persons. Such type of huge deposition of cash in the SB accounts of accused of persons was not in conformity with the legal source of income of accused person. Moreover, neither Dipa Dey Sarkar nor Anil Kumar Dey Sarkar was in position to explain the deposition of huge cash in their accounts. Therefore, Dipa Dey Sarkar being house wife and Anil Kumar Dey Sarkar being the pension holder of scanty amount was dependent on Prabir Kumar Dey Sarkar. So evidence collected so far substantiated that Prabir Kumar Dey Sarkar played major role in the creation of the following FDs."

e) The City Sessions Court, Calcutta took cognizance on the basis of the chargesheet by order dated 14th May 2024 against the above said persons.

#### **IMPUGNED JUDGMENT**

[4] The order of the Trial Court rejecting the application for de-freezing of accounts was challenged before the Calcutta High Court, CRR No. 4511 of 2023. The Judgment and Order dated 4th October 2024, delivered therein setting aside the findings of the learned Trial Court and directing de-freezing of the accounts, has been challenged before us by the State. The relevant paras of the order are:

"...13. In other words, an attachment/freezing of the bank accounts in connection with an offence under the 1988 Act is to be made in accordance with section 18A of the Act. Admittedly the bank accounts of the petitioner have been frozen by the opposite party in exercise of power under section 102 of the Code of Criminal Procedure.

14. Diverse views have been taken by the High Courts of Madras and Patna with regard to applicability of section 102 of the Code in seizure and freezing of bank accounts in a criminal case registered under the 1988 Act. The Madras High Court has held in favour of such application whereas the Patna High Court has held that such seizure and freezing can be made only under section 18A of the Act and not under section 102 of the Code.

15. The Hon'ble Supreme Court, in the authority in Ratan Babulal (supra) has examined the question whether attachment of bank accounts is sustainable in exercise of powers under section 102 of the Code. The Hon'ble Court has held that it is not possible to sustain freezing of the bank accounts taking recourse to section 102 of the Code as The Prevention of Corruption Act is a Code by itself. The freezing was accordingly set aside by the Hon'ble Court leaving open to the respondents/State to take such recourse in law as may be permissible.

16. Section 18A of the Act envisages that attachment, administration of attached property, execution of order of attachment and confiscation of

money or property procured by means of an offence under the Act shall be governed by section 18A. Since admittedly the bank accounts of the petitioner were frozen by the opposite party by invoking section 102 of the Code and not by procedure under section 18A of the Act, the said freezing cannot be sustained.

17. In view of the fact that the bank accounts in question were not frozen in accordance with law, this Court does not find it necessary to deal with the prayer for de-freezing the same and objection raised thereto on merits.

18. Accordingly, freezing of the bank accounts of the petitioner is set aside.

19. The opposite party is directed to de-freeze the said accounts within seven days from date.

..."

### **RELEVANT PROVISIONS**

[5] Before proceeding further, it would be important to take note of the relevant provisions.

#### **Section 13 of the PC Act**

##### **"13. Criminal misconduct by a public servant.**

-1 [(1) A public servant is said to commit the offence of criminal misconduct,-

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.-A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.-The expression "known sources of income" means income received from any lawful sources.]

(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."

#### **Section 18A of the PC Act**

**"18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.**-(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far

as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".]

### **Section 102, CrPC**

**"102. Power of police officer to seize certain property.**-(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, [or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation,] he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]"

### **Section 109, IPC**

**"109. Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment.**

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

**Sections of the Criminal Law (Amendment) Ordinance 1944****3. Application for attachment of property**

"(1) Where the [State Government or, as the case may be, the Central Government], has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the [State Government or, as the case may be, the Central Government] may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the [State Government or, as the case may be, the Central Government] believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person; the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

**4. Ad interim attachment**

(1) Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exist no prima facie grounds for believe that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit: Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached, a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or subsection (3), as the case may be, of section 5."

#### **BRIEF SUBMISSIONS**

[6] We have heard Mr. Shadan Farasat and Mr. Siddharth Agarwal, learned senior counsel for the State and the Respondent, respectively. We have also perused the written submissions. The State's position is that the High Court's reliance on **Ratan Babulal Lath v. State of Karnataka**, 2022 16 SCC 287 which observes that the PC Act is a Code complete in itself, is not justified, for it does not lay down any authoritative position in law, binding under Article 141 of the Constitution of India. The two provisions, i.e., Section 18A of the PC Act and Section 102 Cr.P.C., operate in distinct and/or complementary spheres and are not mutually exclusive. This seizure of property may or may not culminate in attachment. The purpose of the former is to secure the property as evidence during investigation, and that by itself does not constitute attachment. The power of attachment/ad interim attachment given under Sections 3 and 4 of the Ordinance are not akin to the power of seizure given under Section 102, Cr.P.C. The latter is a power to be exercised by the police, which does not require prior judicial approval and so, is effective in securing evidence, even if it is also suspected, tainted property, whereas the latter has to be supported by grounds set out in affidavits, inherently making it a deliberative process. This means that both powers cannot be construed as inconsistent with the other or barring the exercise of the other. It was, as such, submitted that the High Court had erred in its conclusion.

Per contra, the Respondent's position is that **Ratan Babulal Lath** (supra) does in fact constitute binding precedent as evidenced by the fact that it has been relied on by this Court in *The State of Bihar & Ors. v. Sukhdani Devi Etc. Etc*, Order dated

14.10.24 in Criminal Appeal Nos.4232-4234 of 2024 as also by other High Courts. The purpose of the power under Section 102, CrP.C. is, to serve investigative needs. The account, having been frozen by the police, does not serve any such investigative need as the banks have already supplied detailed statements regarding the same, and the Respondent has also disclosed the source of funds in his replies to the authorities. Further, it is the State's case that the action of reason has been taken since the funds found in these bank accounts are disproportionate to the known sources of income.

In other words, the same was done, not for any investigative purpose. In effect, the freezing has been done to prevent the funds suspected of being disproportionate, from being withdrawn/transferred, which is the object of attachment. This Court in **State of Maharashtra v. Tapas D. Neogy**, 1999 7 SCC 685 permitted the freezing of bank accounts under Section 102, Cr.P.C. In that case, the Respondent, such as in the present case, was also a public servant, given that, at the relevant point in time there was no provision for attachment under the PC Act. This lacuna was addressed and cured by the 2018 amendment to the PC Act, and so, the procedure provided therein has to be followed. [Ref: **Opto Circuit India Ltd v Axis Bank & Ors**, 2021 6 SCC 707]. Lastly, it has been submitted that the allegations of disproportionate assets have been responded to by the Respondent before the Police, however, the same has not been reflected in the chargesheet, nor have they been considered in their proper light, i.e., retirement benefits, profits from the sale of lands belonging to his wife, rental income, etc. The said seizure was not reported to the concerned Magistrate, in accordance with Section 102(3), Cr.P.C. In the above terms, the conclusion of the High Court was submitted to be correct in law.

### CONSIDERATION

[7] In light of the afore-stated submissions, let us now consider the question as framed in paragraph 2.

[8] Section 102, which appears in Chapter VI of the Cr.P.C. titled as 'Processes to Compel Appearance' and more particularly Part 'D' thereof, which is headlined as 'Miscellaneous', uses the word 'seizure' and Sections under the Ordinance, which Section 18A applies to the PC Act, uses the word 'confiscation' and 'attachment'. The meaning of these two words, which obviously would indicate the similarities and/or differences, acquires importance. Seize means to "to take something quickly and keep or hold it"<sup>10</sup> Merriam Webster defines 'seizure' as "the act, action, or process of seizing: the state of being seized or the taking possession of person or property by legal process" [[https://www.merriam-webster.com/dictionary/seizure#:~:text=seizure-,noun,the%20brain%20\(as%20in%20epilepsy\)](https://www.merriam-webster.com/dictionary/seizure#:~:text=seizure-,noun,the%20brain%20(as%20in%20epilepsy))] . Black's Law Dictionary describes 'seize' as "To put in possession, invest with fee simple, be seized of or in, be legal possessor of, or be holder in fee simple." Seizure is "to take possession of forcibly, to grasp, to snatch, or to put in possession. [Henry Campbell Black, Black's Law Dictionary, 4th Edition.] P. Ramanatha Aiyar's Advanced Law Lexicon defines 'seizure' as " In general "seizure" is a forcible taking possession. The legal definition of

the word "seizure" is the taking possession of property by an officer under legal process." [3rd Edition, 2009] Confiscate, then means "to officially take private property away from someone, usually by legal authority"<sup>14</sup> Black's Law Dictionary defines 'confiscate' as "To appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use" Now moving to attachment, the Cambridge Dictionary, describes attachment, in law, as "the act of arresting a person for failing to obey the order of a court, or of officially taking their property because they have failed to pay money that they owe"<sup>15</sup> Black's Law Dictionary defines attachment as "The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over. Also, the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain."

Having referred to and understood the meaning of the terms, we move forward.

[9] The text of Section 102, Cr.P.C., has already been reproduced supra. From a studied analysis of the judgments of this Court involving this provision, the following principles/aspects can be highlighted:

9.1 Under this Section, property that is alleged/suspected to be stolen; is the object of crime; has a direct link to the commission of the offence, can be seized. [See: **M.T. Enrica Lexie v. Doramma**, 2012 6 SCC 760]

9.2 The police have the power to seize passports and bank accounts under this Section. [See: Tapas D. Neogy (supra), **Suresh Nanda v. CBI**, 2008 3 SCC 674 **Teesta Atul Setalvad v. State of Gujarat**, 2018 2 SCC 372.

9.3 Orders of freezing issued under this Section, can only be in effect to aid investigation. [See: **Jermyn Capital LLC v. CBI**, 2023 7 SCC 810] Once the investigation is complete, that ipso facto, does not entitle the person whose bank accounts have been frozen, to have them released. It shall, however, be open to them to apply to the concerned authority for the same, and the authority shall consider the same in accordance with law. [See: **Teesta Atul Setalvad** (supra)]

9.4 The police do not have the power to seize any immovable property. It cannot dispossess someone who is in possession of the immovable property. [See: **Nevada Properties (P) Ltd. v. State of Maharashtra**, 2019 20 SCC 119]

9.5 It is not an enabling provision under which the police may, to do justice, seize the property and hand it over to whom they believe to be the rightful owner thereof. [See: **Nevada Properties (P) Ltd.** (supra)]

[10] In order to understand attachment, i.e., what is prescribed in the PC Act, let us look at the procedure given in the Ordinance, as also other legislations where attachment of property is a consequence, to appreciate, in particular, the procedure of the **Ordinance**, as also attachment as employed in other statutes.

10.1 The Ordinance prescribes the following procedure:

- Step 1: Application under Section 3
  - o State or authorised agency files an application before the District Judge.
  - o Must be supported by affidavit(s) stating grounds of belief that the accused committed a scheduled offence and giving details/value of property believed to be procured.
  - o Prior cognizance of the offence by a criminal court is not required. (Ravi Sinha v. State of Jharkhand, Kamal Malik case).
- Step 2: Ad-interim attachment (Section 4)
  - o On receiving the application, the District Judge ordinarily passes an ad-interim order of attachment without delay.
  - o This order prevents alienation or disposal of the property pending further proceedings.
- Step 3: Notice and Opportunity to Show Cause
  - o The person whose property is attached is given notice.
  - o They must be given a fair opportunity to show cause why the attachment should not be made absolute.
- Step 4: Making the Order Absolute (Section 5)
  - o After hearing objections, the Judge may confirm the order and make the attachment absolute.
  - o Ownership objections and claims about the lawful source of acquisition are considered judicially. (AIR 2018 SC (Cri) 164).
- Step 5: Execution and Enforcement
  - o The attachment order is carried out "so far as may be practicable" under the Code of Civil Procedure, 1908.
  - o This may include seizure, freezing of assets, or appointment of a receiver.
- Step 6: Security in lieu of Attachment (Section 8)
  - o The affected person may apply to provide security in place of attachment.
  - o If the Judge finds security sufficient, the attachment can be lifted or not enforced.
- Step 7: Appeal / Revision (Section 11)
  - o Orders making attachment absolute (or other specified orders) are appealable under Section 11.
  - o Appeal must be filed before the appropriate forum within limitation.

10.2 Now, moving to other statutes. The **Prevention of Money Laundering Act, 2002**, dedicates an entire chapter, i.e., Chapter III, to these processes. Sections 5 and 8 thereof, provide for the procedure to be followed. A perusal of Section 5 (Attachment of property involved in money-laundering) reveals these sequential steps:

1. Director/Authorised Officer forms 'reason to believe'.
2. Provisional Attachment Order issued (max 180 days).
3. Order + material sent to Adjudicating Authority (sealed envelope).
4. Within 30 days ? Complaint filed before Adjudicating Authority.
5. Adjudicating Authority holds hearing (Section 8).
6. Order under Section 8(3): Confirm or Release attachment.
7. If confirmed ? Property continues attached until trial ends.
8. Final outcome: Confiscation to Government OR Release.

Section 8, (Adjudication) also prescribes detailed steps:

1. Receipt of complaint (u/s 5(5)) or application (u/s 17(4) or 18(10)).
2. Adjudicating Authority forms 'reason to believe' (person committed offence u/s 3 or possesses proceeds of crime).
3. Notice issued (= 30 days) to such person
  - ? requiring explanation of sources of income/assets + evidence.
  - If property held on behalf of another
    - ? notice is also served to that person.
  - If property is jointly held ? notice to all holders.
4. Adjudicating Authority considers:
  - (a) Reply to notice,
  - (b) Hearing of aggrieved person & Director (or authorised officer),
  - (c) All relevant material on record.
5. Order recorded: Finding whether property is involved in money laundering.
  - If claimed by a third party ? opportunity of hearing is given.
6. If property involved ? Attachment / Retention / Freezing is confirmed (u/s 8(3)).
  - Continues during investigation (= 365 days) or pendency of proceedings.
  - Becomes final upon confiscation order (u/s 8(5)/(7), 58B, 60(2A)).
  - Period of stay by the Court is excluded from 365 days.
7. After confirmation ? Director/Authorised Officer takes possession of property (u/s 8(4)).
8. Trial before Special Court:
  - If money laundering proved ? property confiscated to Central Government (u/s 8(5)).

- If not proved ? property released to entitled person (u/s 8(6)).
- If trial cannot be concluded (death/proclaimed offender/other reason)  
? Court decides confiscation or release (u/s 8(7)).

9. Restoration to Claimants:

- If property confiscated ? Special Court may restore to the claimant with legitimate interest who suffered quantifiable loss (u/s 8(8)).
- Conditions: claimant acted in good faith, took precautions, not involved in laundering.
- Court may even consider restoration during trial (Proviso to s. 8(8)).

10.3 **The Income Tax Act, 1961**, provides for provisional attachment to protect the interests of the revenue. A perusal of Section 281B makes clear the following steps:

1. Proceeding pending for assessment/ reassessment / escaped assessment; Assessing Officer (AO) forms an opinion that provisional attachment is necessary to protect revenue.

2. AO obtains previous approval from the relevant higher authority (Principal Chief Commissioner/Chief Commissioner; Principal Commissioner/Commissioner; Principal Director General/Director General; Principal Director/Director).

3. On approval, AO issues a written order provisionally attaching the assessee's property in the manner provided in the Second Schedule.

4. Initial period of provisional attachment is six months from the date of the order.

5. The higher authority may extend the provisional attachment (reasons recorded), but total extension cannot exceed two years or sixty days after the date of assessment/reassessment, whichever is later.

6. Assessee may furnish a bank guarantee from a scheduled bank for an amount not less than the fair market value (FMV) of the attached property. If accepted, the AO shall revoke the attachment.

7. AO may refer the matter to the Valuation Officer (s.142A) to determine FMV - report due within 30 days.

8. AO must revoke the provisional attachment within 45 days of receiving the guarantee if a Valuation Officer reference was made; otherwise, within 15 days.

9. If a notice of demand specifying a sum is served and the assessee fails to pay, the AO may invoke the bank guarantee (wholly or partly) to recover the amount.

10. The AO shall invoke the guarantee if the assessee fails to renew the guarantee 15 days before its expiry.

11. Amount realized by invoking the guarantee is adjusted against existing demand; any balance is deposited in the Personal Deposit Account (PDA) of the Principal Commissioner/Commissioner.

12. If AO is satisfied that the guarantee is no longer required, the AO shall release the guarantee forthwith.

[11] A detailed analysis of the provisions concerning attachment given in the Ordinance as also the other Acts, the steps of which have been detailed above, is an effort to juxtapose the procedure laid down in different statutes, showing that attachment is a consequence which is given effect to after due application of mind and compliance with procedure. It is not a decision that can be taken on the spur of the moment. It is not a decision that can be taken by a single person. The situation prevalent on the ground and in response to the situation as it may be developing, has to be considered. Instead, the law provides detailed steps and procedures to be complied with before someone's property can be attached. Now, contrasting this with the power contained under Section 102 Cr.P.C., it is clear from the text reproduced supra that it allows 'any police officer' to 'seize any property', and in order to balance the scales, requires that once such a seizure is done, information thereof has been sent forthwith to the concerned Magistrate. This requirement of communication to the Magistrate forthwith received consideration in a recent judgment of this Court in **Shento Varghese v. Julfikar Husen**, 2024 7 SCC 23 the conclusions of which are as below:

"26. From the discussion made above, it would emerge that the expression "forthwith" means "as soon as may be", "with reasonable speed and expedition", "with a sense of urgency", and "without any unnecessary delay". In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

27. We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot be a straitjacket formula prescribed in this regard. In that sense, the interpretation of the word "forthwith" would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.

28. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3)CrPC, the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, "forthwith" as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to

be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail hereinabove."

While it is undoubted that in ordinary circumstances, information is to be sent to the Magistrate, in certain circumstances, if that is not done, even then the seizure will not be vitiated. This indicates the width of the power granted to the police with the sole aim of smooth facilitation of the investigation. As evidenced by the procedure given in the Ordinance, it is sequential and has to be compliant with principles of natural justice, for it to survive scrutiny. It is necessarily time consuming and deliberative. The difference between the two processes is, therefore, clearly exhibited. In essence, we hold that the power of seizure and attachment are separate and distinct, even if, to the naked eye it may so appear, that the effect is same/similar which is, that the property is taken into custody of, by the authority, either investigative or judicial. Consequentially, the conclusion to be drawn is that the powers under Section 18A of the PC Act and Section 102, CrP.C. are not mutually exclusive. Mr Farasat's submission to this extent merits acceptance and is so done accordingly.

[12] The next submission to be weighed is whether **Ratan Babulal Lath** (supra) constitutes a binding precedent in as much as it declares the PC Act to be a 'code in itself', thereby ruling out the application of the Cr.P.C. or any other law to any proceedings which emanates therefrom. There have been several instances where this Court has declared a particular statute to be a self-contained Code or, a Code in itself. Reference to some of these instances is as follows:

12.1 The Industrial Disputes Act, 1947, which N.L.Untwalia J., writing for this Court in **Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke**, 1976 1 SCC 496 observed to be an act providing for "investigation and settlement of industrial disputes, which means adjudication of such disputes..." is one such example. In para 8 of this judgment, the learned Judge gives a glimpse of the width and expanse of the powers provided therein. Krishna Iyer J., in **Rohtas Industries Ltd. v. Rohtas Industries Staff Union**, 1976 2 SCC 82 called it a Code for it

"... it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil court nor any other tribunal or body can award relief." What is seen from the Act is that its references to other procedural laws are only limited to certain extents, which have been clearly laid down for example, Section 11 thereof provides that every Board, Court constituted thereunder shall have the powers under the Code of Civil Procedure, 1908, insofar as the four aspects mentioned therein are concerned.

12.2 The Insolvency and Bankruptcy Code, 2016 [Hereinafter referred to as 'IBC'] is another example. The name itself professes that this legislation is a Code. [See: **Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC)**, 2022 2 SCC 401] Various judgments since its enactment have underscored its self-contained nature. In **Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee)**, 2021 10

SCC 623 this Court expressly rejected the importation of the guarantees of non-arbitrariness and fair procedure into the Court holding that the Code defines in itself what is fair and equitable treatment "constituting a comprehensive framework". It was also noted that the same is compliant with the "Legislative Guide on Insolvency Law" given by UNCITRAL. In **E.S. Krishnamurthy v. Bharath HiTecch Builders (P) Ltd.**, 2022 3 SCC 161 it was observed that the IBC "confers jurisdiction" and "structures, channelises and circumscribes the ambit of such jurisdiction". **V. Nagarajan v. SKS Ispat & Power Ltd.**, 2022 2 SCC 244 held that the Code overrides its inconsistencies as they may be with other laws.

12.3 Two further examples. The Land Acquisition Act, 1894, was held in **State of Bihar v. Dharendra Kumar**, 1995 4 SCC 229 to be a complete code in itself since it details the complete procedure to be followed by the State when it exercises the power of eminent domain. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been termed as a code in itself since it provides the procedure to be followed by a secured creditor and also the aggrieved party including borrower. [See: **Raj Kumar Shivhare v. Directorate of Enforcement**, 2010 4 SCC 772]

[13] Analysing the judgments referred to immediately hereinabove, the following factors can be deduced as essentials of a code being self-contained or complete in all respects:

**I.** A Code should be comprehensive, dealing with all aspects arising directly out of or, ancillary to, the main issue addressed in the statute.

**II.** It should lay down, clearly, when dealing with criminal laws, the offence, its punishment, and when dealing with civil laws, the rights and liabilities of the parties.

**III.** Addressing the above, the procedure provided therein should be all-encompassing. This includes, for instance, adjudication of grievances, and appeals from findings recorded by authorities. In other words, the reliance of the statute upon general laws with reference to the offences/ punishments or, rights/liabilities should be limited as far as possible.

[14] With utmost respect to the learned Judges and the conclusion in **Ratan Babulal Lath** (supra), we would state that in the absence of a detailed discussion made of the scheme of the Act, its provisions and its interactions with other substantive or procedural laws, as far as they may be applicable, it cannot be stated that the conclusion arrived at therein constitutes ratio decidendi and, therefore, would be binding on all Courts as per the effect of Article 141 of the Constitution of India. We draw support for our conclusion from a judgment of this Court in **MCD v. Gurnam Kaur**, 1989 1 SCC 101:

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [ Writ Petitions Nos. 981-82 of 1984] and to the

learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions ...So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the *Salmond on Jurisprudence*, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

(Emphasis supplied)

In the same vein, a reference can also be made to **Jayant Verma v. Union of India**, 2018 4 SCC 743 wherein R.F Nariman J, writing for the Court, referred to the dissenting opinion of A.P. Sen, J. who set out in **Dalbir Singh v. State of Punjab**, 1979 3 SCC 745 what is the ratio decidendi of a judgment, in the following terms:

"22. ... According to the well-settled theory of precedents every decision contains three basic ingredients:

(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgment based on the combined effect of (i) and (ii) above."

[15] In our considered view, **Ratan Babulal Lath** (supra) does not constitute binding precedent for want of (ii) and (iii) since it does not discuss the facts of the matter. Granted, inference can be made as to the facts of the case, and the background in which the order came to be passed. However, Courts ought not to be expected to follow judgments and orders of this Court as binding precedents when, the facts, in light of which the conclusion arrived at, are not properly disclosed and discussed, for law is not always applicable as the black letter of the law and is instead applied to the

facts of each case. It may be clarified here that our observations regarding the PC Act do not hold, either way, as to its status as a code. They are only confined to the precedential value of **Ratan Babulal Lath** (supra).

### CONCLUSION

[16] Having decided the points of law, as above, let us now turn to the facts of this case. The respondent is the father of the main accused. Although he had submitted certain responses to the source of the money present in his accounts, the same was not found to be a justifiable explanation by the investigating authorities and as such, seizure was effected. The release of the funds so seized was rejected by the Trial Court but later accepted by the High Court on the premise that the same had been carried out on an erroneous interpretation of the law. We do not agree. We have held as above that Section 102, Cr.P.C., being distinct from the powers and procedures as detailed under Section 18-A of the PC Act, would apply to the case. Generally, with the setting aside of the order of the High Court, the matter would have ended there, but since the investigation has been completed and the final report already stands presented in the case, the freezing of the accounts, of which fixed deposits are undoubtedly a part, may or may not be required. Considering that in light of the principles enunciated in para 9 of this judgment, we may observe that as per this Court's order issuing notice dated 27th January 2025, we had stayed the operation of the impugned judgment which was dated 4th October 2024. This may result into two situations, viz., **(a)** where the amount stands released; and **(b)** is yet to be released. If the situation is the former, then the respondent herein would either re-deposit the amount or furnish tangible security / bank guarantee of the like amount. This shall be done positively within three weeks from today. Rights of the parties emanating from the statute whether in situation **(a)** or **(b)** for follow up action are left open to be adjudicated in appropriate proceedings before the appropriate court.

[17] The appeal is allowed as aforesaid.

Pending application(s), if any, shall be disposed of

-----  
2026(1)AICC19

**IN THE SUPREME COURT OF INDIA**

[From PUNJAB AND HARYANA HIGH COURT]

(Hon'ble Judge: Vikram Nath; Sandeep Mehta)

Criminal Appeal No 4829 of 2025 **dated 11/11/2025**

*Central Bureau of Investigation*

**Versus**

*Sarvodaya Highways Ltd and Ors*

**BANK LOAN FRAUD**

Indian Penal Code, 1860 Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B, Sec. 406 - Code of Criminal Procedure, 1973 Sec. 482 - Prevention of Corruption Act, 1988 Sec. 13 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528 - Bank Loan Fraud - Bank sanctioned large credit facility on representation of company engaged in construction works - Inquiry revealed company and bank official connived to obtain loan using forged work orders and fabricated stock statements - Account declared non-performing and fraud detected - Company entered one-time settlement with bank and High Court quashed proceedings under inherent jurisdiction citing settlement - CBI contended offences involved fabrication, cheating and corruption impacting public funds - Court held economic offences against public institutions affect society and cannot be quashed on settlement - Criminal proceedings restored - High Court order set aside - Appeals Allowed

**Law Point: Economic offences involving fraud on financial institutions cannot be quashed merely on settlement between accused and bank since such acts harm public interest and integrity of financial system; criminal law must proceed to uphold justice.**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B, Sec. 406  
Code of Criminal Procedure, 1973 Sec. 482  
Prevention of Corruption Act, 1988 Sec. 13  
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528

**Counsel:**

Vikramjit Banerjee, Nachiketa Joshi (Senior Advocate), Mukesh Kumar Maroria, P V Yogeswaran, Merusagar Samantaray, Vishakha, Swati Ghildiyal, Jagdish Chandra, Siddarth Dave (Senior Advocate), Chritarth Palli, Agam Aggarwal, Harsheen M Palli, Siddharth Sangal

**JUDGEMENT**

**Sandeep Mehta, J.- [1]** Heard.

**[2]** Leave granted.

**[3]** The instant appeal at the instance of Central Bureau of Investigation [Hereinafter, referred to as "appellant-CBI".] takes exception to the judgment and final order dated 18th July, 2022 passed by the High Court of Punjab and Haryana at Chandigarh in CRMM No. 31272 of 2018 (O&M) [Hereinafter, referred to as "High Court"]. By the impugned judgment, the High Court allowed the petition under Section 482 of the Code of Criminal Procedure, 1973 [Hereinafter, referred to as "CrPC"], [Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)] filed by respondent No. 1-M/s. Sarvodaya Highways Ltd [Hereinafter, referred to as

"respondent No.1-Company or defaulter company"]. and its Directors i.e., respondent No. 2-Gurinder Kumar Garg, respondent No.3-Aruna Garg, respondent No.4-Aashutosh Garg and respondent No.5-Aayush Garg, and thereby quashed the entire proceedings arising out of the FIR RC No. BD1/2015/E/0002/CBI/BS&FS/DLI registered by the appellant-CBI for the offences punishable under Section 120B read with Sections 406, 420, 467, 468 and 471 of the Indian Penal Code, 1860 [respondent No.4-Aashutosh Garg and respondent] and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption of Act, 1988 [Hereinafter, referred to as "PC Act"]. Consequently, the proceedings arising out of the chargesheet No. RC.BD/2015/E/2002 dated 30th November, 2016 filed pursuant to investigation in the aforesaid FIR also came to be quashed.

#### **BRIEF FACTS**

[4] The FIR mentioned supra came to be lodged on 3rd February, 2015 at the instance of the Branch Manager of the erstwhile State Bank of Bikaner and Jaipur (now merged with State Bank of India) [Hereinafter, referred to as "Bank"], alleging, inter alia, that the Bank had sanctioned credit facility of Rs.50 crores under fund based-limits and Rs.10 crores under non-fund based limits to respondent No.1-Company through its Managing Director. While applying for the loan, it was projected on behalf of respondent No.1-Company that it was engaged in the construction of residential/commercial complexes, townships, highways, bridges and flyovers across India and had been awarded 10 work orders to the tune of Rs.348.24 crores. Acting on the aforesaid information and financial standing provided by respondent No.1-Company, the Bank sanctioned the credit facilities in the above terms.

[5] However, when the amounts were not repaid as per the schedule and the accounts became irregular, an internal inquiry was initiated and it was found that lien of the Bank had not been marked in the revenue records by the Patwari Halqa, Dhakoli, Zirakpur and that the records had been manipulated. The account of respondent No.1-Company was declared to be a Non-Performing Asset [an internal inquiry was initiated and it was found] on 28th July, 2013 by the Bank. The internal inquiry concluded that a fraud of Rs.52.50 crores had been committed. Consequent to these findings, a complaint was lodged by the Branch Manager of the Bank on 9th January, 2015, on the basis of which the aforesaid FIR dated 3rd February, 2015 came to be registered with the appellant-CBI, and investigation was commenced.

[6] During the course of investigation, the investigating agency (i.e., the appellant herein) collected detailed evidence, oral and documentary, and came to the conclusion that the officers of respondent No.1-Company and the then Branch Manager of the Bank, Mr. Nishan Lal, had connived together to defraud the Bank by furnishing false information and provided fabricated work orders for procuring the cash credit limit, which was thereafter utilized and remained unpaid.

[7] The investigation further revealed that the accused persons had submitted false and fabricated stock statements and receivable statements, thereby cheating the Bank, despite no actual work having been executed by them. The investigating officer also found that 3 out of the 10 work orders were entirely fabricated, as the companies to whom these work orders were allegedly issued expressly stated that they had not issued any such orders to respondent No.1-Company. The remaining 7 work orders were, as a matter of fact, issued to the associate companies of the defaulter, one of whose Directors was a common Director in all these 7 companies. Based on the evidence collected, the investigating agency drew the following conclusions in the chargesheet:-

"It was therefore, further revealed in the investigation by the Petitioner Department that the said Respondents knowingly and dishonestly submitted false and forged work orders purportedly issued by the aforesaid companies to induce the Respondent Bank to sanction credit facilities to the Respondent No.1/A-1. In addition to the aforesaid, the investigation further confirmed that marking of hens on 3 properties, which were offered by the Respondent No. 1/Accused Company, as collateral securities to the Respondent Bank were also forged.

The aforesaid facts constitute the commission of offences against M/s Sarvodaya Highways Ltd. (A-1) through its Directors (A-2) to (A-5), Sh. Gurinder Kumar Garg (A-2), Smt. Aruna Garg (A3), Sh. Aashutosh Garg (A-4), Sh. Aayush Garg (A-5) and Sh. Nishan Lal, the then Branch Manager, SBBJ, Panchkula, all committed offences punishable u/s 120 B r/w 420, 467, 468, 471 IPC and Section 13(2) r/w Section 13(1)(d) of PC Act, 1988 and substantive offences thereof."

[8] Sanction was granted by the Competent Authority to prosecute the Bank Manager, Mr. Nishan Lal, and pursuant to conclusion of the investigation, chargesheet came to be filed in the Court of the Special Judge for CBI [Hereinafter, referred to as "trial Court".], Panchkula, Haryana against respondent No. 1-Company, its Directors and the Bank Manager for offences punishable under Sections 120B read with Sections 420, 467, 468, and 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

[9] While the case was pending before the trial Court, respondent No.1-Company claims to have entered into a one-time settlement dated 5th March 2018 with the Bank. The cash credit liability was settled on payment of Rs. 41 crores to the Bank. It is on the basis of this one-time settlement that respondent Nos. 1 to 5, being the defaulting company M/s. Sarvodaya Highways Ltd., and its Directors, approached the High Court by way of a petition under Section 482 of the CrPC seeking quashing of the aforesaid FIR and the chargesheet dated 30th November, 2016.

[10] The learned Single Judge of the High Court was persuaded to invoke the inherent jurisdiction under Section 482 of the CrPC and quashed the proceedings arising from the chargesheet based on the aforesaid one-time settlement, vide

judgment and order dated 18th July, 2022, which is subject matter of challenge in this appeal by special leave.

#### **SUBMISSIONS ON BEHALF OF APPELLANT**

[11] Mr. Vikramjit Banerjee, learned Additional Solicitor General, representing the appellant-CBI vehemently and fervently contended that the High Court committed gross error in law in quashing the proceedings arising out of the chargesheet based on the one-time settlement entered into between the defaulting company, i.e., respondent No.1 and the Bank. He submitted that the investigation conducted by the appellant-CBI resulted into an unimpeachable finding regarding fabricated documents having been used to procure the cash credit facility. The one-time settlement has been entered by the Bank under compulsion because the account of the defaulter company had been declared to be NPA and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were also initiated. Ultimately, realizing that it would not be possible to recover the entire outstanding amount along with interest, the Bank opted for a safer course of settling the account by accepting a substantially lesser amount than what would have been recovered had the terms of the cash credit account been adhered to by respondent No. 1-Company. Thus, significant loss was suffered by the Bank which has a direct and adverse bearing on the public exchequer.

[12] The learned Additional Solicitor General placed reliance on the following observations made by this Court in the case of **Gian Singh v. State of Punjab**, 2012 10 SCC 303 to urge that merely because a settlement has been arrived at in respect of the loan account, the same cannot, by itself, furnish a valid ground for quashing the criminal proceedings:

"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, **on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.**

...

61. The position that emerges from the above discussion can be summarised thus: **the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the**

**power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."**

[Emphasis supplied]

[13] It was submitted that the investigation establishes the submission of forged documents, and misrepresentation by the respondent No. 1-Company and its Directors for procuring the cash credit facility. The material collected reveals grave economic offences committed by the accused. The connivance between the defaulter company, its Directors and the Bank Manager to defraud the Bank stands conclusively proved. Sanction for prosecution of the Bank Manager has been duly granted by the competent

authority. It was argued that quashing of the chargesheet by the High Court would, in effect, result in the indirect exoneration of the Bank Manager as well, and therefore, the impugned order cannot be sustained in law.

[14] Reliance was also placed by Mr. Banerjee on the judgments of this Court in **Central Bureau of Investigation v. Jagjit Singh**, 2013 10 SCC 686 State of Maharashtra through CBI v. Vikram Anantrai Doshi & Ors, 2014 SCC OnLine SC 745, and Anil Bhavarlal Jain v. State of Maharashtra, 2024 SCC OnLine SC 3823.

[15] In **Jagjit Singh (supra)**, this Court stated that offences involving bank fraud affect society at large, observing as follows: -

"15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by the Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well-being of the society. **These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, the society in general, including customers of the bank is the sufferer.** In the present case, there was neither an allegation regarding any abuse of process of any court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice."

[Emphasis supplied]

[16] Further this court in **Vikram Anantrai Doshi (supra)** stated that economic offences against banks are social wrongs, and repayment or settlement cannot justify quashing criminal proceedings. This Court in Paragraph 26 observed as follows:-

"26. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalised bank in the manner, as alleged by the investigating agency, vividly exposit fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kinds of benefits it cannot be regarded as a case having overwhelmingly and predominately civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no dues

certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is **the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kinds of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The Court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence.** As we find in the case at hand the learned Single Judge has not taken pains to scrutinise the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order [Vikram Anantrai Doshi v. State of Maharashtra, Criminal Application No. 2239 of 2009, order dated 22-4- 2010 (Bom)] of the High Court is wholly indefensible.

[Emphasis supplied]

[17] It was submitted that this Court, in **Anil Bhavarlal Jain (supra)**, declined to quash criminal proceedings on the ground that a settlement had been arrived at between the parties, observing that, as the case involved a special statute i.e., PC Act, and that quashing the proceedings would have grave and far-reaching consequences on the society at large. This Court in paragraphs 17 and 18 observed as follows: -

"17. A profitable reference in this regard can be made to the judgment in *State v. R Vasanthi Stanley*<sup>9</sup> wherein this Court declined to quash the proceedings in a case involving alleged abuse of the financial system. It was observed as under:

"15. .... A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the head on the system. That can never be an acceptable principle or parameter, for that would amount to destroying stem cells of law and order in many a realm and further

strengthen the marrow of unscrupulous litigations. Such a situation should never be conceived of."

[18] In the instant case, it is on record that consent terms were submitted by the parties before the DRT. It is admitted that the bank had suffered losses to the tune of Rs. 6.13 Crores approximately. Hence, a substantial injury was caused to the public exchequer and consequently it can be said that public interest has been hampered. Keeping in view the fact that in the present case a special statute i.e. PC Act has been invoked, we are of the view that quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the High Court committed no error in declining to exercise its inherent powers in the present case, thereby refusing to quash the criminal proceedings."

18. It was thus urged that the impugned judgment does not stand to scrutiny and should be set aside and the proceedings of the chargesheet should be revived.

#### **SUBMISSIONS ON BEHALF OF RESPONDENTS**

[19] Per contra, Mr. Siddarth Dave, learned senior counsel representing the respondents, vehemently and fervently opposed the submissions advanced by the learned ASG appearing for the appellant-CBI. It was urged that not only has the Bank agreed to onetime settlement but thereafter all the pledged assets have also been released. The proceedings before the Debt Recovery Tribunal have been closed on instructions of the Bank. In these circumstances, it was urged that continuation of the criminal prosecution against the respondent No. 1-Company and its Directors would serve no useful purpose and would amount to an exercise in futility.

[20] In support of his contentions, Mr. Dave placed reliance on the judgments of this Court in *Jaswant Singh v. State of Punjab & Another*, 2021 SCC OnLine SC 1007 **CBI New Delhi v. B.B. Aggarwal & Others**, 2019 5 RCR(Cri) 573, and **CBI, ACB, Mumbai v. Narendra Lal Jain & Others**, 2014 5 SCC 364. He urged that the monetary disputes inter se between the Bank and the defaulter company have been settled and no dues settlement certificate has been issued by the Bank and so also that the proceedings before the Debt Recovery Tribunal stand closed with the settling of the accounts. Hence, no useful purpose would be served by continuing with the criminal prosecution of the defaulter company and its Directors. He urged that it is a lame prosecution, which the appellant CBI wants to pursue in this matter.

#### **ANALYSIS**

[21] We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and also the material placed on record.

[22] The High Court, while quashing the proceedings, assigned the following reasons: -

"After hearing learned counsel for the parties, I find merit in the present writ petition, for the following reasons:-

(a) It is admitted case that cash credit facility was availed in the year 2012 and on account of account being declared NPA, some proceedings were initiated before DRT, where the petitioners had paid back the amount as per settlement arrived at between the petitioners and the bank.

(b) It is also admitted case of the bank that at no point of time, the petitioners tried to sell off or siphon off of the loan amount to any third party and it is a simple case where the loan was not repaid in time, for which it was declared NPA and once the recovery proceedings were initiated before DRT, the petitioners repaid the entire amount along with interest to the respondent Bank in installments and similarly, in the same manner, the respondent Bank was releasing the mortgaged properties by issuing the letters, as noticed above.

(c) The respondent-Bank as well as CBI have filed affidavits that the entire amount stands paid and at no point of time, any action of the petitioner was of any criminal intent except that the loan amount was not paid in time.

In view of the observations made above and also in view of judgment of the Hon'ble Supreme Court in B.B. Aggarwal's case (supra), present petition is allowed and FIR bearing RC No.BD1/2015/E/0002/CBI/BS&FS/DLI dated 03.02.2015 and final report dated 30.11.2016 as well as the consequential proceedings arising out of the FIR are ordered to be quashed."

[23] Having gone through the reasons assigned by the High Court, it is apparent that while quashing the proceedings on the basis of one-time settlement, the High Court failed to advert to the following vital facts of the case which were duly established during investigation.

(i) That there was a specific finding in the chargesheet that the defaulter company through its directors had submitted fabricated documents and misrepresented to the Bank for the purpose of procuring the cash credit facility.

(ii) That the appellant-CBI, on the basis of evidence collected during investigation, found that the offences of criminal conspiracy, fabrication of documents, and offences under the PC Act, were clearly made out.

(iii) That sanction for prosecution had been duly issued against the then Bank Manager, Mr. Nishan Lal.

(iv) That the amount of settlement under the onetime settlement did not cover the actual amount due to the Bank and that there was a deficit of more than 5 crores plus interest which was a direct loss to the public exchequer.

[24] The High Court, while exercising jurisdiction under Section 482 CrPC, did not consider these vital facts and quashed the proceedings merely on the basis of the alleged one-time settlement. The blanket order quashing the chargesheet in its entirety would have the effect of terminating the prosecution against the Bank Manager as well, against whom prosecution sanction has been granted.

[25] There are plethora of judgments of this Court, some of which we have referred to above, which categorically hold that in cases involving economic offences, it is not merely the Bank that stands defrauded, but the society at large is also impacted.

[26] It can be said without a shadow of doubt that the one-time settlement would not fetch the entire amount to which the Bank was otherwise entitled, had the cash credit account been maintained regularly. The settlement was made at around Rs.41 crores whereas, admittedly, the liability was of Rs. 52 crores approximately. One-time settlements are, as a rule, effected under circumstances where the Bank under duress is compelled to accept lesser amount in order to secure the maximum possible recovery against the defaulting account.

[27] In this background, we feel that the High Court committed error apparent in the eyes of law by quashing the proceedings.

[28] In the case of **Jaswant Singh (supra)**, the dispute involved was inter se between private parties and the prosecution had been initiated only for the offences punishable under Sections 406 and 420 of the IPC. This Court thought it fit to quash the proceedings considering the fact that the accused and the complainant had settled all their disputes amicably and no useful purpose would be served by allowing the prosecution to continue.

[29] In the case of **B.B. Aggarwal (supra)**, this Court upheld the order of the High Court quashing the proceedings against the accused on the ground that the civil suits filed by the Bank against the defaulter companies and their directors for recoveries of the outstanding dues, which were subsequently transferred to Debt Recovery Tribunal stood settled by entering into a one-time settlement.

[30] On going through the aforesaid judgments, we find that this Court did not consider the judgment in the case of **Gian Singh (supra)** which expressly prohibits quashing of proceedings of a criminal case on strength of a compromise where loss to public exchequer is evident and the offences under the PC Act, 1988 are applied.

[31] In the Case of **Narendra Lal Jain (supra)**, the offences were under Sections 420 and 120B of the IPC. This Court held that Section 420 IPC was compoundable whereas Section 120B IPC was not. In this background, the Court was persuaded to quash the proceedings holding that allowing the criminal prosecution to continue would be nothing short of an exercise in futility. Additionally, in **Narendra Lal Jain (supra)**, there was no indication about use of forged documents to procure the loan/advance facilities from the Bank.

[32] Furthermore, in none of these three cases did the Court observe that the amount of the one-time settlement did not cover the actual outstanding dues of the Bank.

[33] In this background, we are of the clear opinion that the facts involved in the three precedents relied upon by learned counsel for the respondents are clearly distinguishable and the same have no application to the case at hand.

[34] Thus, we are of the opinion that the impugned judgment and order do not stand to scrutiny and deserves to be set aside. We, therefore, allow the appeal, set aside the impugned judgment and order and restore the proceedings arising out of the chargesheet dated 30th November, 2016 before the trial Court.

[35] We further make it clear that this order should not be construed as making any observations on the merits of the case which may prejudice the defence of the accused persons before the trial Court which shall proceed with the trial of the case uninfluenced by any of the observations made hereinabove.

[36] The appeal is allowed in these terms.

[37] Pending application(s), if any, shall stand disposed of.

-----  
2026(1)AICC30

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

(Hon'ble Judge: P M Raval)

Criminal Revision Application (Against Order Passed By Subordinate Court) No 2197  
of 2025 **dated 11/12/2025**

*Devenbhai Dhanabhai Chavda*

**Versus**

*State of Gujarat*

**SANCTION FOR PROSECUTION**

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7 - Sanction for Prosecution - Applicant police officer sought discharge in corruption case on ground of absence of prior sanction under Sec.17A of Prevention of Corruption Act - Authority contended no sanction needed when public servant commits criminal act - Court held Sec.17A protects honest officers acting in discharge of official duty and requires prior approval before investigation - However, demand or acceptance of bribe not part of official function - Offence alleged being independent criminal act, absence of sanction does not vitiate proceedings - Application for discharge rightly rejected - Revision Dismissed

**Law Point: Prior approval under Sec.17A of Prevention of Corruption Act is not mandatory when alleged act of public servant constitutes criminal misconduct unrelated to discharge of official duties.**

**Acts Referred:**

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7

**Counsel:**

Dhruv Toliya, Utkarsh Sharma

**JUDGEMENT**

**P M Raval, J.- [1]** Present revision application is filed challenging the order dated 19.08.2025 passed below exh. 18 in Special (ACB) Case No. 2 of 2020 by the learned 6 th Additional Sessions Judge, Junagadh, whereby, the application of the applicant seeking discharge in connection with FIR being C.R. No. 6 of 2019 registered with ACB Police Station, Junagadh for the offence punishable under Sections 7(a), (c) and 13(2) of the Prevention of Corruption Act, 1988 (PC Act), came to be rejected.

**[2]** Briefly stated the facts of the case are that on 14.10.2019, de facto complainant received a call informing to contact present applicant, who was serving in ACB Police Station, Junagadh as Police Inspector, pursuant to which, the de facto complainant called the applicant. The applicant allegedly called the de facto complainant to the ACB Police Station and told him that in view of decision of the High Court, he would present before the Municipal Commissioner and threatened that he would get the hospital shut and thereby, the applicant allegedly demanded Rs.15 lakh from the applicant. On the basis of such an allegation, the FIR in question came to be filed against the applicant herein.

**[3] Rule**, returnable forthwith. Learned Additional Public Prosecutor waives service on behalf of the respondent - State.

3.1 This application is filed mainly on the ground that entire proceedings initiated against the present applicant including registration of FIR, investigation and filing of Charge-sheet are in clear violation of Section 17A of the PC Act. It is submitted that the applicant was discharging his official duties as a Police Inspector and the prosecution has failed to demonstrate anything from the record that approval/sanction which is required to be obtained under Section 17A of the PC Act, which is a condition precedent so as to proceed against a government servant, is not obtained and accordingly, the proceedings initiated against the present applicant is vitiated in the absence of any such sanction. It is, therefore, urged that the present application may be allowed and the applicant may be discharged from the case on hand.

3.2 In support of his submissions, the learned advocate for the applicant has relied upon following decisions:

- i) **Yashwant Sinha and Ors. v. Central Bureau of Investigation through its Director and Anr.**, 2020 2 SCC 338;
- ii) **Amit Kapoor v. Ramesh Chander and Anr.**, 2012 9 SCC 460;
- iii) **State of U.P. v. Manbodhan Lal Srivastava & Manbodhan Lal Srivastava v. State of U.P.**, 1957 AIR(SC) 912; 1957 SCC OnLine SC 4;

iv) Sri D. S. Veeraiah v. State of Karnataka and Anr., rendered in Writ Petition No. 31828 of 2024 (GM-RES) dated 29.04.2025 of the High Court of Karnataka at Bengaluru;

v) Shri Raj Kumar Ram S/o. Late Gonaur Ram v. The Central Bureau of Investigation represented by IO and Anr., rendered in Writ Petition No. 15635 of 2024 (GM-RES);

vi) Shreeroopa v. State of Karnataka, 2023 SCC Online Kar 68.

[4] As against this, the learned Additional Public Prosecutor for the respondent - State would submit that it may be that prior approval or sanction would be required however, the same would be required in the case where a government servant is discharging his official duties, but, the same does not apply where a government servant indulges in criminal activity and commits such a crime, and thus, the said provision is not sine qua non and prior sanction is not required.

4.1 In support of his submissions, the learned Additional Public Prosecutor has relied upon a decision of the Apex Court in the case of The Karnataka Lokayuktha Police v. Lakshman Rao Peshve, 2025 LiveLaw(SC) 941.

[5] Having regard to the submissions made, essentially, the question that arises in the cases on hand is whether as per Section 17A of the Prevention of Corruption Act, 2018 previous approval is a condition precedent to every investigation, enquiry or inquiry. The specific contention of the accused is that Section 17A is mandatory and in absence of previous approval there cannot be any investigation since the Section is intended to prevent misuse of the provisions of the Prevention of Corruption Act, by using it against honest officers and hence, a proceeding launched sans such statutory requirement is bad in law and as such requires to be quashed and set aside. No doubt, Section 197(1) Criminal Procedure Code (Cr.P.C.) and Section 17A of the PC Act operate in two different fields and in distinct situations. However, consistent principle laid down by the decisions referred hereinafter would reflect that in relation to any offence committed by a public servant while "acting or purporting to act in discharge of his official duty" can be profitably adverted to answer the legal issue involved in relation to Section 17A of the PC Act. The decisions referred hereinafter are based on the principle that the commission of crimes by a public servant which had no connection with his official duty, cannot be considered as one falling within the scope of Section 197 Cr.P.C. Extending the same principle to Section 17A of PC Act, it can be said that offences like misappropriation, falsification of accounts, cheating, criminal breach of trust, receiving bribes, etc. are beyond the scope of the provision and are not relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. The question whether sanction under Section 197 Cr.P.C. is a mandatory requirement preceding every action taken by the authority has been the subject matter for consideration in a catena of decisions. Section 197 of the Cr.P.C. provides that, no Court shall take cognizance of an offence

involving a public servant who was accused of an offence alleged to have been committed by him, while acting or purporting to act in discharge of his official duty, except with the previous sanction of the concerned competent authority. The question whether every act done by the public servant called for a protection under Section 197 of the Cr.P.C. was the subject matter of these decisions.

5.1 One of the earliest decisions of the Supreme Court on this point is in the case of **Bajnath Gupta & Ors v. State of Madhya Pradesh**, 1966 AIR(SC) 220. The question that came up before the Supreme Court was, whether a public servant to any recommendation made or decision taken by such public servant in discharge of his official functions or duties charged with offences punishable under Section 477A read with Sections 109 and 409 IPC required previous sanction from the competent authority, as contemplated under Section 197 of Cr.P.C., 1898. Supreme Court referred to two earlier decisions in the case of **Hori Ram Singh v. Emperor**, 1939 AIR(SC) 43 as well the decision reported in the case of **H.B.Gill & Another v. the King**, 1948 AIR(PC) 128. In the latter case, the accused was charged under Section 161 of IPC with taking bribe and under Section 120B IPC with criminal conspiracy. On the question whether sanction was necessary under Section 197(1) Cr.P.C., it was held that, there was no difference in the scope of that Section and the one under Section 270 of the Government of India Act, 1935. In **Hori Ram's case** (supra), it was held that a public servant can be said to act or purported to act in discharge of his official duty, if it was such as to lie within the scope of his official duty. Thus, act of a judge receiving bribe, though the judgment which he delivers may be an official act, taking bribe does not become an official act, it was held. It was also held that Government Medical officer does not act or purport to act as a public servant, in picking the pocket of a patient whom he was examining, though examination itself may be such an act. Any recommendation made or decision taken by such public servant in discharge of his official functions or duties Court laid down the crucial test to determine whether a public servant, acts or purports to act in official capacity by holding that, if challenged, he can reasonably claim that, what he did was, by virtue of his office. This view was approved in the case of **R.W Mathams v. State of West Bengal**, 1954 AIR(SC) 455, wherein it was held that it was not every offence committed by public servant that required sanction or prosecution. Under Section 197(1) of the Code of Criminal Procedure, it was not every act done by him while he was actually engaged in the performance of the official duties; that, but if the act complained of, was directly concerned with his official duty and, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that was important and if it falls within the scope and ambit of his official duties, protection contemplated under Section 197 of Cr.P.C. will be attracted.

5.2 In the case of **S.B.Saha & Others v. M.S.Kochar**, 1979 AIR(SC) 1841, the Supreme Court had an occasion to consider the question whether in the case of alleged offences under criminal conspiracy and breach of trust, sanction under Section 197(1)

of the Criminal Conspiracy was required. Supreme Court held that the words " any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty" employed in Section 197(1) are capable of a narrow as well as wide interpretation. It was the quality of the act that was important and if it falls within the scope and range of "official duties", the protection contemplated under Section 197 Cr.P.C. will be attracted. It was held that for prosecuting a public servant for dishonest misappropriation or conversion of goods, which they had seized and under such circumstances sanction was not essential. In the case of **Harihar Prasad v. State of Bihar**, 1972 3 SCC 89 it was held that sanction under Section 197 Cr.P.C. for prosecution of offence under Section 409 IPC, was not necessary. In the case of **Om Prakash Gupta v. State of U.P.**, 1957 SCR 423, it was held that public servant committing criminal breach of trust does not normally act so, in his capacity as a public servant. In the case of **Prakash Singh Badal & another v. State of M.P.**, 2007 AIR(SC) 1274, Supreme court had an occasion to consider the scope and ambit of expression "official duty" that appears in Section 197 of the Cr.P.C. It was held that Section 197 extends only to those acts or omissions done by the public servant while discharging the official duty. It was held that on facts, if it was prima facie found that the act or omission for which the accused was charged, had reasonable connection with the discharge of his duty, then it must held to be official, to which, applicability of Section 197 Cr.P.C. cannot be disputed.

5.3 Supreme Court in the case of **Rajib Ranjan & Others v. R. Vijayakumar**, 2015 1 SCC 513, held that even while discharging the office, any recommendation made or decision taken by such public servant in discharge of his official functions or duties, if a public servant enters into criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to to any recommendation made or decision taken by such public servant in discharge of his official functions or duties be treated as an act in discharge of his official duties and therefore, the provisions of Section 197 Cr.P.C.will not be attracted.

5.4 The above decisions consistently lay down a clear division between those acts which constitute an offence and those acts, though done while discharge to any recommendation made or decision taken by such public servant in discharge of his official functions or discharging the official duties of the public servant, does not ipso facto constitute an act done or purported to be done in discharge of his official duties, as contemplated under Section 197(1) Cr.P.C. The law laid down seems to be consistent that if a criminal offence is committed by a public servant, which is unconnected with his duty, sanction under Section 197 of Cr.P.C. was not required, since it undoubtedly does not form part of his official duty or purported to be done, in discharge of his official duty.

5.5 Keeping in view the law laid down in that context, the contention, whether prior approval as contemplated under Section 17A of the Prevention of Corruption Act is required in respect of every act which form subject matter of prosecution has to be

considered. At this juncture it would be apt to refer to Section 17A, relevant part of which is extracted as follows:

"S.17A No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without previous approval."

5.6 Section 17A, which was inserted by Act 16 of 2018, and which came into force w.e.f. 26.07.2018, the previous approval by the concerned authorities is made essential. The crucial question that arises for consideration in the present proceeding is whether previous approval from the competent authority was required to be obtained for every enquiry, inquiry or investigation, into alleged offence committed by the public servant.

5.7 While considering the scope of the Section 17A of PC Act, the issue has to be analysed in the background of the views expressed at the time of drafting of the enactment. The Law Commission of India in its 254 th Report had referred to the scope of Section 17A(1) of the Prevention of Corruption Amendment Bill dated 2013. After referring to the proposed Section 17A(1), the Law Commission in Chapter 7, at para 7.1.2., opined that the proposed Section 17A(1) introduced a limited requirement of previous approval to prosecute persons, who are or were alleged to have been public servants at the time of the alleged offence. It was held that this was in line with the provisions of Section 197 Cr.P.C. and the scheme of Section 14 of the Lokpal Act. It was opined that the proviso to proposed to Section 17A(1) was similar to clause 2 of the repealed Section 6A of the Delhi Special Police Establishment Act, 1946, which provided that in certain factual scenario, no sanction previous approval would be necessary. However, the proviso to the proposed Section 17A(1) was narrower than Section 6A of the Delhi Special Police Establishment Act, requiring that even if a person is caught on the spot while accepting illegal gratification, it would have to be shown by the prosecution that it was intended that such acceptance was consequential to a relevant public function or activity being performed. In the proviso to the proposed Section 17A (1), it was provided that the taking of bribe must have been with the intention that a relevant public function or activities shall be performed improperly, either by himself or by another public servant. It was held by the Law Commission that the above provision imposed a duty on the prosecution not only to show that the bribe or illegal remuneration/consideration was obtained, that it was in consequence of a relevant public function or that duty shall be performed improperly, either by himself or any public servant. Hence, it was suggested that the above part in the proviso shall be omitted. Except that, no other suggestion was made by the Law Commission, in relation to Section 17A. The above report does not throw any light as to the scope and ambit of Section 17A of PC Act, except that it was in line with Section 197 Cr.P.C.

5.8 Section 17A PC Act has to be analysed keeping in view the above background. The most crucial part of Section 17A provides that previous approval is required in relation to enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act "where the alleged offence is relatable to any recommendation made or decision taken by such public servant". It seems that the above part of the Section is the most crucial part of the Section, since it imposes a rider on the otherwise absolute power under Section 17A that enquiry, inquiry or investigation into every act needed prior approval. From the Judgments referred herein above it is clear that it is not that every offence alleged to have been committed by the public servant under the Act that needed prior approval. Prior approval under Section 17A was required only where the alleged offence was relatable to "any recommendation made or decision taken by the public servant". It is clear that the Parliament has consciously used the above words. If the intention of the Parliament was to impose a pre-condition that every enquiry, inquiry or investigation into every allegation of offence against a public servant required prior sanction, the words "where the alleged offence is relatable to any recommendation made or decision taken by the public servant" would be missing. If the above words are omitted, it would have meant that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act in discharge of his official function or duties without the previous approval of the competent authority. In other words, if the intention of the statute was to cover every enquiry, investigation or inquiry, the words "where alleged offence is relatable to any recommendation made or decision taken by the public servant" were unnecessary, since even without those words it would have conveyed the intention. Hence, it is clear that the intention of the Parliament was not to insist for previous approval in relation to enquiry, inquiry or investigation in relation to every offence committed by the public servant.

5.9 Thus the provisions of Section 17A of the PC Act are in pari materia with Section 197 Cr.P.C. and also in tune with the scope of the law laid down by the Supreme Court in its various decisions referred to herein above, while discussing the scope of Section 197(1), Cr.P.C.

5.10 The object of Section 17A of the Prevention of Corruption Act is to protect honest and upright public officers and to ensure that they are not unnecessarily dragged into criminal prosecution. It is also intended to ensure that honest officers are insulated and protected against unnecessary harassment and can perform their duties fearlessly.

5.11 In the present case, there is no recommendation or decision on record by public servant in discharge of his official functions. It is only such acts done in discharge of the official functions that would have become the subject matter of approval. However, when the act of a public servant is ex facie criminal or constitutes an offence, prior approval of the Government would not be necessary. Hence, any commission of offence or allegation of acts of public servant which is ex facie criminal

or constitute an offence or even demanding illegal consideration/bribe or receiving of it either to routinely move the file or to keep the file pending, without any decision being taken therein, will not fall within the scope of Section 17A. Hence prior approval under Section 17A is not warranted in the case on hand.

5.12 The learned advocate for the applicant has relied upon above referred decisions, on the aspect of powers of revision under Section 397 Cr.P.C. [Amit Kapoor (supra)] and powers for judicial review [Yashwant Sinha and Ors. (supra)], respectively, and more particularly, on the aspect of requirement of prior approval / sanction under Section 17A of the PC Act. So far as, powers of revision and the powers of judicial review are concerned, there cannot be any dispute with regard to the same. However, so far as the another aspect of requirement of prior approval / sanction under Section 17A of the PC Act is concerned, without burdening this judgment by discussing each and every decision, which, in the considered opinion of this Court, has no application in the present facts and circumstances of the case, more particularly, in view of the aforesaid discussion, supported by several pronouncements of the Apex Court, by which, clear demarcation is explained between the official duty and an act, which is unbecoming to a government servant having criminal consequences. Further, so far as decisions in the case of Sri D. S. Veeraiah and in the case of Shri Raj Kumar Ram S/o. Late Gonaur Ram, (supra), the proceedings therein were against the former employees. Further, in the case of Sri D. S. Veeraiah, the petitioner had called in question registration of crime for the offence punishable under Sections 120B, 409, 420, 465, 468 and 471 of the IPC, wherein, as observed by the Court in paragraph 14, that "it is not that the prosecution is not aware of the fact that prior approval under Section 17A is necessary or otherwise. **It did seek approval during the investigation. Approval is not granted against the petitioner. But, nonetheless the prosecution filed a charge sheet and then sought sanction**". So, in that case, sanction was not granted, although, the prosecution filed the Charge-sheet, which is not the case here. Whereas, in the decision in Shreeroopa (supra), the petitioner therein had challenged the approval accorded by the State Government for conducting an investigation against her under Section 17A of the PC Act, which is not the case here. Further, in paragraph 41 of the said decision, it is observed by the Court that, "It is clear from the statutory framework that the Legislature has decided to not only protect the public servants from unwanted investigation but also from a prosecution, by making it mandatory for the Investigating Officer to obtain two different and separate approvals for investigation and for prosecution". Nonetheless, in the recent decision of the Apex Court in the case of The Karnataka Lokayuktha Police (supra), relied by the learned Additional Public Prosecutor, the Apex Court has in no uncertain terms held that invalidity of sanction under Section 19 of the PC Act, cannot be a ground to discharge an accused in a criminal case under the PC Act until failure of justice is shown. Further, the two fold protection as envisaged in Section 17A and 19 of the PC Act is to protect a legal and bona fide actions on the part of a government servant and

it is not a shield to cover his illegal activities while holding the office. In the case on hand, the allegation against the present applicant is of serious in nature and a huge amount of bribe in the sum of Rs.15 lakh is alleged to have been demanded, supported by prima facie evidence therefor, such action does not fall in official duty at all nor the bribe is relatable to any recommendation made or decision taken by the public servant in discharge of his official duty.

5.13 Further, it is apt here to note the observations made by the Apex Court in paragraph 11 in the case of Manbodhan Lal Srivastava (supra), relevant part of which, is extracted hereunder:

".....The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other "

5.13.1 Thus, from the above observations, it is manifestly clear that it is the intent which matters and not the language in which the intent is clothed. As referred herein above, Section 17A provides that previous approval is required and would be mandatory in relation to enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act "where the alleged offence is relatable to any recommendation made or decision taken by such public servant" and not otherwise. It seems that the above part of the Section is the most crucial part of the Section, since it imposes a rider on the otherwise absolute power under Section 17A that enquiry, inquiry or investigation into every act needed prior approval. From the judgments referred herein above it is clear that it is not that every offence alleged to have been committed by the public servant under the Act that needed prior approval. Prior approval under Section 17A is required only where the alleged offence is relatable to any recommendation made or decision taken by the public servant. It is clear that the legislature has consciously used the above words.

5.14 Even otherwise, in the case on hand sanction under Section 19 of the PC Act is already given, though such sanction is for taking cognizance, however, stands on higher pedestal than Section 17A, which relates to only enquiry, inquiry or investigation. Further, nowhere it comes on record that the applicant has assailed the said order granting sanction under Section 19 of the PC Act. Further, the applicant has not been able to point out as to what serious prejudice has been caused to him or there is failure of justice by not obtaining prior approval under Section 17A. Under the circumstances, present application being meritless, no interference is required at the hands of this Court.

[6] Resultantly, the application is rejected. Rule is discharged

-----

2026(1)AICC39

**PUNJAB AND HARYANA HIGH COURT**

(Hon'ble Judge: Tribhuvan Dahiya)

CrM M (Criminal Main) No 51341 of 2025 dated 04/12/2025

*Bikram Singh Majithia*

**Versus**

*State of Punjab*

**REGULAR BAIL**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 27A, Sec. 25 - Prevention of Corruption Act, 1988 Sec. 13 - Regular Bail - Petition filed for regular bail in case under Prevention of Corruption Act alleging accumulation of assets disproportionate to known income - FIR registered based on findings of Special Investigation Team in earlier NDPS case revealing large unexplained wealth - Petitioner argued FIR illegal being political vendetta and based on same material already considered - State contended evidence shows illicit enrichment through benami companies and foreign entities - Court noted serious economic offences involving public funds and ongoing investigation into complex financial network - Found possibility of tampering with evidence and influencing witnesses if released - Observed registration of second FIR permissible when new facts reveal larger conspiracy - Held bail not justified at current stage considering gravity and extent of offences - Directed completion of investigation within fixed period to enable later consideration of bail - Bail Petition Dismissed

**Law Point: Bail may be denied in serious economic offences where investigation reveals large-scale financial irregularities and accused's release may obstruct probe or influence witnesses; registration of second FIR is permissible when based on new facts forming part of larger conspiracy**

**Acts Referred:**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 29, Sec. 27A, Sec. 25  
Prevention of Corruption Act, 1988 Sec. 13

**Counsel:**

R S Cheema (Senior Advocate), D S Sobti, A S Cheema, Satish Sharma, Siddharth Bhukkal, Sultan Singh Sangha, Paras Jhamb, Sheenam Kamboj, Prince Bharol, Maninderjit Singh Bedi, Chanchal K Singla, Madhur Sharma, Satjot Singh Chahal, Kavita Joshi

**JUDGEMENT**

**Tribhuvan Dahiya, J.- [1]** The petition has been filed for grant of regular bail in case FIR No.22 dated 25.06.2025, registered under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988, as amended by Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as 'the PC Act'), at Police Station Vigilance Bureau, FS-1, S.A.S. Nagar.

**[2]** The FIR in question has been lodged on the basis of a report, dated 07.06.2025, of the Special Investigation Team (SIT) investigating an earlier FIR against the petitioner and others, bearing no.2, dated 20.12.2021, registered under Sections 25, 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), at Police Station Punjab State Crime, S.A.S. Nagar. The report mentioned accumulation of more than '540 crores of wealth by the petitioner and his wife through illegal entities. The relevant extract of the FIR reads as under:

In the report of Special Investigation Team bearing No.292/SIT dated 07.06.2025, it has been written that "FIR No. 02 dated 20.12.2021 registered under sections 25, 27-A and 29 of NDPS Act 1985 at Punjab State Crime Police Station, S.A.S. Nagar against Bikram Singh Majithia and others is being investigated by the Special Investigation Team (SIT) and has uncovered substantial evidence indicating acquisition of assets disproportionate to the known sources of income of Bikram Singh Majithia and his wife Ganieve Kaur. That Bikram Singh Majithia has accumulated vast wealth, properties, and business interests in his name or in the name of his family members which appear to be grossly disproportionate to his legitimate income. In the course of investigation the material collected establishes that the assets have been acquired through proceeds of illegal activities and it amounts to illicit enrichment of resources.

In 2007. Bikram Singh Majithia became an elected member of the legislature and subsequently a Cabinet Minister in the State Government of Punjab. Evidence indicates that during his tenure as a Cabinet Minister in the State Government of Punjab, there has been disproportionate increase in the assets of Bikram Singh Majithia, his wife, wherein they have acquired huge wealth from the unknown and illegal means.

2.1 The FIR further details of ten companies under the petitioner's direct or indirect control where questionable transactions have been noticed. The investigation also revealed that huge cash had been deposited in the bank accounts of Saraya Industries Limited (SIL) during the period the petitioner was Member of Legislative Assembly (MLA) and a Cabinet Minister in the State of Punjab. The amount has allegedly been utilised for acquiring assets; besides, other suspicious entities have been created for siphoning of the money.

[3] Mr. Cheema, learned senior counsel for the petitioner contended that the case essentially arises out of the earlier case registered against the petitioner, i.e., FIR No.2 dated 20.12.2021, under Sections 25, 27-A and 29 of the NDPS Act, at Police Station Punjab State Crime, S.A.S. Nagar (hereinafter referred to as 'the NDPS case'). He has been granted regular bail in that case by a Division Bench of this Court vide detailed order dated 10.08.2022, specifically holding that, " we are satisfied that reasonable grounds exist to believe that petitioner is not guilty of the offences alleged against him in FIR No.002 of 2021 dt. 21.12.2021 and he is not likely to commit such offences while on bail." The order was challenged before the Supreme Court by the State, but the SLP was dismissed on 25.04.2025.

3.1. Learned senior counsel further contends that the companies/entities mentioned in the instant FIR have been thoroughly investigated by the State in the NDPS case as well. In that case the vigilance mentioned the alleged disproportionate assets and cash deposits in the petitioner's as well as the companies' accounts, as drug money. The same transactions have now been referred to as unaccounted money for registering the case under the PC Act. In this regard, he has made specific reference to the affidavits filed on behalf of the vigilance before the Supreme Court, dated 22.04.2024, 20.07.2024, 16.09.2024 and 10.02.2025, Annexures P-4, P-6, P-8 and P-10, respectively. The affidavits specifically state that the petitioner allegedly facilitated, harbored and financed international drug racket through his co-accused in the NDPS case. He is also alleged to have provided conveyance and premises to them. A huge money trail was allegedly found linking him directly to the offences alleged, and on that basis cancellation of his bail was sought. But the plea was not accepted and, as aforementioned, the SLP was dismissed. Since the State could not get the petitioner's custody in the NDPS case, they thought of making a new case, the instant one, to keep him behind bars. Legally the State was required to add the alleged offences under the PC Act to the NDPS case, if they had any material establishing the petitioner's disproportionate assets. Therefore, lodging of the FIR is illegal. The petitioner is an opposition leader and has been exposing the Government at every stage. It is only to settle personal scores with him that the instant FIR has been lodged in violation of the settled procedure to keep him behind the bars. This, in fact, was an election agenda of the present Government also. The entire exercise is vitiated by mala fides. It is further contended that the State has failed to convince the Supreme Court about existence of material against the petitioner so far as the disproportionate assets are concerned, since that was not considered a sufficient ground to cancel his bail in the NDPS case. And the same material could not have been used to lodge a fresh case. It is only to bypass the law laid down by the Supreme Court in **Pradeep Ram v. State of Jharkhand and another**, 2019 17 SCC 326, that in case the accused has already been granted the bail, the investigating authority on addition of an offence or offences may not proceed to arrest him, and would require to obtain an order to arrest from the Court which had granted the bail. Therefore, registration of FIR is in violation of the

law and abuse of its process. The material, money transactions, cash deposits, the alleged disproportionate assets, can either be drug money or disproportionate assets, as per petitioner's case; it cannot be both. Therefore, there is no basis to lodge the FIR in question. It is an outcome of vendetta politics of the present Government against the petitioner.

3.2. Still further, learned senior counsel contended that the only offence the petitioner is accused of is Section 13(1)(b) read with Section 13(2) PC Act. It is based on presumption against the accused and, therefore, the allegations are to be established during trial and pre-trial incarceration is not required in the case. He also contended that the petitioner has been out of power since 2017, and there is no basis to contend that he will influence the prosecution witnesses and/or hamper the trial in any manner. Similar allegations against him in the NDPS case were not believed by the Division Bench while granting bail, nor could the State persuade the Court for cancelling the bail on those allegations. Even otherwise, the petitioner is already in custody for over five months since 25.06.2025, and investigation is over as the challan/chargesheet against him already stands presented in the Court on 22.08.2025. It runs into about forty thousand pages, and there are 272 witnesses; therefore, there is no possibility of early conclusion of the trial. A statement by the Investigating Officer, dated 26.11.2025, made before the trial Court has also been placed on record which is to the effect that investigation of this case qua the petitioner is complete, however qua the role of other accused it is still under progress. Much reliance has been placed upon the Constitution Bench judgment in **Gurbaksh Singh Sibbia and others v. State of Punjab**, 1980 2 SCC 565, laying down that 'grant of bail is the rule and refusal is the exception'.

[4] Per contra, Mr. Singla, learned Additional Advocate General, Punjab, has addressed arguments by referring to reply filed by way of an affidavit, dated 27.10.2025, on behalf of the State. He contended that there is substantial evidence against the petitioner establishing his own enrichment and also that of his family run companies, apart from acquiring assets disproportionate to his known sources of income. He became an MLA in 2007 and, subsequently, a Cabinet Minister holding various important portfolios. Prior thereto, he was running family businesses, including SIL, in the capacity of its Director and shareholder. After joining public office, his family run businesses, including SIL, became cash rich in unprecedented manner. SIL is owned by the petitioner and his family members, the percentage of shareholding is - petitioner (11.63 per cent), Satyajit Singh Majithia (5.29 per cent), Satyajit Singh Majithia (HUF)-43.93 per cent, Gurmehar Singh Majithia (11.63 per cent), Peregrine Saraya Organics Pvt. Ltd. (Co. of father, brother-in-law, father-in-law of brother)-26 per cent, other family members (0.03 per cent), other nominal shareholders (1.49 per cent). The analysis of cash registers of SIL revealed that actual cash deposited in 2007-08 and 2008-09 in its bank accounts was significantly higher to the tune of '161.72 crores, more than the cash received in business as per the cash

register. There is no explanation for this. The amount was further utilised for the purpose of acquiring assets and various other entities by siphoning of the money. Some of his companies channelised money through foreign entities resulting in abnormal gains of more than '141 crores approximately. These companies, Clearwater Capital Partners (Cyprus) Limited, Xentolar Holding Limited (Cyprus), Sindicatum Captive Energy Singapore Pte. Ltd., primarily based in Cyprus and Singapore, along with their Indian subsidiaries, pumped in around '196 crores in the petitioner's companies. An amount of '35 crores pumped in by a Cyprus based company was set off for a meagre amount of '3.5 crores during the check period, 02.03.2007 to 31.03.2017. Similarly, another amount of '134 crores was set off for a meagre amount of '51 crores. Nobody would keep on investing huge amounts of money without getting any returns, but the Cyprus based companies and their subsidiaries did that, and despite suffering losses kept on giving money to the petitioner's companies.

4.1. There are other allegations regarding Nawanshahar Power Private Limited (NPPL), a subsidiary of Saraya Renewable Energy Private Limited, which is also a hundred per cent subsidiary of SIL. It was also given '22.86 crores by the Cyprus based company and its Indian subsidiaries against equity shareholding of fifty per cent and preference shareholding of ninety-nine per cent. However, later the said shareholding was transferred by the subsidiaries, namely, Sindicatum Solar Energy Gujrat Private Limited and Sindicatum Solar Energy Private Limited in the name of petitioner's mother without any consideration. The petitioner's mother was not having any income and the shares were acquired at 'Nil' price. This resulted in undue gain of more than '141 crore approximately to SIL and NPPL.

4.2. Further, it has been alleged that there is four times increase in the fixed assets of SIL after 2007, whereas neither manufacturing expenses nor sales had been increased in sync with the fixed assets. Another amount of '236 crores approximately was credited to the SIL for which there is no explanation in the financial statements. This amount has allegedly been transferred/siphoned off for acquiring benami assets worth crores of rupees. There are several properties acquired by the petitioner from 2007 to 2012, for which there is no explanation of sources of income. He, as well as his wife, is accused of acquiring benami properties through questionable means at Mashobra, Shimla, and Sainik Farms, New Delhi.

4.3. It is also alleged that after the petitioner demitted office as Minister in 2009, there was an abrupt decline in the total cash deposits in his companies which fell drastically to Rs. 3.5 crores only in that year. Thereafter, upon resumption of ministerial office in March 2012, the same trend of sharp escalation in credit summations became evident. For instance, '127.90 crores in 2013 and 2014. The timing and fluctuation of these deposits suggest possible linkage between the petitioner's official position and financial activities of SIL.

4.4. The allegations regarding another company, Patiala Kings Liquor Private Limited (PKLPL), which transferred huge amounts of money to SIL, as mentioned in the status report, are as under:

25. That a company namely Patiala Kings Liquor Pvt. Ltd. has transferred more than Rs.855 crores (approx) to the SIL during the Year 2012-13 and 2013-14. During these two years the total sale of SIL was Rs.1098 crores (approx) i.e. Rs.546 crores + Rs.552 crores as given in table above. The ledger accounts of SIL in the books of Patiala Kings Liquor Pvt. Ltd. were checked for the Year 2012-13 and Year 2013-14 as there were excessive deposits than sales of SIL in these two years particularly. These payments made to SIL by Patiala Kings Liquor Pvt. Ltd., as per these ledger accounts, were then cross checked with the amounts received by SIL from Patiala Kings Liquor Pvt. Ltd. in their bank accounts. That many deposit entries in bank accounts of SIL were marked to be received from Patiala Kings Liquor based on bank statements provided with full narration and bank receipt books provided which were said to be recovered from SIL premises at Gorakhpur. Total about 31 entries amounting to Rs.74.95 crores received by SIL but are not reflecting in the books of accounts of Patiala Kings, provided by their CA firm. As such these 31 entries are found to be unexplained in nature.

4.5. Regarding Saraya Aviation Private Limited (SAPL), the allegations are as follows:

26. That it has been established that prior to the Year 2012, the shareholding of SAPL was limited only to Sh. Satyajit Singh Majithia and SIL. Both of these entities are directly connected to the petitioner and his family. That subsequent to the Year 2012, SAPL passed a series of Board Resolutions and Allotment Deeds through which shares of the company were purportedly distributed among several new individuals. In Year 2014-15, some new shareholders have been inducted into the business thereby raising the share capital from Rs 900 lacs to Rs 1631 lacs. The new shareholders include Yadvinder Singh Bains, Surjit Singh, Gurpreet Singh, Jasbir Kaur, Rupinder Singh, Dalwinder Singh, Kuljit Kaur, Surjit Kaur, and Major Singh. While Surjit Singh, Gurpreet Singh and Major Singh belongs to Village Mughal Chak, Tehsil Patti, District Tarn-Taran the others namely Jasbir Kaur, Rupinder Singh, Dalwinder Singh, Kuljit Kaur and Surjit Kaur belong to Village Nangli, Tehsil and District Amritsar. During this Financial Year 2014-15, new aircrafts have been purchased for Rs. 741.66 lakhs, hence, directly proportional to the increase in share capital of Rs. 731 lakhs.

It is further alleged that during course of investigation into the affairs of SAPL, it was found that certain individuals belonging to one family from Village Nangli, Tehsil and District Amritsar, were shown as shareholders. But on questioning they stated that they had no knowledge of shareholding in SAPL in their names; no share certificates were ever received by them from the company in return for the amounts purportedly invested in their names, nor had they attended any meeting of the company. They were not even aware of the company's business or activities.

4.6. During course of investigation into the financial dealings and related entities of the petitioner, records pertaining to Peregrine Saraya Organics Private Limited (PSOPL) were obtained from Registrar of Companies (ROC). Investigations further revealed a pattern of funding between SIL and PSOPL, which has been used for layering of funds and accumulation of assets. SIL has been found to be a principal source of intercorporate advances to PSOPL and other related entities without taking any services from them.

4.7. Regarding foreign entities, the respondent has mentioned Clearwater Capital Partners (Cyprus) Limited. Many questionable transactions were detected during investigation, some of which are as under:

39. That it was found that in Financial Year 2005-06, SIL received Rs. 35 crore as Share Capital Money from foreign entity M/s Clearwater Capital Partners (Cyprus) Ltd., representing a 26% equity stake in SIL. The shares were issued at an extraordinary premium of approximately 3,040% of face value, suggesting a significant capital inflow disproportionate to the company's declared net worth at that time. Subsequently, between Financial Year 2007-08 and Financial Year 2010-11, SIL also received loan amounts from Clearwater Capital Partners India Pvt. Ltd., aggregating to Rs. 105.49 crores, with an additional interest charge of Rs. 41.24 crores reflected in SIL's accounts. Additionally interest of Rs. 49.77 crores was not booked by SIL in its books of accounts in the subsequent years till the date of One Time Settlement. These heavy interest charges and foreign investment structures indicate a complex debt-equity hybrid funding model, potentially used for tax structuring or illicit fund layering.

#### **TRANSFER OF SHARES FROM CLEARWATER TO PSOPL AT GROSSLY REDUCED VALUE**

40. In Financial Year 2014-15, the entire 26% shareholding of Clearwater Capital Partners (Cyprus) Ltd. in SIL was transferred to PSOPL at an extreme undervaluation. The sale price for 11,13,800 shares was only Rs. 3.5 crore, equivalent to Rs. 31 per share, implying a loss of approximately 90% over the original investment price. This transfer effectively shifted foreign-held shares back to a domestic, family-controlled entity (PSOPL) at a throwaway price, raising suspicion that the loss was compensated through undisclosed or under-table payments outside the official financial system.

4.8. The investigation has also revealed that the petitioner has adopted questionable means to establish his financial and controlling liquor business in the State, and camouflaged it with benami ownership and corporate structures. In this regard the allegations pertaining to another company, SD Beverages Private Limited (SDBPL), are the following:

57. That investigation has revealed that Bikram Singh Majithia, after becoming Member of Legislative Assembly and subsequently Minister in the Government of Punjab in March 2007, devised a systematic modus operandi to establish his financial

and controlling interest in the liquor business of the State while camouflaging the same under layers of benami ownership and corporate structures, Bikram Singh Majithia was one of the directors and shareholders of SIL, a distillery unit situated at Gorakhpur, Uttar Pradesh. To avoid public scrutiny and to conceal his direct involvement in the liquor trade while holding public office, he formally resigned from the directorship of SIL but retained his shareholding therein and control over it. Thereafter, as part of a larger conspiracy to extend the business operations of SIL into Punjab and to circumvent statutory restrictions applicable to public representatives, a new private limited company namely SD Beverages Pvt. Ltd. (herein after referred to as SDBPL) was incorporated on 18.10.2007 with a nominal paid-up capital of Rs. 1,00,000 only, having Gurdeep Singh and Arif Aladdin as its initial directors/shareholders, who were merely name-lenders and front-men of Bikram Singh Majithia. Subsequent financial and documentary evidence indicates that the land and entire construction cost of the bottling plant of SDBPL was funded from the resources of SIL and other associates of the accused petitioner, clearly establishing a direct nexus between the two entities. As per the records of the Excise Department, the said company has, since its inception in 2007, been engaged in blending and bottling liquor for SIL, thereby functioning as an extension arm of SIL within Punjab.

The scrutiny of bank statements of SDBPL in Axis Bank further revealed cash deposits of '29.96 lakh during 2008-09, whereas total sales and other income of the company for that year was only '1.7 lakh. The investigation further revealed as under:

68. That examination of the transaction statements of SDBPL, maintained with Axis Bank bearing Account No. 303010200003117, reveals that the said company had received deposits amounting to several crores of rupees from Harpreet Singh Gulati and Amardeep Singh, and from various concerns and associate entities under their control. The records further indicate that the very same funds were subsequently transferred from the account of SDBPL into the account of Satyajit Singh Majithia (father of the petitioner). The group of Harpreet Singh Gulati and Amardeep Singh comprises six business concerns, namely M/s United Wines, M/s Akash Enterprises, M/s A.D. Enterprises, M/s UW Enterprises Pvt. Ltd., M/s Akash Spirits Pvt. Ltd., and M/s A.D. Enterprises Pvt. Ltd. The pattern of these transactions clearly reflects a structured movement of funds through SDBPL, thereby suggesting its use as an intermediary channel for transferring financial benefits to the family of the petitioner.

The investigators found the financial trail demonstrated that SDBPL was being financed either by Harpreet Gulati Group or SIL; both provided the requisite funds which were subsequently routed through SDBPL to petitioner's father for acquisition of properties situated at Mashobra, Shimla, and Sainik Farms, New Delhi.

4.9. Again there have been transaction trails from M/s Shore to Shore Logistics Private Limited and Harpreet Gulati, which are statedly as under:

70. That another chain of financial transactions has been traced and established, wherein funds have flowed through entities and concerns belonging to Harpreet Singh Gulati and Amardeep Singh. The transaction trail originates from M/s Shore to Shore Logistics Pvt. Ltd. and Harpreet Gulati, and culminates in a payment of Rs. 21.50 crores being made by SIL to M/s Clearwater Capital Partners India Pvt. Ltd. The sequence of transactions, their originating and terminating points, and the amounts involved, have been meticulously examined and are summarized in the table below for ready reference. The said chain of transactions prima facie indicates structured and deliberate movement of funds through multiple entities, suggesting possible diversion or layering of resources for the benefit of the ultimate recipients (present petitioner).

4.10. The investigation has also revealed allegations regarding M/s A 2 Zed Transport/ M/s Patiala Express owned by petitioner's wife and brother-in-law, which are as under:

89. Accused Bikram Singh Majithia, during his tenure as Cabinet Minister, misused his official position to build a transport empire under the guise of M/s A2Zed Transport / M/s Patiala Express, in the names of his wife and brother-in-law. The route permits were obtained through coercion, influence, and payment of large sums in unaccounted cash, while official records falsely reflected nominal consideration. The total investment of approximately Rs. 2.80 crore made for acquiring permits and buses constitutes expenditure from illegal and undisclosed sources. The firm served as a benami front to conceal assets and proceeds of corruption belonging to the accused. M/s A2Zed Transport is a partnership firm (PAN AAXFA2865J) incorporated on 20-03-2013. The partner of the firm were Gajpat Singh Grewal and Ganieve Grewal with profit sharing and holding in the ratio of 25:75 respectively. Since inception, the firm is engaged in transport services i.e. plying of passenger buses on selected routes in Punjab. The registered address of the firm as per the bank account opening forms and partnership deeds is House number 353, Village Kheri, District Sangrur. As per the amended partnership deed dated 01-10- 2015, the name of the business A2Zed Transport was changed to M/s Patiala Express.

90. xxx xxx

91. That, under the provisions of the Motor Vehicles Act, 1988 and the Punjab Motor Vehicles Rules, route permits for State Carriage buses are required to be issued by the competent authority upon payment of the prescribed fees. It is pertinent to note that there exists no provision under the said Act or Rules for the sale or purchase of such permits between private parties, and a permit shall not be transferable from one person to another except with the express permission of the Transport Authority which originally granted the permit. That during the course of the investigation, statements were recorded from transporters, namely Jagroop Singh, owner of Rauni Bus and Ramandeep Bus Service, and Simranjit Singh, son of Late Sh. Kuldeep Singh, owner of Patarsi Bus and Guru Amardas Bus Service. In addition, bank account details of the said transporters were obtained from SBI, HDFC Bank, and Kotak Mahindra Bank,

and relevant notifications and records were obtained from the State Transport Commissioner, Punjab and the Regional Transport Authority (RTA), Patiala. Statements of departmental officers, including Ms. Sukhvir Kaur, Assistant Transport Officer (Taxation Branch), and Amanpreet Singh, Section Officer, RTA Patiala, were also recorded from which it has surfaced that during the check period 02.03.2007 to 31.03.2017, total 26 route permits were purchased in the name of M/s A2Zed Transport/ M/s Patiala Express from Small Transporters. Out of which, 8 permits were purchased from the aforementioned Jagroop Singh and 7 permits from Late Sh. Kuldeep Singh for total consideration of about Rs. 2.42 crores, out of which Rs. 16 lacs only were found to be paid through bank accounts and balance amount of about Rs. 2.26 crores were paid in cash.

4.11. Referring to the aforesaid investigation, learned Additional Advocate General has further contended that the offences the petitioner is accused of are very serious economic offences. He has created a web of companies in the name of his family members and diverted his ill-gotten money there. Although chargesheet has been filed against him, further investigation in the case is going on, and the investigating agency is following the leads which have so far been revealed. In case the petitioner is released at this stage, it will hamper further investigation and uncovering of deeper financial irregularities. There are many Chartered Accountants and other individuals, companies and their subsidiaries, which are closely related to all the transactions; the same are also under investigation. The petitioner is the mastermind behind all these transactions, and he is aware about the entire network of companies that has been created for handling the ill-gotten money. The investigation has also found leads pointing towards offshore accounts of the petitioner, and movable and immovable assets in other States regarding which investigation is going on. Therefore, he should not be released.

4.12. It has further been contended that the petitioner is an influential political person in the State, and has been in power for a long time. His conduct so far in recording video at the time when the vigilance had raided his premises, as also the threats of dire consequences being issued to the officials by his relatives, etc., are enough to show there is reasonable apprehension of his obstructing investigation of the case, as well as threatening of the witnesses and preventing them from disclosing facts to the agency.

4.13. In support of the contentions he has relied upon the Supreme Court judgments in **Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation**, 2013 3 SCC(Cri) 552, and **Nimmagadda Prasad v. Central Bureau of Investigation**, 2013 3 SCC(Cri) 575, to contend that economic offences, which the petitioner is accused of, constitute a class apart, and need to be visited with a different approach in the matter of bail. These offences have deep rooted conspiracies and involve huge loss of public funds, and cannot be treated like other offences so far as grant of bail to the accused is concerned. He has also relied upon another judgment in *State of Rajashtan v. Surendra*

Singh Rathore, 2025 SCCOnlineSC 358, which lays down the circumstances whereunder lodging of second FIR is permissible, especially when the investigation revealed the earlier FIR to be part of a larger conspiracy.

[5] Submissions made by learned counsel for the parties have been considered.

[6] The petitioner is accused of serious economic offences. Investigation of the case has revealed huge unaccounted money in his bank accounts, as also setting up of a large number of companies through which the financial transactions have been carried out surreptitiously for his benefit. It has also come to notice of the investigating agency that money has been routed through some foreign entities based in Singapore and Cyprus. The petitioner is directly or indirectly in control of most of these entities with immediate family members, and appears to be the key beneficiary. The transactions as well as the assets accumulated by routing the money in the manner aforementioned are being investigated. All this has adverse ramifications for financial health of the State. Various leads to track money trail are being followed. Not only the role of these companies, but also that of petitioner's close associates and financial experts is still under investigation. The investigators are steadily in the process of accessing crucial records with regard to the questionable financial transactions from various banks, financial institutions, and other agencies. The petitioner is one of the prominent political figures in the State of Punjab, and has been a Cabinet Minister in the Government for over seven years. The investigating agency has cited about twenty material witnesses, who have been termed vulnerable. In case the petitioner is to be released from custody at this stage, possibility of his influencing the further course of investigation, trying to cover up the questionable transactions, manipulating the record relating to the same, and influencing the concerned persons/witnesses not to cooperate with the investigating agency, cannot be ruled out.

[7] The reliance by Mr. Cheema on Pradeep Ram case (supra) and his assertions based thereupon that the State has not followed the correct procedure in registering the FIR in question with regard to disproportionate assets said to have come to its notice during investigation of an earlier NDPS case against the petitioner, are misplaced. There is no absolute bar on registering a fresh case for separate offences on the basis of material coming to notice while investigating a case. The observations of the Supreme Court in Pradeep Ram case are with reference to a situation where the investigating agency adds offences to an existing case. It has been held that in such circumstances the agency is required to obtain an order of arrest from the Court which has granted bail to the accused in the earlier case. The facts of the instant case are different, as the investigating agency has registered a second case under the PC Act against the petitioner, and it is entitled to do so as per law laid down in Surendra Singh Rathore case (supra), which reads as under:

9. From the above conspectus of judgments, inter alia, the following principles emerge regarding the permissibility of the registration of a second FIR:

9.1. When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.

9.2. When the ambit of the two FIRs is different even though they may arise from the same set of circumstances.

9.3. When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.

9.4. When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.

9.5. Where the incident is separate; offences are similar or different.

Accordingly, as the investigating agency statedly came across new facts which appeared to be part of a larger conspiracy pointing to the petitioner's disproportionate assets and use of ill-gotten money, it was within its right to register second FIR and investigate the case. It cannot be termed a mala fide exercise or sheer political vendetta against the petitioner.

[8] It also needs a reference that the Supreme Court has emphasised time and again that economic offences constitute a class apart, and for grant of bail the Court has to take into account the alleged deep rooted conspiracies to cause huge loss to public exchequer, etc. In somewhat similar circumstances in Y.S. Jagan Mohan Reddy case (supra), the Court has observed as under:

34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

[9] Keeping in view the totality of facts and circumstances, as discussed hereinbefore, this Court is not inclined to grant regular bail to the petitioner at this stage and the petition, accordingly, stands dismissed. However, the Court is conscious of the fact that he cannot be kept in custody for an indefinite period, as that would infringe his right to liberty. Also, that the investigating agency owes a duty to the State to complete investigation of the case in every respect within a reasonable time. Therefore, it is directed that investigation be completed within three months. Thereafter, the petitioner can seek his release on bail

-----

2026(1)AICC51

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

(Hon'ble Judge: A Badharudeen)

CrI A (Criminal Appeal) No 302 of 2014 **dated 03/12/2025**

*K Manoharan*

**Versus**

*State of Kerala*

**BRIBE TRAP IN PANCHAYAT**

Prevention of Corruption Act, 1988 Sec. 13, Sec. 20, Sec. 7 - Bribe Trap in Panchayat - Appeal against conviction under Prevention of Corruption Act - Accused Secretary of Grama Panchayat alleged to have demanded and accepted bribe for approving revised house plan - Trap conducted by Vigilance Bureau recovered tainted note from drawer of accused's table - Defence claimed money planted and phenolphthalein test negative on hands - Evidence of complainant, decoy witness and officers consistent proving demand and acceptance - Recovery corroborated documentary proof and surrounding circumstances - Non-detection of colour on hands immaterial when demand and recovery proved beyond doubt - Trial court properly applied presumption under Section 20 - Conviction confirmed - Appeal Dismissed

**Law Point: When prosecution proves demand and recovery of bribe amount by reliable evidence, absence of positive hand wash in phenolphthalein test does not vitiate conviction; statutory presumption under Section 20 applies unless rebutted by credible defence**

**Acts Referred:**

Prevention of Corruption Act, 1988 Sec. 13, Sec. 20, Sec. 7

**Counsel:**

P S Sreedharan Pillai, Arjun Sreedhar, T K Sandeep, Rajesh A, Rekha S

**JUDGEMENT**

**A. Badharudeen, J.- [1]** The sole accused in C.C.No.45 of 2008 on the files of the Enquiry Commissioner and Special Judge, Kozhikode, has filed this appeal challenging the judgment dated 05.03.2014 rendered in the above case. The respondent herein is the State of Kerala represented by VACB.

**[2]** Heard the learned counsel for the appellant/accused as well as the learned Public Prosecutor. Perused the verdict under challenge and the records of the Special Court.

**[3]** The prosecution case is that the accused while working as Secretary to Mattool Grama Panchayat and as being a public servant had abused his official position and

committed criminal misconduct by demanding and accepting Rs.500/- as bribe from PW1 Muhammedali at 8 p.m on 14.05.2007 to grant permission to construct the house of one Zeenath, who is the niece of PW1. On this premise, the prosecution alleges commission of offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 ('PC Act, 1988' for short), by the accused/appellant.

[4] On receipt of final report filed after investigation, the Special Court secured the presence of the accused for trial and proceeded with trial. During trial, PW1 to PW6 were examined and Exts.P1 to P20 as well as M.O1 to M.O8 were marked on the side of the prosecution. On the side of the defense, DW1 was examined and Exts.D1 to D2(a) were marked.

[5] The Special Court appreciated the evidence and found that the prosecution proved commission of offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988, by the appellant/accused and accordingly he was convicted and sentenced as under:

"accused is sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- (Rupees ten thousand only) and in default of payment of fine to undergo rigorous imprisonment for a period of one month for the offence punishable under Section 7 of the PC Act, 1988. Accused is sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one month for the offence punishable under Section S.13(1)(d) r/w 13(2) of P.C. Act, 1988, he The substantial portion of the sentence shall run concurrently. Accused is entitled to get set off under Section 428 of CrI.P.C regarding the period of detention undergone by him. MO-1 currency note shall be returned to PW-1, MO-3 currency note shall be confiscated and MO-2 and MO-4 to MO-8 shall be destroyed as valueless, after the expiry of period of appeal. Bail bond executed by the accused shall stand cancelled."

[6] While assailing the verdict of the Special Court, the specific contention raised by the learned counsel for the accused is that, in this case, the prosecution allegation is that the accused demanded and accepted bribe on 14.05.2007 for granting permission to construct the house of Zeenath, the niece of PW1, acting on the revised application and plan submitted by Zeenath. On perusal of Ext.P11 file, the same would show that the application alleged to have been submitted for the purpose of granting revised sanction and the revised plan thereof were not available even though Ext.P11 file would indicate that, earlier, sanction was issued for constructing the building based on the plan appended to the application then filed. Thereafter, one T.P.Musthafa had filed a Suit, O.S.NO.41/2006, against Zeenath before the Munsiff Court, Kannur, and obtained an order of injunction restraining the construction that would protrude into the pathway, that too, without leaving the required set back for the way as mandated under the Building Rules. According to the learned counsel for the accused, absence of revised application and revised plan would shatter the very foundation of the

prosecution case. It is also pointed out that non conduct of pre-trap verification had prejudiced the accused. Yet another point argued by the learned counsel for the accused is that, in the absence of the accused, the vigilance party entered his room and the bribe money was placed by PW1 in his office chamber; and that is the reason why, when the phenolphthalein test was conducted on the hands of the accused, no colour change could be found. Therefore, the inference to be drawn is that PW1, who is in inimical terms with the accused, had placed the money in the absence of the accused, in the drawer of his table and the accused was thereafter trapped. Thus the prosecution case is not fully free from doubt and the accused is entitled to get the benefit of doubt.

[7] Opposing this contention, the learned Public Prosecutor would submit that even though Ext.P11 file did not contain the revised plan or the fresh application for granting permission to make constructions on the basis of the revised plan in view of the civil suit, the evidence otherwise would indicate that the entire genesis of the case is on the plank of the submission of the revised plan to get the same approved in accordance with the contention raised by Musthafa in the Civil Suit to avoid construction that would protrude into the pathway and without leaving the required set back as per the Building Rules. It is also pointed out that on evaluating the evidence of PW1 supported by PW5 Investigating Officer and PW2, the decoy witness, demand and acceptance of bribe by the accused was proved without an iota of doubt and in such a case there is no doubt to find fault with the prosecution case. Therefore, conviction and sentence to be upheld.

[8] The points arise for consideration are:

(i) Can it be said that the Special Court rightly entered conviction on the accused/appellant finding that he had committed offence punishable under Section 7 of the PC Act, 1988?

(ii) Is it correct to say that the appellant/accused committed the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988, as found by the Special Court?

(iii) Whether it is necessary to interfere with the verdict under challenge?

(iv) The order to be passed?

Point Nos.(i) to (iv)

[9] As far as the prosecution case is concerned, the allegation is that there was demand of Rs.500/- by the accused to process the revised plan submitted by one Zeenath, in suppression of the earlier permit issued based on the plan appended thereof. The prosecution allegation would show that a civil suit was filed by one Musthafa against Zeenath restraining construction in terms of the old plan which was approved by the Panchayat, as could be seen from Ext.P11 file pertaining to the same. PW1 deposed this aspect before the Special Court. According to him, after the filing of O.S.No.41/2006, a notice was issued by the Panchayat to Zeenath to show cause why the permit should not be cancelled, and accordingly a portion of the basement was demolished and a revised plan was submitted before the Panchayat for approval along

with an application. That apart, permission to construct the compound wall was also sought. Even though PW1 had approached the accused for issuing the permit based on the revised plan, the accused had prolonged the matter. While so, on 11.05.2007 the accused had contacted PW1 through telephone and requested to meet him in a lodge. When PW1 had met the accused at his room in a lodge on 11.05.2007, the accused demanded Rs.500/- to grant permission based on the revised plan and had requested PW1 to bring the money on 17.05.2007. According to PW1, since PW1 was not willing to give bribe, he had approached the Dy.S.P, VACB, Kannur on 11.05.2007 and had given Ext.P1 complaint. He had identified Ext.P1 and signature thereof. He had deposed about the arrival of 2 gazetted officers as part of the pre-trap proceedings, the handing over of one Rs.500/- note to the Dy.S.P, the demonstration of the Phenolphthalein test and the smearing of phenolphthalein on the Rs.500/- note, identified as M.O1, etc. Thereafter the vigilance party had reached Mattool Grama Panchayat at 12 o' clock and PW1 had gone to the chamber of the accused and found the accused was sitting inside his chamber. When PW1 had informed the accused that he came in connection with the approval of the plan, the accused had demanded the amount. When PW1 had attempted to hand over the amount to the accused, he asked PW1 to place the currency note inside the drawer of the table. Accordingly, PW1 placed the currency note in the drawer, and the accused then closed the drawer. Thereafter, the accused came out of the cabin and went to the upstairs portion of the office, whereupon PW1 gave the signal to the police waiting outside. Later, the accused returned to his chamber, and by that time the vigilance party, including the Dy.S.P., had entered the chamber and asked about the money. According to PW1, when the hands of the accused were dipped in the Sodium Carbonate solution, there was no colour change. During cross examination of PW1, an attempt was made to categorise PW1 as a political worker. During cross examination, PW1 had stated that he along with Zeenath reached the panchayat in 2007 and submitted the revised plan and the application. He was cross examined at length, but nothing extracted to disbelieve his version.

[10] Supporting the evidence of PW1, PW2 the Senior Superintendent at the office of Deputy Director of Education, Kannur, the decoy witness, was examined and he had deposed his arrival before the Dy.S.P at 10.45 a.m on 17.05.2007 and lodging of Ext.P1 complaint by PW1 and handing over of a Rs.500/- note to the Dy.S.P and he had identified M.O1 as the currency note handed over by PW1 to the Dy.S.P. He had also deposed about the demonstration of phenolphthalein test using a 500 rupee note by dipping the same in Sodium Carbonate solution and identified M.O2 as the solution used for the same and M.O3 as the 5 rupee note used for the demonstration test. Thereafter Phenolphthalein powder was smeared on M.O1 currency note and it was entrusted to PW1 with an instruction that the same should be given to the accused only if he would demand bribe and signal had to be given on receipt of the bribe amount by the accused. Ext.P2 entrustment mahazar was prepared showing the details of the

incidents occurred at the Office of Deputy Superintendent of Police and it was signed by PW1, the Deputy Superintendent of Police himself (PW5) and other witnesses. Trap party reached near Mattol Panchayat Office at 12.30 p.m. PW1 and the Constable Purushothaman had been sent to the office of the accused. Subsequently the Dy.S.P had received signal and the trap party had gone to the office of the accused. Then the trap party entered the cabin of the accused. Dy.S.P had introduced him and the official witnesses to the accused and asked him whether he had received money from PW1. But the accused denied the same. Dy.S.P had called PW1, who was waiting outside to the cabin of the accused and asked him what was happened. PW1 had replied that the accused demanded money and he had refused to receive the money by his hands and the accused had instructed PW1 to put the bribe money inside the drawer of the table of the accused, and PW1 had put the currency note inside the drawer of the table, then the accused had closed the drawer of the table. Hands of the Dy.S.P and official witnesses were dipped in Sodium Carbonate solution. There was no colour change. M.O4 sample was taken from that solution. Hands of the accused were dipped in Sodium Carbonate solution. There was no colour change. M.O5 sample was taken out of it. Dy.S.P had opened the drawer of the table of the accused and M.O1 currency note was found in the drawer of the table. An officer had taken out the currency note from the drawer of the table and dipped in Sodium Carbonate solution. Solution turned pink. M.O6 sample solution was collected. When the drawer was opened, apart from M.O1 currency note, a piece of paper was also found in it. When that paper was dipped in the Sodium Carbonate solution, there was slight colour change. M.O7 sample solution was collected. Paper was also taken into custody, which was marked as M.O8. Thereafter accused was arrested after preparing Ext.P3 arrest memo. Ext.P4 recovery mahazar was prepared stating the details of the incidents occurred at the office of the accused, where he himself, Dy.S.P, accused, and other official witnesses had signed. Trap party had returned along with the accused to the vigilance office.

[11] During cross examination, PW2 had supported entry of PW9 in the chamber of the accused and further asserted that when the vigilance party had entered the chamber of the accused, the accused was there and he supported Ext.P4 recovery mahazar after understanding its contents.

[12] Pw3 examined in this case is the Head Constable attached to VACB, Kannur, and he had also deposed about the pre as well as post trap proceedings, supporting the evidence of PW1 and PW2, including the recovery of M.O1 series from the drawer of the table used by the accused and his arrest. PW4, who was the Head Clerk of Mattool Grama Panchayat, where the accused was working as a Secretary therein, also was examined. His evidence is that as per the Office Order, Musthafa was given charge of Building Tax and Building Rules. Usually Joining Report would be prepared, when a Secretary joined the office. A copy of joining report would be kept there and the original report would be sent to the Director of Panchayats. Copy of Joining Report of the accused was not available in the Panchayat Office during the time of trap. He was

present in the Panchayat Office, when the Vigilance Party arrested the accused. His seat was outside the cabin of the Secretary. He had not noted the incidents occurred in the office till the Vigilance Party entered the office. When he had seen certain persons talking to the Secretary in his cabin, he had gone there. At that time, he had seen the accused inside the cabin of the Secretary. Subsequently he was called by the Deputy Superintendent of Police to the cabin of the Secretary and he had signed the Arrest Memo as a witness. Ext. P-3 was the Arrest Memo containing his signature. Vigilance party had taken the accused from the Panchayat Office by 5 P.M. He had produced the Attendance Register of Mattool Grama Panchayat for the period 2006-2007 which was marked as Ext.P-6 and the letter having No. A1- 1/2006 dated 16-09-2006 issued by Pooyappally Grama Panchayat Secretary and the correspondence file which was marked as Ext.P7 and Proceedings of the Secretary of Mattool Grama Panchayat having No.12/07 dated 30-04-2007 which was marked as Ext. P-8 and attested Photostat copies of pages 183 to 191 of Office Order Book of Mattool Grama Panchayat to the Vigilance officials and they were seized as per Ext.P5 Mahazar. According to him, usually when applications for granting building permit would be submitted to the Secretary and he would initial it and entrust to the Enquiry Officer. According to him, in certain cases, Secretary himself would conduct enquiry. Application received by the Secretary should be entered in the Building Application Register. But in that Panchayat, it was not usually done. After conducting enquiry, report would be submitted to the Secretary for approval and after getting approval of the Secretary, necessary fees would be collected and if permit had to be given, it would be issued. In Mattool Grama Panchayat, applications were not entered in the register regularly. They were entered in the register only at the time of granting Permit. When he joined Mattool Grama Panchayat Office, the accused was the Secretary. Usually applications received by the Secretary would be kept by himself and it would be handed over to the section only at the time of issuing Permit. This was the procedure adopted in the office before PW4 joined the office and thereafter.

[13] Ext.P10 is the application identified by PW4 as one given by C.K.T. Zeenath for granting permission to construct compound wall. That application was given in the prescribed form issued from the Panchayat Office on 07-12-2006. Application was seen prepared on 26- 12-2006. The date on which the application was submitted at the Panchayat Office was not shown in the application. That was not entered in the register. Ext.P11 is the attested copy of the application submitted by Zeenath for granting permission to construct a house. That application was received in the Panchayat Office on 07-12-2005 and permit was issued by the previous Secretary on 26-12-2005. If there was deviation in the construction of the building from the approved plan, revised plan had to be submitted to the Panchayat and after receiving the revised plan, enquiry would be conducted. If there were only minor deviations from the approved plan, a completion plan incorporating those deviations had to be submitted. When the revised plan and applications were received, they had to be kept

in the file of the original plan. No revised plan and application were seen in the file of original plan produced in the Court. There was civil case regarding the construction of building and it was not proper to receive revised plan and take action on it during the pendency of civil case.

[14] Pw5, the Dy.S.P supported the registration of Ext.P1(a) FIR based on Ext.P1 complaint lodged by PW1 and also supported pre as well as post trap proceedings and preparation of Ext.P2 entrustment mahazar and Ext.P4 post trap mahazar in terms of the evidence of PW1 and PW2. It was through PW6, Ext.P17 property list was marked. He seized Exts.P6 to P9 documents produced by PW4 on 25.05.2007 as per Ext.P5 mahazar. It was PW6 who had placed Ext.P11 documents when the original file was produced by the accused as on 13.07.2007 as per Ext.P18 mahazar and the original file was returned to the accused as per Ext.P18(a) kychit.

[15] Dw1 was examined from the side of the accused. DW1 examined in this case was the U.D Clerk worked in Mattool Panchayat during the tenure of the accused and according to him, PW1 used to come to the Panchayat office and he was a leader of a political party. DW1 deposed further that PW1 had visited the panchayat office in connection with the auction regarding the boat service in Mattool Grama Panchayat which one Musthafa had bid in auction during 2006-07. There was problem regarding the fitness certificate of the boat used for the service in the panchayat and the accused issued notice to stop the service, and again auction was conducted regarding the right to conduct boat service. The attempt of the accused by adducing the evidence of DW1 is to show that PW1 was on inimical terms with the accused. But during the cross examination, his evidence was that he did not know the nature of the relationship between PW1 and Musthafa who had bid for the boat service, and that he did not know for what purpose, PW1 and Musthafa had come to the Panchayat office. Thus the evidence of DW1 adduced by the accused to show animosity between the accused and PW1 is found to be not convincing or reliable.

[16] Coming to the specific contention raised by the learned counsel for the accused that the police failed to seize revised application and revised plan as the same is not available in Ext.P11 file, it is relevant to note that PW6 deposed that Ext.P11 file was produced by CW18 as per Ext.P18 mahazar after the trap and the original file was returned as per Ext.P18(a) kaichit. This evidence would show that Ext.P11 file was not taken on the date of trap and it was produced by CW18 at a belated stage. Thus there was enough time for the concerned to remove papers form part of Ext.P11 file as it was deposed by PW4 that when revised plan and application would be filed the same would be placed in the original file. Thus at the time of producing Ext.P11, knowing the trap, the revised plan and the application available at the time might have been removed and, therefore, the prosecution did not have much opportunity to get the custody of the same. Therefore, absence of the revised plan and application Ext.P11, in the above circumstances, by itself is not sufficient to brush aside the consistent evidence of PW1, PW2 as well as PW5 and PW6. Thus the evidence available would

show the basis of the prosecution case regarding the demand of bribe for issuing the revised plan, particularly, after issuance of the show cause notice why the earlier permit and plan would not be cancelled, that too, in view of the injunction order obtained by one Musthafa, as evident from Ext.P11 file.

[17] 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.

[18] In this connection it is relevant to refer a 5 Bench decision of the Apex Court in **Neeraj Dutta Vs State**, 2023 AIR(SC) 330 where the Apex Court considered when the demand and acceptance under Section 7 of the P.C Act, 1988 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 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."

[19] Thus the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the P.C 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.

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

"12. Indubitably in **Neeraj Dutta's** case (supra) the Apex Court held in paragraph No.69 that there is no conflict in the three judge Bench decisions of this Court in

B.Jayaraj and P.Satyanarayana Murthy with the three judge Bench decision in M.Narasinga Rao, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no conflict between the judgments in the aforesaid three cases. Further in Paragraph No.70 the Apex Court held that in the absence of evidence of the complainant (direct/primary,oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and 13(1)(d) r/w Section 13(2) of the Act based on other evidence adduced by the prosecution. In paragraph No.68 the Apex Court summarized the discussion. That apart, in **State by Lokayuktha Police's** case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the offences punishable under Section 7 and 13(1)(d) r/w 13(2) of the PC Act,1988 and held that demand and acceptance of bribe are necessary to constitute the said offences. Similarly as pointed out by the learned counsel for the petitioner in **Aman Bhatia's** case (supra) the Apex court reiterated the same principles. Thus the legal position as regards to the essentials to be established to fasten criminal culpability on an accused are demand and acceptance of illegal gratification by the accused. To put it otherwise, proof of demand is sine qua non for the offences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and de hors the proof of demand the offences under the two Sections could not be established. Therefore mere acceptance of any amount allegedly by way of bribe or as undue pecuniary advantage or illegal gratification or the recovery of the same would not be sufficient to prove the offences under the two Sections in the absence of evidence to prove the demand."

[21] Insofar as the absence of the accused in the cabin when the vigilance party had entered the cabin is concerned, the evidence available in no way would support this contention raised by the accused. On the contrary presence of the accused in his chamber at the time when the vigilance party entered the chamber is proved by the evidence of PW1, PW2, PW5 as well as PW4 and PW6. It is true that when phenolphthalein test was conducted at the hands of the accused, the same showed negative result and the reason is obvious. That is, PW1 had never given evidence that the accused had accepted the bribe money with his hands; instead, he deposed that the accused directed him to place the money in the drawer of the table used by the accused. Therefore the accused had no opportunity to come into contact with M.O.1, the bribe money. However, the evidence discussed herein above would categorically show that M.O1 notes were recovered from the drawer of the table used by the accused to establish acceptance of bribe by the accused in consequence of the demand spoken

to by PW1. Regarding non conduct of pre-trap verification in this case, it is not mandatory that in every trap there must be a pre-trap verification, though generally pre-trap verification being followed as a convention to ensure false implication of a public servant on the basis of baseless allegations. At the same time, when the evidence adduced in a case categorically proved the ingredients of the offences alleged to be committed by the accused, non conduct of pre trap verification would be of no much significance and the same would not vanish the prosecution case which was proved by evidence.

[22] Overall re-appreciation of evidence would show that the Special Court rightly entered the conviction after analysing the evidence in detail and the said finding doesn't require any interference. Consequently, the conviction doesn't require any interference.

[23] Coming to the sentence, I am inclined to modify the sentence imposed by the Special Court to the statutory minimum, in consideration of the prayer made by the learned counsel for the appellant/accused.

[24] In the result, the appeal is allowed in part. Conviction is confirmed and the sentence is modified as under:

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

(ii) The appellant/accused is sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/- (Rupees Ten thousand only) for the offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988. In default of payment of fine, the accused shall undergo rigorous imprisonment for a period of one month;

(iii) The substantive sentences shall run concurrently and the default sentences shall run separately.

[25] The order suspending execution of sentence to the accused stands vacated with direction to him to appear before the Special Court forthwith, without fail, to undergo the modified sentence. On failure to do so by the accused, the Special Court is directed to execute the modified sentence without fail. Registry is directed to forward a copy of this judgment to the Enquiry Commissioner and Special Judge, Kozhikode, for compliance and further steps

-----

2026(1)AICC63

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

(Hon'ble Judge: Dr Neela Gokhale)

Criminal Appeal No 716 of 2009 dated 01/12/2025

*State of Maharashtra*

**Versus**

*Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad*

**DEMAND OF BRIBE**

Code of Criminal Procedure, 1973 Sec. 313 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12 - Demand of Bribe - Appeal filed against acquittal order under Prevention of Corruption Act - Allegation that public servant demanded illegal gratification for passing order in mutation entry - Trap laid by Anti-Corruption Bureau and recovery made - Trial Court acquitted accused on ground of lack of corroboration and absence of proof of conscious acceptance - Evidence of complainant and panch witnesses considered not credible - Appellate Court observed that double presumption of innocence operates in case of acquittal and interference permissible only if findings are perverse or unreasonable - Evidence reappraised showing that prosecution failed to prove demand and acceptance beyond reasonable doubt - Held that mere recovery not sufficient to convict without proof of demand and voluntary acceptance - Acquittal based on proper appreciation of evidence - Acquittal confirmed - Criminal Appeal Dismissed

**Law Point: For conviction under Sections 7 and 13 of Prevention of Corruption Act, prosecution must establish demand and voluntary acceptance of illegal gratification beyond reasonable doubt - Mere recovery of tainted money without proof of demand and conscious acceptance cannot sustain conviction - Appellate Court should not interfere with acquittal unless findings are perverse or wholly unreasonable**

**Acts Referred:**

Code of Criminal Procedure, 1973 Sec. 313

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12

**Counsel:**

Anuja Sunil Gotad, Uday Dube (Senior Advocate), Balwant Salunkhe, Saurabh Butala

**JUDGEMENT**

**Dr. Neela Gokhale, J.- [1]** This Appeal assails the Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2) from the offences punishable

under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short '**PC Act**') and acquitting the Respondent No.3 (Original Accused No.3) from the offence punishable under Section 12 of the PC Act.

[2] By an order dated 18th June 2009, this Court, by a reasoned order opined that a triable issue was made out by the Appellant-State of Maharashtra, to be dealt with in this Appeal, to ascertain the correctness and legality of the impugned Judgment and Order. Hence, this Court allowed the Leave Petition and admitted the Appeal.

[3] The facts of the case, in brief, are as under:

**3.1** The Respondent No. 1/Accused No.1 (A/1) was a Tahsildar posted at Indapur. The Accused No.2/Respondent No.2 (A/2) was working as a clerk in the Tahsildar's office, and the Accused No.3/Respondent No.3 (A/3) was another person in the office of the Tahsildar.

**3.2** The Informant's father died on 19th June 2005 and he thus, made an application before the Talathi, seeking to enter the names of his father's legal heirs on the revenue records of the agricultural land owned by his father. The Talathi carried out the mutation entry. The same was challenged by one Vijay Gulumkar, a cousin brother of the Informant. Hence, the Application was forwarded to the A/1 for decision. Notices were issued to the parties calling upon them to appear before the Tahsildar on 31st October 2005. Written statements were submitted, and the matter was closed for orders.

**3.3** On 22nd December 2007, the Informant (PW/1) went to the office of the Tahsildar to enquire about the pending case. The Tahsildar demanded Rs.3,000/- in lieu of clearing the file and passing an order in favour of the Informant. The Informant indicated his inability to pay the said amount prompting the Tahsildar to reduce the demand to Rs.1,000/-. The Informant met A/2 who also conveyed the demand of 'Saheb' to him. Again at 05:00 pm. on the same date, the Informant met the Tahsildar and his clerk in his office, who asked him as to whether he had brought the amount with him. They told him that he should pay the money and collect the order. The Informant assured the A/1 and A/2 that he will come on the following day with his brother and bring the money.

**3.4** The Informant then, made a complaint with the AntiCorruption Bureau, Pune ('**ACB**') on 28th December 2005, (Exhibit-30) narrating the demand of the A/1 and A/2. The ACB Pune laid a trap on the same day. The amount of Rs.1,000/- (10 currency notes of Rs.100/- denomination) was taken from the Informant and the numbers of the currency notes were noted; anthracene powder was applied on the currency notes on both sides; and these notes were returned to the Informant to be given to A/1 - Tahsildar. A pre-trap panchanama was recorded (Ex.33). One panch, Shri Ganesh Krishna Chillal (PW/2) accompanied the Informant in the office of the Tahsildar. The Tahsildar informed him that a copy of the order was sent to the Talathi and also inquired about the bribe money. On the instructions of the Tahsildar, the

Informant met A/2 - clerk who pointed to the A/3, namely Shrikant Gaikwad, who accepted the money on behalf of the A/1. Two copies of the order were handed over to the Informant. After paying the money to A/3, the Informant signaled the officers as per their instructions and he came out of the room. The pancha accompanying the Informant remained in the room as per predetermined plan. The members of the raiding party went in the room on a predetermined signal and caught A/3 red handed. The amount was recovered from the drawer of the computer room in A/2's cabin, where the A/3 had kept the same.

**3.5** The numbers of the currency notes recovered from the computer room were tallied with the numbers noted by the ACB officials. Anthracene powder was found on the said currency notes and on A/3's hand and the drawer of the computer room. The documents of the mutation entry case were collected from the Tahsildar's office, a panchanama was recorded (Exhibit-34). Shri Sudam Darekar (PW/4), Deputy SP, ACB, conducted the investigation. A sanction for prosecution of the A/1 and A/2 was sought and granted by the sanctioning authority (Sanction Order at Ex.40) and upon completion of the investigation, the charge-sheet was filed before the JMFC, Indapur. The offence punishable under Sections 7 and 13 of the PC Act, being exclusively triable by the Sessions Court, was committed by the JMFC, Indapur, to the Court of Sessions, for trial.

**3.6** By an order dated 26th March 2008, the Special Judge, Baramati, framed charges against the A/1 and A/2 for offences punishable under Sections 7 and 13(1)(d) r/w Section 13(2) of the PC Act, and against A/3 for offence punishable under Section 12 of the PC Act.

**3.7** After framing of the charges, the Accused pleaded not guilty and sought to be tried.

**3.8** During the course of the trial, the prosecution examined four witnesses. The witnesses examined are as follows:

**PW/1** Sukhdeo Rangnath Gulumkar (First Informant)

**PW/2** Ganesh Krishna Chillal (Panch No.1)

**PW/3** Shantaram Sitaram Kudale (Under Secretary Forest Section- Proposal for sanction received by his office).

**PW/4** Sudam Vitthal Darekar (ACP of the Anti -Corruption Bureau)

**3.9** Thereafter, the Trial Court recorded the statements of the Respondents (Accused Nos.1, 2 and 3) under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'). The defence of the accused was that of false implication. The learned Special Judge, Baramati, by its Judgment and Order dated 2nd September 2008 acquitted A/1 and A/2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act and acquitted A/3 for the offence punishable under Section 12 of the PC Act. Aggrieved by the acquittal, the State of Maharashtra has filed the present Appeal. By an order dated 18th June 2009, Leave Petition was

allowed, and the Appeal was admitted. The Record and Proceedings were called and received.

[4] Notice was duly served on all the Respondents and Mr. Balwant Salukhe represented the Respondent Nos.1 and 2. None appeared for the Respondent No.3.

[5] Before advertng to the rival submissions, it is necessary to discuss the principles laid down by the Supreme Court governing the scope of interference by the High Courts in an appeal filed by the State, assailing the finding of acquittal of the accused by the Trial Court. The Supreme Court in its decision in the matter of **Rajesh Prasad v. State of Bihar & Anr.**, 2022 3 SCC 471 held as below:-

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, 2007 4 SCC 415])

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reapprciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseology are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

[6] Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka**, 2023 9 SCC 581 the Supreme Court summarized the principles governing the exercise of

appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. as follows:

"8. ....8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

[7] Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the Trial Court in favour of the Accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

[8] The Appellate Court, to interfere with the judgment of acquittal, would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

[9] In the light of above legal principles, I now proceed to analyze the evidence before the Trial Court, leading to the acquittal of the accused.

[10] The PW/1, the Informant, in his examination-in-chief has clearly narrated the incident of 22nd December 2005, i.e., the day on which the first demand was made by A/1. He specifically stated that A/1 demanded an amount of Rs.3,000/- for deciding the application in his favour. There were some negotiation and A/1 agreed to accept a reduced amount of Rs.1,000/- in lieu of passing an order in favour of the Informant. The PW/1 visited the Tahsildar office once again, when he was again told by A/1 to pay the money to A/2, who was instructed by A/1 to prepare the order and give copy of the same, after receiving the amount. In his crossexamination, PW/1 has categorically denied that he was unable to meet A/1 on the said date as he was on tour

from 8.00 am to 5.00 pm. It is also revealed from the crossexamination that PW/1 learnt about the decision on his application only when he went on the assigned date to pay the bribe amount. Once, he assured that he had the amount, he was directed to pay the money to A/2 and collect the order passed in his favour from the Talathi, to whom the order was dispatched. Nothing was elicited from the cross-examination to indicate that A/1 was out of his office on 22nd December 2005, i.e., the day on which the demand was made. One of the defence of A/1 was that he was not present in the office on the date of first demand.

[11] The second demand was made at the time when PW/1 and PW/2, i.e., one of the panchas, accompanying PW/1 went to the Tahsildar's office, pursuant to the trap laid by the ACB. The deposition of the pancha confirms the demand made by A/1 once again. He deposed that he accompanied PW/1 in the cabin of Tahsildar on 28th December 2005, when the Tahsildar told PW/1 in his presence that his work is ready, one copy was sent to the Talathi and another is with A/2 and that he should collect the order from A/2. A/1 met A/2 after which A/2 asked PW/1 as to whether he had brought the money. Thereupon A/2 directed PW/1 to give the money to A/3. The money exchanged hands, A/3 counted the amount and pocketed it, confirmed to A/2 that money was paid after which PW/1 was given a copy of his order. PW/2 further confirmed that in his presence and on a signal given by PW/1 as prearranged, the ACB officials entered the Tahsil office. On A/3's admission, money was recovered from the drawer of the computer-room. The currency notes were checked for anthracene powder, and the numbers were tallied with the pre-trap panchanama. Anthracene was found on the hands and pocket of A/3 and the drawer in the computer-room. The entire sequence of events has been deposed by PW/2 to have taken place in his presence. Even on intense crossexamination, his testimony could not be shaken.

[12] Pw/3 is the Under-Secretary of Forest Section and has deposed regarding sanction to prosecute the Accused. The same has not been seriously contested by the Accused.

[13] Pw/4 is the ACP of the ACB. In his deposition, he has narrated the facts regarding complaint of PW/1, the action taken by him and other officials in laying the trap including, applying anthracene powder on Rs.100/- notes, which were to be given by PW/1 to the Accused, the recording of the pretrap panchanama and the actual raid carried out. In his crossexamination, an attempt was made by the defence to establish that the work of PW/1 was done by the Accused before the bribe money was paid. However, this witness remained steadfast in his testimony that the fact of the order passed in favour of PW/1 was noticed after the trap. Hence, nothing beneficial to the Accused was elicited from his crossexamination.

[14] I have perused the pre-trap panchanama and the panchanama recorded after the bribe money was recovered. The deposition of the witnesses is consistent with the panchanamas.

[15] I have perused the Judgment and Order acquitting the Accused carefully. The finding of the acquittal is only on the basis of a certified copy of a log-book of the Government vehicle, claimed to have been used by A/1 to travel out of Indapur to nearby villages for official work on 22nd December 2005, i.e., on the date on which PW/1 claims that the first demand was made. The learned Special Judge has relied on the statement of A/1 recorded under Section 313 of the Cr.P.C., that on the date of demand, he left his residence at 8.00 a.m. and visited villages - Wadapuri, Bhodni, Lakhewadi, Chakati, Redni and Warkude (Khurd). The Special Judge has recorded that a copy of the bill of TA and DA paid to the driver Kale, as per entry in the log-book and the certified copies of the statements of the persons recorded at the time of spot inspection at Mauje-Wadapuri on 22nd December 2005 are on record and sufficient to show that the A/1 was not in office on the date of demand. Hence, only on this basis, the Special Judge has disbelieved the deposition of PW/1. Secondly, the Special Judge appears to be swayed by the statement of A/1 that the application was already decided in favour on 27th December 2005, i.e., one day before the trap. On these two grounds, the Special Judge acquitted the Accused.

[16] I have perused the Record & Proceedings. There is a copy of the log-book certified by the Tahsildar himself, which has an entry of the vehicle leaving Indapur at 8:00 am and returning at 9:00 pm traveling to the villages mentioned herein above. There are also other entries in the log-book of the movement of the Government vehicle on other dates, including on 28th December 2005 from 9:00 am to 6:00 pm. However, it is an admitted fact that, on 28th December 2005, between 5:00 pm and 5:45 pm, a trap was laid by the ACB in A/1's office and all the accused were very much present in the office. The trap and the recovery of the bribe amount accepted by Accused is proved by statements of PW/1, PW/2 and PW/4. It is also not the case of any of the Accused, that they were not present in the office on 28th December 2005. Thus, the entries in the log-book are only indicative of movement of the Government vehicle from Indapur to various places. The log-book entries by themselves are not evidence of travel of A/1 in the Government vehicle. If it was his case that the Government vehicle is used only by A/1, then, there possibly cannot be an entry regarding travel by A/1 on 28th December 2005, i.e., on the date of trap. The defence has nowhere attempted to establish that the Government vehicle was used only by the Tahsildar, leading the trial court to believe absence of A/1 in the office on the first demand date. On the contrary, the prosecution has beyond any doubt proved the demand made by A/1 by cogent oral evidence, which the defence was unable to demolish.

[17] The Special Judge has also accepted the statement of overtime TA/DA given to one Mr. A.J. Kale stated to be the driver attached to the Tahsil office in Indapur. The statement of TA/DA is from 1st December 2005 to 27th December 2005 and 3rd January to 28th February 2006. Contrary to the logbook entry of movement of the vehicle from 9:00 am to 6:00 pm on 28th December 2005, there is no explanation

forthcoming regarding absence of the allowance on 28th December 2005. Thus, this is a major contradiction on the part of defence, rendering the story of the Accused completely unbelievable.

[18] There are many documents placed on record by the defence to show that some applications were made by the residents of Wadapur regarding requirement of a road in their village. Of the plethora of documents placed on record, only two statements relate to 22nd December 2005 signed by persons stated to be villagers of Wadapur. The place of recording of the statements is not visible on the documents. Most pertinently, none of the persons including any villager, pancha, driver-Kale nor any person maintaining the log-book of the Government vehicle is examined by the defence. In view of the discrepancies in the log-book as compared with TA/DA statement of the driver, it was imperative for the defence to examine some witness corroborating the story of the Accused.

[19] The defence of the Accused appears to be that of a plea of alibi. In the decision in **Binay Kumar Singh v. State of Bihar**, 1996 INSC 1260. The Supreme Court has considered the question of alibi meaning 'Elsewhere' and observed that the said plea would be available only if that 'Elsewhere' is a place far-off making it impossible or improbable for the person concerned to reach the place of occurrence of offence. The Apex Court held as under:

".....Once the prosecution succeeds in discharging the burden it is incumbent on the Accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Page 13 of 19 **Nath Pandey v. State of U.P.**, 1981 2 SCC 166 **State of Maharashtra v. Narsingrao Gangaram Pimple**, 1984 1 SCC 446.)"

[20] In the facts of the present case, the demand of the bribe money is established satisfactorily by the prosecution, through reliable evidence. Hence, it was incumbent on the defence to adduce evidence of the alibi by strict proof. The defence has completely failed to establish the plea of alibi. There is absolutely no evidence establishing presence of A/1 at the place other than the spot of the occurrence of the offence. In these circumstances, I am of the considered view that there is a mis-reading/omission on the part of the Special Judge in considering the material evidence

on record. There is thus, a patent infirmity in the Judgment and Order impugned herein.

[21] The other basis of acquittal as per the Special Judge is that, there was no motive for the demand of bribe as the order in favour of the Informant was passed on 27th December 2005 itself. This finding is also contrary to the evidence on record. The prosecution has established the factum of demand and acceptance of bribe money by A/1 and A/2 beyond reasonable doubt. It has come on record that PW/1 was informed regarding the order passed on 27th December 2005 when he along with PW/2-Pancha went to the office of the Accused to pay the money, pursuant to the trap laid by the ACB. The PW/1 was told that his order was sent to the Talathi's office and categorically A/2 was directed by A/1 to take money from PW/1. The entire transaction was that of a simultaneous give and take. The fact of passing of the order was informed to him at the same time when the bribe money was accepted from him. Hence, the finding of the Special Judge in this regard is quite distorted, in this regard, as well.

[22] Section 7 of the PC Act deals with public servants accepting or attempting to accept illegal gratification other than their legal remuneration. Its essential ingredients are (i) that the person accepting the gratification should be a public servant; and (ii) that he should accept the gratification for himself, and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. Insofar as Section 13(1)(d) of the PC Act, it was amended by the Prevention of Corruption (Amendment) Act, 2018, with effect from 26th July, 2018. However, in view of Section 6 of the General Clauses Act, 1897, Section 13(1)(d) prior to the amendment, is applicable to the facts of the present case, as the offence was stated to have been committed on 22nd December 2005 and 28th December 2005. Thus, its essential ingredients are (i) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person. The facts in the present case not only bring home the guilt to A/1 but also A/2, who directed the Informant to hand over the bribe money to A/3 and in lieu of the same, gave a copy of the order to the Informant. Thus, A/1 and A/2 are both complicit in commission of offence. As far as A/3 is concerned, the prosecution has been unable to establish beyond reasonable doubt, the abetment of the offence by A/3. The prosecution has failed to establish the active role and knowledge of A/3 that the money given to him was bribe money. Hence, the acquittal of A/3 cannot be faulted.

[23] The Supreme Court in its decision in the case of **State of Karnataka v. Chandrasha**, 2024 INSC 899 has reproduced its observations in an earlier decision in the matter of **Swatanter Singh v. State of Haryana**, 1997 4 SCC 14

"6..... Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

[24] Corruption on the part of public officers erodes the faith reposed by the citizens and has a pervasive impact on governance and democracy. Undoubtedly, the amount of bribe is a mere Rs.1,000/- however, it is settled law that it is not necessary for the amount involved to be substantial to draw the presumption under Section 20 of the PC Act. As per Section 20(3) of the PC Act, the Court has a discretion to refrain from drawing adverse presumption against the public servant if the amount involved is trivial. In the case of **Chandrasha** (Supra), the Supreme Court held that the presumption becomes irrelevant when the agreement to receive gratification is factually proved. The presumption under Section 20 of the PC Act provides that where it is proved that the public servant has accepted or obtained any undue advantage, unless the contrary is proven, it shall be presumed that such acceptance of undue advantage was with a motive or reward under Section 7 of the PC Act. The value of gratification is to be considered in proportion to the act to be done or not done, to forebear or not to forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. In any case, the fact of demand and receipt of demand stand proved in the present case.

[25] Being conscious of the settled law that, in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the Appellate Court would not be justified in setting aside the acquittal merely because another view is possible. In the present case however, the demand, the recovery of the bribe money from A/1 and A/2 being proven, in the absence of any concrete material supporting the defence, brings home guilt to them beyond reasonable doubt. Once, the 'demand' and 'acceptance' of the bribe amount is established beyond reasonable doubt, in my opinion, no two views are possible in that matter. The defence has made no attempt to establish the alibi theory attempted to be put forth by A/1. Thus, the Judgment and Order impugned herein, is unsustainable. The Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2 from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside. For reasons mentioned herein above, A/3 remains acquitted and the Judgment and Order impugned in so far as relating to A/3 is confirmed.

[26] Having convicted the Respondent Nos. 1 and 2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption

Act, 1988, the next consideration is the quantum of punishment that may be imposed on them. Hence, I proceeded to hear the Respondent Nos.1 and 2 on the aspect of sentencing on 21st November 2025.

[27] Heard Mr. Uday Dube, learned Senior Counsel appearing for the Respondent Nos.1 and 2.

[28] Mr Dube, submitted that as many as 17 years have elapsed from the time that the accused were acquitted. He further submitted that the A/1 is due for retirement next year and has also aged considerably. Similarly, he submitted that the A/2 has few more years of service and has a family with children. Both the Accused are the sole earning members in their families and hence, lenient view be taken in the matter of sentencing.

[29] Admittedly, as many as 17 years have elapsed from the time, the accused were acquitted. The A/1 is due for retirement next year and the A/2 has few more years of service and has a family with children. Considering the gravity of the offence, the circumstances of the Accused and the time taken in deciding the present Appeal, I am inclined to impose minimum sentence provided for the said offence at the relevant time. The A/1 and A/2 are directed to undergo 6 months of simple imprisonment and liable to pay fine of Rs.500/- each. The A/1 and A/2 are directed to surrender before the Trial Court within a period of 12 weeks from today and the Trial Court is directed to take steps to commit them in prison to undergo the period of sentence and recover the fine imposed on them.

[30] The Appeal is accordingly, partly allowed

-----  
2026(1)AICC73

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**

(Hon'ble Judge: Sanjay Dhar)

CrM (M) (Criminal Procedure Code) No 736 of 2025 **dated 26/11/2025**

*Zahoor Ahmad Pahalwan*

**Versus**

*U T of J & K*

**PASSPORT NOC REQUEST**

Indian Penal Code, 1860 Sec. 409, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 120B, Sec. 418 - Prevention of Corruption Act, 1988 Sec. 8, Sec. 7A, Sec. 13, Sec. 12 - Passport NOC Request - Petitioner facing corruption trial sought NOC for passport renewal - Trial court rejected plea citing existing NOC validity and lack of necessity for foreign travel - Court held right to hold passport forms part of personal liberty under Article 21 - Need for travel not required to seek NOC - Only consideration is whether accused will be available to face trial - Rejection based on speculative

grounds unsustainable - Order set aside and matter remanded for fresh consideration -  
Petition Allowed for Reconsideration

**Law Point: Right to obtain or renew passport is part of personal liberty; court while granting NOC should consider only likelihood of accused's presence for trial, not reasons for travel**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 409, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 120B, Sec. 418

Prevention of Corruption Act, 1988 Sec. 8, Sec. 7A, Sec. 13, Sec. 12

**Counsel:**

Saqib Shabir, Ilyas Laway

**JUDGEMENT**

**Sanjay Dhar, J.- [1]** The petitioner through the medium of present petition has challenged order dated 25.10.2025 passed by the Court of learned Special Judge, Anticorruption, Anantnag (for short "the trial court"), whereby his application for grant of No Objection Certificate for obtaining/renewing passport has been dismissed.

**[2]** Issue notice to the respondent. Mr. Ilyas Laway, GA, enters appearance and accepts notice on behalf of the respondent.

**[3]** It appears that the petitioner is facing trial in a case arising out of FIR No.05/2022 for offences under Section 409, 418, 465, 467, 468, 471, 120-B IPC, 7A, 8, 12 and 13(1) of Prevention of Corruption Act. During the pendency of the challan against the petitioner, he applied for grant of NOC before the learned trial court for obtaining passport for the purpose of undertaking Hajj Pilgrimage. The said application was considered by the trial court and vide order dated 24.02.2025, NOC was issued by the said court, whereafter the petitioner was granted passport for a limited period of one year as the NOC was given by the trial court only for one year.

**[4]** It seems that the petitioner, pursuant to the NOC granted by the trial court, obtained passport, the validity of which was restricted to one year, and undertook Hajj Pilgrimage, whereafter he again approached the trial court for grant of NOC for obtaining passport for five years.

**[5]** The aforesaid application has been dismissed by the trial court, primarily, on the ground that the same is premature because the earlier NOC granted by the said court is valid upto 23.02.2026. Another ground on which the learned trial court has rejected the application of the petitioner is that he has not produced any documentary proof that would go on to show that he was required to travel abroad in connection with his business.

**[6]** Both the grounds on which the learned trial court has rejected the request of the petitioner for grant of NOC appear to be specious. It is a settled law that every

citizen has a legal right to hold a passport and that the said right can be taken away only in accordance with law. In *Maneka Gandhi vs. Union of India*, 1978 15 SCC 248, the Supreme Court held that no person can be deprived of his right to go abroad unless there is a law enabling the State to do so. The right to personal liberty includes the right to travel abroad. For travelling abroad, it is mandatory for a citizen to obtain passport. Thus, right to hold a passport is an important constitutional right of a citizen. Therefore, for obtaining passport or NOC, it is not necessary for a citizen to demonstrate before the court or before the Passport Authority that he has some pressing need for travelling abroad. Since a citizen has a right to hold a passport, as such, even without his need for traveling abroad, he is entitled to hold a passport. Thus, the reasoning adopted by the learned trial court that the petitioner has failed to produce the documentary proof with regard to the necessity of his foreign travel, is contrary to the legal position.

[7] It is true that NOC granted in favour of the petitioner is going to expire in the month of February, 2026, but since the petitioner has a right to hold a valid passport, he is also entitled to get his passport renewed for further period because the date of expiry of his passport is approaching.

[8] Of course, the passport can be issued in favour of the petitioner only in accordance with the rules governing the field and it can even be refused to him if necessary NOC is not issued by the court before which he is facing trial in a criminal offence. However, a criminal court while considering an application for grant of NOC has only to advert itself to the question as to whether the accused, if allowed to travel abroad, would be available to face the trial. No other factor should influence the decision of the criminal court while considering an application for grant of NOC in favour of an accused who intends to obtain a passport/travel document.

[9] In the light of the foregoing discussion, the petition is allowed. The impugned order passed by the learned trial court is set aside and the matter is remanded to the said court to decide the application of the petitioner for grant of NOC afresh in the light of the observations made hereinbefore.

[10] A copy of this order be sent to the learned trial court for information and compliance

-----  
2026(1)AICC75

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

(Hon'ble Judge: A Badharudeen)

Bail App (Bail Application) No 13615 of 2025 dated 25/11/2025

*Biju Kareem S/o Kareem; Sunilkumar T R S/o Ramakrishnan; Jilse S/o Kumaran;  
Jutha Bhaskar W/o Biju; Sreelatha W/o Jilse*

**Versus**

*State of Kerala; Pradeep S/o Krishnankutty*

**COOPERATIVE BANK FRAUD**

Indian Penal Code, 1860 Sec. 423, Sec. 477A, Sec. 34, Sec. 420, Sec. 409, Sec. 468, Sec. 465, Sec. 471, Sec. 120B, Sec. 406 - Prevention of Corruption Act, 1988 Sec. 13 - Cooperative Bank Fraud - Anticipatory bail sought by accused in large scale misappropriation from cooperative bank - Allegation that officials and directors conspired to create fake loan files by forging documents and misappropriated huge sum - Properties of accused used to obtain fraudulent loans and proceeds diverted - Prosecution opposed bail citing ongoing investigation and seriousness of offence affecting public confidence in cooperative sector - Defence claimed documents executed voluntarily and loans genuine - Court found magnitude of scam and organized criminality requiring custodial interrogation - Observed that granting bail would impair investigation and affect faith of public depositors - Held that custodial interrogation necessary for tracing misappropriated funds - Considering gravity and public interest - Anticipatory Bail Rejected

**Law Point: When allegations indicate systemic financial fraud causing loss to public institution, anticipatory bail cannot be granted as investigation requires custody for effective recovery and preservation of public confidence in cooperative system.**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 423, Sec. 477A, Sec. 34, Sec. 420, Sec. 409, Sec. 468, Sec. 465, Sec. 471, Sec. 120B, Sec. 406  
Prevention of Corruption Act, 1988 Sec. 13

**Counsel:**

Rajit, Ajaiy Baskar, Gracious Kuriakose, C K Suresh, N L Bitto

**JUDGEMENT**

**A Badharudeen, J.- [1]** This is an application for anticipatory bail moved by accused Nos.1 to 3 as well as accused Nos.21 and 22 in Crime No.678/CB/TSR/R of 2023 of Crime Branch Economic Offences Wing, Thrissur.

**[2]** Heard the learned counsel for the petitioners as well as the learned Additional Director General of Prosecution (ADGP) appearing for the prosecution. Also heard Adv.N.L.Bitto, the learned counsel appearing for the additional 2nd respondent/defacto complainant. Perused the relevant records.

**[3]** Here, the prosecution alleges commission of offences punishable under Sections 406, 409, 420, 465, 468, 471, 423, 120B and 477A r/w Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') as well as under Section 13(1)(c)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act, 1988') and under Section 13(1)(a) r/w 13(2) of the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as 'PC (Amendment) Act, 2018 by the accused persons.

[4] There are 22 accused persons in this case, as per the report of the Investigating Officer. The allegation of the prosecution, as could be seen from the report filed by the Deputy Superintendent of Police, Crime Branch, Thrissur, dated 18.11.2025 and the prosecution records, is that, accused Nos.1 to 3, the office bearers of the Karuvannur Service Co-operative Bank, after hatching conspiracy with the 2<sup>nd</sup> accused and the other accused persons, viz., accused Nos.4 to 20 and accused Nos.21 and 22 who are the wives of accused Nos.1 and 3 respectively, with intention of cheating the complainant and the Bank, falsely assured the complainant that they would arrange a loan to clear the liability pending in connection with the agreement to purchase properties that were owned by the wives of accused Nos.1 and 3, fraudulently mortgaged the properties with the aid of forged records and obtained Rs.3 crore as loan, as against Rs. 1.25 Crore applied by the complainant, his wife and three other relatives. The specific case is that the complainant, his wife and three other relatives submitted five loan applications before the Karuvannur Service Cooperative Bank, requesting loan of Rs. 25 lakh each. Out of which accused Nos.1 to 3 and other accused hatched conspiracy and neglected to process the loan application put in by the complainant. While acting upon the other four loan applications submitted for Rs.25 lakh each, accused Nos.1 to 22 fraudulently suppressed original loan applications and forged loan applications in their names showing the loan amount as Rs.50 lakh each instead of Rs.25 lakh each. Apart from that, accused Nos.1 to 3, without the knowledge or consent of a friend of the 1<sup>st</sup> accused and his wife wlong with whom he had studied, fraudulently created loan files after forging loan applications in their names also. Thereby six loans to the tune of Rs.50 lakh each were sanctioned and encashed by fraudulent means and thereby misappropriated Rs.3 crore by the accused. The prosecution alleges that accused Nos.1 to 3 were the staff members of the Bank, and accused Nos.4 to 20 were the Director Board Members of the Bank during the relevant period. During investigation, it has been revealed that the 21<sup>st</sup> accused, Smt.Jitha, W/o. Biju M.K.(1<sup>st</sup> accused) and the 22<sup>nd</sup> accused, Smt.Sreelatha, W/o.Jilse C.K. (3<sup>rd</sup> accused), who were the owners of 3.79 acres of landed property as per document No.2639/12, 2940/12 and 2641/12 situated in Kottanellur Village under Vadakkekara SRO, entered into a property sale agreement with the complainant on 31.12.2013 fixing the sale price of the landed property as Rs.1,38,000/- per cent, amounting to a total of Rs.5,23,02,000/- for the purchase of the entire property. For this, the complainant gave Rs.50 lakh as advance on the date of agreement. The complainant gave Rs.1 crore on 28.03.2014. Rs.1.5 crore on 22.07.2015 and Rs.1 crore on 21.10.2015 as partial payments towards the balance. During the time period of the sale agreement with the complainant, accused Nos.21 and 22 colluded with accused Nos.1 to 3 and with the connivance of accused Nos.4 to 20, who were the Director Board members of the Bank during that time, fraudulently created fake release order [1]on 05.03.2014, and registration of the properties was carried out at the Vadakkekara SRO in the names of approximately 24 person, covering a total extent

of 1.73 acres out of the original 3.79 acres of landed property. For registering the remaining 2.06 acres in the name of the complainant, accused Nos.1 and 3 convinced the complainant that they would arrange loan from Karuvannur Cooperative Bank towards the balance amount. In this connection, the complainant submitted loan applications and connected documents including the voucher, which were signed in blank form as directed by the accused, for availing loan of Rs.25 lakh each, in his name and 4 of his relatives, amounting to a total of Rs. 1.25 crores, and the said property was registered in the complainant's name on 21.10.2015. However, the accused neglected to process the loan application of the complainant and unlawfully increased the loan amounts from Rs. 25 lakh to Rs. 50 lakh in the remaining 4 loan applications by forging the signatures of the applicants in the loan application, without their knowledge or consent. Additionally, the accused created two more fraudulent loans in the names of the friend of the 1st accused and his wife, and thereby generating six fake loan files of Rs.50 lakh each, totalling Rs. 3 crore, all secured by pledging the same property. Out of this fraudulently availed amount of Rs.3 crores, Rs.2,17,32,101 was used to settle existing loan liabilities of the property and the remaining balance was adjusted through BOD accounts and other deposits in the names of the relatives and associates of the accused. Through this scheme, the accused derived unjust enrichment, while causing substantial financial loss and liability to the bank.

[5] While canvassing anticipatory bail to the petitioners, it is submitted by the learned counsel for the petitioners that, going by Annexure B private complaint lodged by the additional 2nd respondent and the answers given by Smt.Karthika, W/o. the defacto complainant, as Annexure E before the Enforcement Director and Annexure D statement given by the complainant, Sri.Pradeep K.K. to the Enforcement Director, they had admitted signing of document showing grant of these loans. Apart from that, the learned counsel for the petitioners relied on Annexure E to N gahans, executed for the purpose of mortgaging at the time of availing the loans, would show that the same were executed for getting Rs.50 lakh each as loan in the applications filed. According to the learned counsel for the petitioners, therefore, the allegation of the prosecution, that the 1st accused, with the connivance of accused Nos.2 and 3, along with accused Nos.21 and 22, falsely created loan applications, as alleged by the prosecution, by falsifying the amount of loan as Rs.50 lakh each instead of Rs. 25 lakh each, is primarily not sustainable. He also would submit that the investigation has progressed much and in such a case, the petitioners' arrest and custodial interrogation are not necessary and therefore, they may be released on pre-arrest bail.

[6] While describing the genesis of the case, it is submitted by the learned ADGP that accused Nos. 1 to 3 were officers of the Bank, and the properties that were mortgaged for the purpose of the disputed loans were owned by accused Nos. 21 and 22, who are the wives of accused Nos.1 and 3 respectively. According to him, earlier, by mortgaging the same property, 11 loans were availed from the Bank and the same kept in arrears. Suppressing these facts, release deed showing clearing the liability was

obtained fraudulently without closing the above 11 loans. Pursuant to that, a sale agreement was executed in between the complainant and accused Nos.21 and 22 on 31.12.2011 to sell the properties for a total consideration of Rs. 5.23 crore, out of which Rs. 4 crore was received as advance by instalments. Thereafter, as instructed by the defacto complainant, 1.73 acres of land were sold to 24 other persons after retaining 2.06 ares of property. In order to execute sale deed for the said sum, 5 loan applications were submitted by the defacto complainant and his relatives to the tune of Rs. 25 lakh each. However, accused Nos.1 to 3 did not act upon the application submitted by the defacto complainant. While acting on the other four applications and also granting loan in the name of a friend of the 1st accused and his wife, the accused fraudulently created loan applications and files, each for Rs. 50 lakh, and thereby obtained Rs. 3 crore pecuniary advantage in this case. It is pointed out by the learned ADGP that altogether 21 cases were registered against accused Nos.1 to 20, noticing huge scam coming to crores of rupees from Karuvannur Cooperative Bank. The crimes are also included in the report of the investigating officer and the same are as under:

1. Cr. 165/CB/TSR/R/21
2. Cr. 240/CB/TSR/21,
3. Cr. 241/CB/TSR/D/21,
4. Cr. 242/CB/TSR/21,
5. Cr. 243/CB/TSR/D/21,
6. Cr. 247/CB/TSR/D/21,
7. Cr. 248/CB/TSR/D/21,
8. Cr, 249/CB/TSR/D/21,
9. Cr. 252/CB/TSR/D/21,
10. Cr. 253/CB/TSR/D/21,
11. Cr. 254/CB/TSR/D/21,
12. Cr. 302/CB/TSR/21,
13. Cr, 313/CB/TSR/D/21,
14. Cr. 18/CB/TSR/D/22,
15. Cr. 25/CB/TSR/D/22,
16. Cr. 29/CB/TSR/D/22,
17. Cr. 30/CB/TSR/D/22
18. Cr. 49/CB/TSR/R/22,
19. Cr. 25/CB/TSR/R/24,
20. Cr. 1322/CB/TSR/R/25

[7] It is also submitted by the learned ADGP that all the loans illegally and fraudulently issued with the direct involvement of accused Nos.1 to 3, with the support of accused Nos.4 to 20, using their official positions in the bank, in collusion with

accused Nos.21 and 22. The conduct of the accused had severely undermined the trust of the general public in the cooperative banking system across the State. Hence, granting bail to the petitioners/accused Nos.1, 2, 3, 21 and 22 would be denial of natural justice to the lakhs of common shareholders/depositors, especially in the lower rung of the society, which would adversely affect their faith in the transparency of Co-operative sector as a whole. The learned ADGP would submit that although four of the eleven earlier loans availed using the misappropriated amount have been closed, seven of those loans are still subsisting. According to the learned ADGP, going through the allegations herein, the allegations are very serious where custodial interrogation and recovery of materials, including investment of the money by the accused, are inevitable, otherwise the entire investigation would be spoiled. In such view of the matter, the anticipatory plea by the accused persons could not be allowed.

[8] dv.N.L.Bitto, who appeared for the defacto complainant shared the argument of the learned ADGP and strongly opposed grant of bail to the petitioners. According to Adv.N.L.Bitto, coming to the huge scam in Karuvannur Co- operative Bank, many persons who lost their money have committed suicide and others are trailing to survive. Therefore, the perpetrators of the said crime, including the petitioners, cannot be granted anticipatory bail and if so, the entire investigation would be spoiled and effective recovery of the money or its details could not be materialized. Therefore, Adv.N.L.Bitto, the learned counsel for the defacto complainant also vehemently opposed grant of anticipatory bail.

[9] Going through the allegations as extracted hereinabove, the allegations are very serious. The case diary, along with the original applications filed by the five applicants, including the defacto complainant, seized by the police from the Society, along with the forged loan applications supplemented by way of forgery by accused Nos.1 to 3, with the assistance of the other accused do form part of the prosecution records. On perusal of the original applications filed and the forged application, it could be seen that as alleged by the prosecution, the loans applied are only Rs.25 lakh each, originally by the applicants. However, the accused persons, ignoring the said applications, created forged applications in the names of the applicants and also created fake and forged applications in the name of a friend of the 1st accused and his wife showing that they have applied for loans of 50 lakh each and thereby availed loans of Rs.50 lakh each. It is true that, on perusal of Annexure E to N Gahans, the loan amounts sanctioned were shown as Rs. 50 lakh each. In this connection, the very specific contention of the prosecution is that the signatures therein are that of the loan applicants, as admitted by the complainant and his wife before the Enforcement Directorate Officials, though the gahans in the names of the friend of the 1st accused and his wife were also forged. According to the learned ADGP, going by the Gahans executed for the purpose of these loans, it could be seen that those are all prepared in printed forms. According to the learned ADGP, after getting signatures in the printed forms, the entries therein were substituted, so as to appear that gahans were executed for Rs.50 lakh. According to the learned ADGP, going through

the original applications put in by the applicants, one could easily understand that the loans originally applied by five persons for and behalf of the complainant was for Rs. 25 lakh each, and thereafter, forged applications were substituted by the accused for availing loan to the tune of Rs. 3 crore instead of Rs. 1.25 crore originally applied by five persons. On perusal of the Gahans, and the forged applications, it is easy to understand that the contention raised by the learned ADGP is having force, as all the entries in the Gahans were (Annexure E to N) generated in printed forms after writing the contents thereof, including the loan amount as Rs. 50 lakh. Regarding Annexures D and E statements given by the complainant and his wife to the Enforcement Directorate Officer are concerned, it could be seen that though they admitted the signatures in the documents, they never admitted availing of loans of Rs. 50 lakh each. Their further version is that they have signed in the documents for availing loans and they are not aware of its contents. Therefore, what could be seen from the prosecution records is that the prosecution allegations are made out prima facie, involving scam of Rs. 3 crore. Apart from that the petitioners have involved in 21 crimes as already extracted hereinabove.

[10] According to the learned counsel for the petitioners, on earlier occasions, some of the accused were arrested and detained in another crime and in the present crime, their arrest and custodial interrogation are not necessary. But considering the arguments advanced by the learned ADGP as well as Adv.N.L.Bitto, along with the prosecution records, I could not justify this contention in a very serious case, where arrest, custodial interrogation as well as the investigation regarding the manner in which the money spent with attempt to get the same recovered are absolutely necessary to accomplish meaningful investigation and successful prosecution. Therefore, the anticipatory bail plea at the instance of the petitioners is dismissed, with direction to them to surrender before the investigating officer forthwith. On failure to do so, the investigating officer is free to arrest the petitioners without fail and ensure proper investigation of a serious case.

In the result, this bail application stands dismissed

-----  
2026(1)AICC81

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

[From NAGPUR BENCH]

(Hon'ble Judge: M M Nerlikar)

Criminal Appeal No. 22 of 2013 dated 24/11/2025

*State of Maharashtra*

**Versus**

*Narayan S/o Shri Shivram Mataghare*

**BRIBE DEMAND PROOF**

Prevention of Corruption Act, 1988 Sec. 13, Sec. - Bribe Demand Proof - Appeal challenged acquittal of accused charged for accepting illegal gratification during mutation entry process - Complainant alleged demand and acceptance during trap by Anti-Corruption Bureau - Trial Court found inconsistencies, contradictions, and lack of independent corroboration - Appellate Court examined evidence of demand and acceptance and considered double presumption of innocence in acquittal appeals - Found prosecution failed to establish clear demand forming foundation of offence - Procedural irregularities and doubtful witness conduct weakened case - View of trial court not perverse - Acquittal confirmed - Appeal Dismissed

**Law Point: In corruption cases proof of demand and acceptance must be explicit and reliable; appellate interference in acquittal justified only when trial view perverse or unsupported by record.**

**Acts Referred:**

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7

**Counsel:**

Bhagwan M Lonare, Jemini B Kasat

**JUDGEMENT**

**M. M. Nerlikar, J.- [1]** Heard.

[2] The appeal is directed against the judgment and order dated 07.12.2011 passed by the learned Special Judge Warora in Special (ACB) Case No. 11/2008, wherein the accused i.e. present respondent is acquitted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("PC Act").

[3] The prosecution case in brief appears to be:-

The complainant Shri Ashok Kathane intending to relinquish his rights in favour of his son qua his shop property vide a gift deed applied for mutation in favour of his son in the Office of the Taluka Inspector of Land Records, Chimur on 20.02.2003. At the relevant time, the present respondent was working as Head Quarter Assistant, demanded an amount of Rs.2000/- as illegal gratification for mutation entry but the complainant unable to pay the said amount and asked to reduce the amount to Rs.200/- . However, the accused/present respondent was persistent in his demand of Rs.2000/-. Again, on 09.07.2003, when the complainant went to respondent's office, same demand was made, to which the complainant agreed. As the complainant had no intention to give bribe to the present respondent, he visited the Office of Anti-Corruption Bureau, ('ACB' ) Chandrapur. The complainant made oral complaint in ACB Office which was reduced in writing by Shri Choudhari, Deputy Superintendent of Police, ACB on 21.07.2003. The ACB Officer called two persons to act as 'Panchas'. The complainant's complaint was read by the two 'panchas' and thereafter

both the 'panchas' affixed their signatures on the said complaint. After preparing the Pre-Trap Panchnama, the raiding party proceeded to the Office of Taluka Inspector of Land Records. The present respondent demanded the bribe amount from the complainant which was handed over to the respondent. On giving the pre-fixed signal, the raiding party conducted the raid. The tainted notes were found on the person of the accused in his shirt pocket. Thereafter, a detailed Panchnama was prepared and the shirt of the present respondent was also seized. After examination, the shirt pocket of the present respondent as also the currency notes seized from him, turned violet in colour due to sodium carbonate solution being sprinkled on the tainted currency notes. Accordingly, Seizure Memos were duly recorded. After completing investigation by the Investigating Officer, charge-sheet came to be filed against the respondent. The learned Trial Court framed charge vide Exh-4. The same was read over and explained to the accused/respondent in vernacular language. The present respondent pleaded not guilty and claimed to be tried. The prosecution examined 5 witnesses to prove the guilt of the accused whereas, the respondent did not examine any witness in his defence.

The learned Trial Court upon hearing both the parties was pleased to acquit the respondent for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act. Being aggrieved by the same, the State has preferred the present appeal.

[4] The learned APP submits that, in order to prove the guilt of the accused, the prosecution has examined as many as five witnesses. PW-1 is the complainant who has lodged the complaint (Exh.18) with the ACB Office. PW-2 is Sanjay Bhaurao Wankhede Panch No.1 to the demand. PW-3 Vijay Ashokrao Kathane is son of the complainant. PW-4 Pandit Ramji Kanekar is the Sanctioning Authority and PW-5 Purushottam Ramrao Choudhary is the Investigating Officer who has registered the FIR (Exh.72) and also conducted the investigation. The learned APP submits that the prosecution has proved the case beyond reasonable doubt. All the witnesses supported the case of the prosecution and accordingly, the demand and acceptance was duly proved by the prosecution. He submits that in the cross-examination of the witnesses, nothing was brought on record, to draw an adverse inference. The testimonies of the witnesses were not shaken or shattered in the cross-examination. The trap was successful and the accused was caught red handed while demanding and accepting the illegal gratification. He submits that after considering the record, PW-4 who is the Sanctioning Authority has accorded the sanction. PW-1 and PW-2 deposed about the demand of Rs.2000/- by the respondent for effecting the mutation entry. The evidence of these two witnesses also show that the accused has accepted the bribe amount, therefore the Trial Court ought to have considered the evidence of PW-1 and PW-2 in its true perspective. However, the learned APP submits that the Trial Court has given much importance to the omissions and contradictions which do not go to the root of the matter and the Trial Court ought to have ignored those contradictions and omissions. He submits that, when the sanction was accorded by PW-4, it was

specifically deposed that it was after going through the record and application of mind. The investigation was carried out in lawful manner and after getting the sanction order, the charge-sheet was filed and the case was proceeded. The accused was caught red handed and the tainted notes were recovered from the pocket of the accused. The Trial Court has committed gross error in acquitting the accused. Lastly, he prayed that the appeal be allowed and accused be convicted for the offence, for which he was charged.

[5] On the other hand, learned counsel for the respondent vehemently submits that the High Court is dealing with the appeal against acquittal. There is a double presumption of innocence after the acquittal and therefore, interference must be limited. He submits that the High Court is having full power to re-appreciate the evidence in appeal against acquittal, however interfering in the order of acquittal is only warranted where the Trial Court view is perverse, based on misinterpretation or ignorance of material evidence or results in miscarriage of justice. He submits that the prosecution has miserably failed to prove the case beyond reasonable doubt. The evidence of prosecution witness does not inspire confidence. On the contrary, it is based on hypothesis. There are several variances and contradictions in the testimonies of the prosecution witnesses. He submits that the evidence led by the prosecution is full of omissions and those omissions go to the root of the matter. The evidence of PW-1 and PW-2, if taken as it is, it cannot be said that the demand was duly proved. The evidence of prosecution witnesses have been shaken in crossexamination in order to bring on record the relevant omissions and falsify the case of the prosecution. The testimony of PW-1 cannot be believed as the conduct of PW-1 is not natural. PW-1 has suppressed many facts and those facts are brought on record by the defence in the cross-examination of PW-1, therefore the evidence of PW-1 is required to be discarded. He further submits that the evidence of PW-2 who is Panch Witness is not believable and his presence at the spot itself is doubtful. Further, the sanction which was accorded by PW-4 is not in accordance with law and it is without application of mind. The draft was sent by the office of the ACB which is only signed by the Sanctioning Authority without going through the material and this fact was brought on record by the defence in the crossexamination. So far as PW-3 is concerned, his evidence is hearsay and his evidence would not be useful for the prosecution. The evidence of PW-5 Investigating Officer demonstrates only procedure which he has followed, even his evidence is full of contradictions and omissions, therefore cannot be relied. Lastly, he submits that if the evidence of PW-1 is perused, he stated that the demand was in the nature, "whether he brought the amount" is not sufficient as it does not constitute the demand in law, therefore the very basis in respect of demand is lacking. He submits that though it has come in the evidence of the Investigating Officer i.e. PW-5 that the statement of the respondent was recorded after the trap to which an explanation was given, however that statement does not find place in the charge-sheet and therefore, an adverse inference is required to be drawn. The conduct of PW-1 and PW-5 is unnatural for the reasons that without verification of the demand,

the Investigating Officer accepted the version of the complainant. It is necessary to consider that, filing of the complaint by PW-1 (Exh.18), calling panchas from the office of the Conservator of Forest, Chandrapur, the panchas thereafter being readily present at the office of the ACB, the entire exercise done at the ACB office in respect of the procedure to be followed during the trap, going to the office at Chimur from Chandrapur, laying down the trap and so also registration of FIR after conducting the trap. All these stages have been done within one day which is not believable. He submits that PW-5 accepted the version of the complainant as gospel truth and arranged the trap. The conduct of PW-1 is unnatural for the reason that he readily brought 20 notes of denomination of Rs.100/- each, as if he knew that trap was going to be arranged on the very day and therefore, the conduct is unnatural and with malafide intention. So far as the earlier episode of demand is concerned, there is no specific date and time and same cannot be considered as the defence was successful in bringing omission on record to that effect in cross-examination and further that the omission was proved by PW-5 Investigating Officer, therefore, there is no connecting circumstances to the alleged incident of initial demand and acceptance dated 21.07.2003, therefore lastly he submits that the Trial Court after appreciating the entire evidence, acquitted the present respondent. He relies on the following judgments:-

- (i) P. Somaraju Vs. State of Andhra Pradesh, 2025 SCCOnlineSC 2291,
- (ii) State of Maharashtra Vs. Baliram, 2024 SCCOnLineBom 1019,
- (iii) Ramchandra and another Vs. State of Maharashtra, 2024 SCCOnLineBom 2286,
- (iv) **Mir Mustafa Ali Hasmi Vs. State of Andhra Pradesh**, 2024 10 SCC 489,
- (v) Shashidhar Shivram Shinde Vs. State of Maharashtra, 2018 SCCOnLineBom 968,
- (vi) **Dattatraya S/o. Rajaram Thaokar Vs. The State of Maharashtra**, 2017 AllMR(Cri) 4184,
- (vii) **Subhash s/o. Narayanraoji Rathod Vs. State of Maharashtra**, 2017 AllMR(Cri) 4144,
- (viii) **Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra**, 2004 AllMR(Cri) 1341,
- (ix) **Mukhtiar Singh (since deceased) thr. His Legal Representative Vs. State of Punjab**, 2017 8 SCC 136.

[6] While dealing with the appeal against acquittal, the Supreme Court in the case of P. Somaraju (Supra) has laid down certain parameters which read as under:

"11. Before proceeding, it would be appropriate to recapitulate the well-settled principles governing interference with an order of acquittal by an Appellate Court, which were also discussed by the High Court in the impugned judgment. At the outset, we rely upon the seminal case of

Chandrappa & Ors. vs. State of Karnataka,<sup>4</sup> wherein this Court had laid down the five-point canonical test as follows:

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." 4 (2007) 4 SCC 415.

12. To summarize, an Appellate Court undoubtedly has full power to review and reappraise evidence in an appeal against acquittal under Sections 378 and 386 of the Code of Criminal Procedure, 1973. However, due to the reinforced or 'double' presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgements of this Court has more firmly entrenched this position, including, inter alia, Mallappa & Ors. vs. State of Karnataka, Ballu @ Balram @ Balmukund & Anr. vs. The State of Madhya Pradesh, Babu Sahebagouda

Rudragoudar and Ors. vs. State of Karnataka, and Constable 907 Surendra Singh & Anr. vs. State of Uttarakhand."

[7] In order to prove the case of the prosecution, the prosecution has examined as many as five witnesses. PW-1 is the complainant examined at Exh.17; PW-2 Sanjay Wankhede who was present at the time of demand and acting as Panch was examined at Exh.31, PW-3 Vijay Kathane who is the son of complainant was examined at Exh.54, PW-4 Pandit Kanekar who is the Sanctioning Authority was examined at Exh.55 and PW-5 Purshottam Choudhary who is the Investigating Officer was examined at Exh.66. Upon perusal of the evidence of PW-1, he has deposed that in order to mutate the name of his son Vijay in respect of his property i.e. shop, he approached the accused who was serving in the office of the Land Record at Chimur as he looked after the said work. When he met with the accused, accused told him that if he wanted to mutate the name of his son, he will have to sell that shop to the complainant's son and for that he will be required to spend Rs.10,000/- to Rs.15,000/-, but instead of that PW-1 should pay Rs.2000/- to the accused so that he will effect the entry in the name of his son. It was informed by PW-1 that it was not possible for him to spend Rs.2000/-, instead he will pay Rs.200/-. However, the accused was persistent in his demand of Rs.2000/-. Thereafter, he visited the accused several times, but every-time, the accused was persistent in his demand of Rs.2000/- The accused had said that he may come anytime with Rs.2000/- and he will do his work. Subsequently, he went to the ACB Office and lodged complaint against the accused. After recording the complaint (Exh.18), PW-1 produced an amount of Rs.2000/- in the ACB Office. He further deposed that two panchas were called and they were explained about the procedure which was to be followed by the ACB Office. Thereafter, PW-2 who is panch witness went along with PW-1 and after reaching the office of the accused, the accused said that his work will not be done on that day and it will be done on Monday. However, PW-1 replied that on Monday, he is not available in town and so his work be done on that day itself. Accordingly, the accused agreed and asked him whether he has brought the amount. PW-1 replied and said that he has brought an amount of Rs.2000/-. Thereafter, the accused took out some papers and obtained signature of PW-1. Accused said that his work was ready and accordingly PW-1 took out the amount by right hand from the pocket of his shirt and handed over to the accused, who accepted that amount. Accused counted the amount and kept it in the pocket of his shirt. He further deposed that when the amount was paid to the accused, he gave signal by removing his spectacles and when the accused said to PW-1 to come to the office of Mr. Nannaware at that time, the accused was caught by the raiding party. The subsequent procedure was thereafter followed.

[8] Pw-3 who is son of PW-1 deposed that as his father (PW-1) intended to transfer the building in his name and accordingly, PW-1 executed gift deed in favour of PW-3 and for the mutation purpose, PW-3 along with PW-1 went to the Taluka Land Record Office. Accordingly, the application was submitted by PW-3. He further

deposed that the accused had perused all the documents and told that gift-deed is not proper and sale-deed will have to be executed and for that purpose, he will be required to spend Rs.10,000/- to Rs.15,000/-. He further deposed that they will also be required to pay stamp duty. The accused told his father that if he does not want to spend that much amount, then they will have to pay Rs.2000/- to him and he will do the work. However, his father (PW-1) told him that he will pay Rs.200/- for tea, but the accused refused to do the work unless Rs.2000/- was paid to him. The rest part of his deposition is hearsay.

[9] Another witness is PW-2 who is a panch witness who accompanied along with PW-1 to the office of the accused. PW2 deposed that he was serving in the office of Conservator of Forest, Chandrapu and another panch Diwakar Kemekar was working as a Forest Guard in his office. He further deposed that he knows accused and complainant. The incident occurred on 21.07.2003, when he was called in the ACB Office along with another panch Diwakar Kemekar. They were asked about willingness to act as panch. Accordingly, both gave consent to act as panch. At the relevant time, the complainant was present. Complaint which was lodged by the complainant, was given to the panchas for reading. In the complaint, demand of Rs.2000/- was mentioned for effecting mutation entry of the field in the land record by the accused. He further deposed that an amount of Rs.2000/- was brought by PW-1. These were 20 notes of denomination of Rs.100/- each. Numbers of currency notes were noted. Then the demonstration of the entire process was given. Thereafter, it was informed that they had to go to Chimur and accordingly PW-1, PW-2 and another panch witness went to Chimur by Jeep to the office of accused. Accused was present in the office. The complainant asked the accused about his work. Accused told that his work is not done yet and accordingly informed that he has no time and to come on Monday. PW-1 informed that he is not available on Monday and he is going to other village. Therefore, his work should be done today itself. Accordingly, accused asked him whether he has brought the amount as agreed. Complainant told him that he has brought the amount of Rs.2000/-. Accordingly, the PW-1 handed over amount to the accused. Accused accepted it by hand and kept in his shirt pocket. Then accused gave two forms to the complainant and asked him to put date as 04.06.2003. PW-1 signed those forms. Those were kept by the accused. Thereafter along with the pad of papers, accused went inside the cabin of officer Nannaware. Thereafter, PW-2 gave signal to another panch Kemekar who was standing near the gate of the said office, then that panch gave signal to the raiding party. Thereafter, members of the raiding party and panch Kemekar came in the office of the accused and asked PW-2 where is accused. Accordingly, PW-2 informed that accused has accepted the amount and he is in cabin. Thereafter, Dy.S.P. Choudhary went inside the cabin of officer Nannaware along with Police Constable Dongre and Sayankal and they caught hold of the accused. Accused was frightened and asked the Police Officer of their identity. Accordingly, Dy.S.P. Choudhary introduced himself and other members of staff. He further deposed that

Dy.S.P. Choudhary asked him where the accused has kept the amount. Accordingly, he informed that the amount is in his shirt pocket.

Thereafter, one person took out the notes from the shirt pocket of the accused and he does not remember the name of the person who has taken out the amount. PW-2 has further deposed about the procedure which was carried after accused was caught red handed.

[10] Now, so far as cross-examination of all these three witnesses are concerned, PW-1 has admitted that unless some amount is paid to Mr. Nannaware, his work will not be done. It was also stated to him that Mr. Nannaware will not directly accept the bribe. He further admits that the accused was caught by raiding party on getting signal just on entering the cabin of Mr. Nannaware. It was brought on record by the defence in the cross-examination that during investigation, the Investigating Officer had recorded PW-1's statement. However, it is not stated in the statement that he repeatedly visited the office of Land Records and met with accused about 5 to 6 times and each time the accused asked him to pay Rs.2000/-. It has also come in the cross-examination that the accused said to him that he can bring the amount of Rs. 2000/- at any time and whenever the amount will be brought, he will do his work. He further deposed that he cannot assigned any reason as to why these facts do not find place in his statement though he has stated. Further, in the cross-examination of PW-2, he admits that he went to office of the ACB at about 11 to 11.30 a.m. and after one and half hours, he along with other raiding party, proceeded for the raid. Categorically, he admits that before proceeding for raid, he had not given any signature. He further admits that after the amount was paid on demand, he was not directed by Dy.S.P. Choudhary to give signal. It was told to PW1 to give the signal. He further admitted that he has stated to the Police that he gave signal to Kemekar who was standing near the gate of the office who then gave the signal to the raiding party, however he did not assign any reason why this fact did not find place in his statement. He admits that he cannot assign any reason why the same has not come in the statement that he had stated that accused had kept the amount in his shirt pocket. He further admits that after accused was caught, he was interrogated and the statement of accused was also recorded in his presence.

[11] Upon perusal of the entire evidence of these three witnesses, it appears that accused has asked PW-1 as to whether he had brought the amount. Whether the aforesaid question amount to demand is the question before this Court. As argued by the learned counsel for respondent that it does not amount to demand as held in the case of Mukhtiar Singh (Supra), of which para 19 and 24 read as under:-

"19. Inspector Satpal (PW 2), who was the shadow witness, after reiterating the statement of the complainant with regard to the pre-trap proceedings, stated that he along with the complainant on that day met the original accused and followed to his quarter in the building of the police station whereafter the

original accused enquired of the complainant as to whether he had brought the money, on which, the latter handed over three currency notes denomination of Rs 500 and five currency notes of Rs 100 each to him and that he kept the same in a cardboard box lying near him. The witness stated that he then gave a signal to the other members of the raiding party including the DSP (Vigilance) who entered the room and undertook the steps pertaining to recovery and seizure as narrated by the complainant. Further, in the case of Dattatraya S/o. Rajaram Thakkar (supra) and Mir Mustafa Ali Hasmi (supra).  
20...

....

24. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs 3000 which had been paid or of Rs 2000 as made on the day of trap operation is wholly inadequate to comply with the prerequisites to constitute the ingredients of the offence with which the original accused had been charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs 3000 at the first instance is alleged to have been paid i.e. Santosh Singh Lambardar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs 3000 as well as the demand of Rs 2000 has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of the complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the Act."

[12] After perusal of above judgment, it could be said that the question which was posed by the accused cannot be said to be demand in the eye of law. As the Supreme Court has specifically held that, inquiry as to whether money had been brought or not, can by no means constitute demand as recognized in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under Section 7 or 13 of the PC Act. Therefore, in order to attract Section 7 or 13 of the PC Act, there should be other cogent evidence, other than the accused asking whether money has been brought or not.

[13] After perusal of the evidence of PW-1, PW-2 and PW-3, there are many omissions which have come in the evidence of PW-1 like the statement regarding going to Land Record Office 5 to 6 times and the demand of Rs.2000/- being made by the accused, that entire part was brought on record as omission which was proved by the Investigating Officer i.e. PW-5 in paragraph No. 20 which is a material omission. The same was also brought on record even in the cross-examination of PW-2. The said omission was brought from the mouth of PW-1 and was proved by PW-5 Investigating Officer. This omission is a material omission which goes to the root of the matter and falsify the version of PW-1. If this material omission is brought on record, then there is no proof of initial demand neither there is date and time is forthcoming and therefore, further demand dated 21.07.2003 in the nature of whether he brought the amount is not sufficient to comply with the prerequisites to constitute the ingredients of the offence of which accused is charged. Therefore, from the evidence, it is crystal clear that the prosecution has utterly failed to prove the initial demand and further on 21.07.2003, merely inquiring "whether the amount is brought", is not sufficient to constitute offence under Section 7 or 13 of the PC Act. It is settled position of law that if the prosecution fails to prove the demand then mere acceptance is of no use.

[14] From the entire evidence of these three witnesses, there are various contradictions and omission which destroys the case of the prosecution. On one hand, PW-1 deposed that he has given the signal to the raiding party, however on the other hand, PW-2 deposed that he has given signal to Kemekar who is another panch witness. However, it has come in the evidence of PW-5 that PW-1 has given the signal to the raiding party. Further, it has come in the evidence of PW-2 that one person took out the notes from the shirt pocket of the accused, however he does not remember the name of that person who has taken out the amount. However, PW-5 has stated that panch No.2 - Kemekar has taken out those notes. This is also a major contradiction which was brought on record. If at all PW2 was accompanying with another panch Kemekar, then certainly he would have taken the name of Kemekar, however as PW-2 does not remember the name who has taken out the amount creates doubt about his presence and therefore, his testimony cannot be believed. It is further to be noted that from the deposition of PW-3, he accompanied his father to the office of the accused when initial demand was made, however same does not find place in the evidence of PW-1. Therefore, there are several contradictions and variances in the testimonies of these witnesses. The evidence of these witnesses cannot be believed and the prosecution has utterly failed to prove the demand. The presence of PW-1, PW-2 and PW3 at the place of incident itself is doubtful in view of above discussion and therefore, this evidence will have to be discarded.

[15] In the evidence of PW-4 who is the Sanctioning Authority, it is deposed that the department of ACB has sent the documents to him for according sanction. Accordingly, he verified all the documents sent to him along with proposal of sanction order. He further deposed that sanction bears his signature at Exh. 56. He is

empowered to appoint and remove the accused. In the cross-examination, he admits that he had also received proforma of sanction order. He admits that before according sanction, he had not verified the service book of the accused. The learned counsel for the respondent submitted that the sanction is not valid as PW-4 without application of mind had signed sanction order which was already received by him. To buttress his submission, he relied on the case of State of Maharashtra Vs. Baliram (supra). This Court while dealing with the sanction order, has observed as under:-

"Perusal of the sanction order reveals that First seven paragraphs deal with allegation levelled against accused. In second last paragraph, only it is mentioned that upon reading papers of investigation and evaluating evidence carefully, he is satisfied that there is an adequate evidence against the accused and accorded sanction."

Further, the learned counsel for the appellant relied on another judgment of Ramchandra and another (Supra) wherein in para 21 it is observed as under:-

"21. Here, in the present case, the sanction is not only challenged on the ground of Incompetency of Sanctioning Authority PW4 Dilip Swami but also on the ground of nonapplication of mind. Perusal of the sanction order shows that the Sanctioning Authority has not clarified that on what basis he came to conclusion that the sanction is to be accorded. As observed earlier, the sanction of the Sanctioning Authority should be after application of mind. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied his mind to all relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law. Perusal of the evidence of Sanctioning Authority PW4 Dilip Swami and the sanction order nowhere reflects material that on which basis he came to conclusion that the sanction is to be accorded. Thus, the sanction granted is not a valid sanction."

[16] Keeping in mind the observations of this Court, I perused the sanction order (Exh.56). It is apparently clear that even in this case the first seven paragraphs deal with the allegations levelled against the accused. In another paragraph it is stated that upon reading papers of the investigation and evaluating evidence carefully, he is satisfied that there is sufficient evidence against accused and in the last paragraph sanction has been accorded.

[17] From the evidence and order of sanction at Exh.56, it is crystal clear that the Sanctioning Authority has not applied his mind and only signed the sanction order which was provided by the ACB Department along with the proposal which is further corroborated by the admission of PW-4 that he has received proforma of sanction order. If such cryptic orders are passed, according sanction, it would frustrate the very

object of inserting the provisions for getting sanction for prosecuting government servant. The purpose of this provisions is to safeguard frivolous complaint/frivolous allegations against public servant and if the Sanctioning Authority fails to apply mind to the fact and material placed before it, under such circumstances, that sanction is not valid sanction accorded, therefore on this ground also the prosecution has failed.

[18] There is one another glaring factor in this case, that though the statement of the accused was recorded immediately after he was caught red handed, that statement was not placed on record by the prosecution and therefore, whatever explanation given by the accused has not come on record. It has come in the evidence of PW-5 Investigating Officer that at the time of incident, the statement was given by the accused. Admittedly, the said statement does not form part of the charge-sheet. Therefore, an adverse inference ought to be drawn that the said statement was fatal to the prosecution. This Court in case of Shashidhar Shivram Shinde (supra) observed in para 12 which read as under:-

"12. As per the panchnama no. 2, explanation of accused was taken by Police Inspector Shri Idole. But that explanation not filed with the chargesheet. In the case of Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra (cited supra), this Court has observed as under: However, there is one more important circumstance and i.e. the statement to be found in the post trap panchnama to the effect that immediately after the trap was sprung, both the accused were asked by P.I. Dhok and they gave their version regarding acceptance of money. It is the express prosecution case which can be found in the panchnama that the version given by accused was reduced to writing and signed by the panchas as well as P.I. Dhok. The contents of what was mentioned in these two writings was not found in the panchnama as those were separate documents. However, for reasons best known to the prosecution, these documents have not been brought before the Court in the trial. The panchas examined as well as P.W. 7 Dhok but do not utter a single word about this first version given by the two accused in writing immediately after the trap was sprank. This circumstances of suppressing the first version as given by two accused, according to him, is a very important circumstance which raises a shadow of doubt about the veracity of the prosecution case. The duty of the prosecution is to bring the entire truth as found before the Court.

It appears to me that these two vital documents have been kept back from the trial. In my view, in such circumstances, these writings were evidence which could be produced and which were in the hands of the Investigating Agency and which could have been produced as evidence in the Court but was not produced. By virtue of Section 114 of the Indian Evidence Act, the Court would be entitled to presume that had these documents been produced, they would not have favoured the prosecution which had withheld these

documents. Useful reference can be made to illustration (g) of Section 114 of the Indian Evidence Act, in this regard."

[19] Therefore, as observed earlier the explanation of the accused, taken by Dy.S.P. Choudhary, that explanation/statement was not filed along with the chargesheet for the reasons best known to the prosecution and therefore non-production of explanation given by the accused creates doubt about the prosecution story.

[20] Considering the above discussion, it is crystal clear that the story of the prosecution is not believable. The evidence of PW-1, PW2 and PW3 is full of contradictions, omissions and there are variances in their testimonies, therefore the evidence cannot be believed. It is further necessary to mention that demand is not proved and therefore, mere acceptance is not sufficient to come within the purview of Sections 7 and 13 of the PC Act. Not only that, even the surrounding circumstances do not support the case of the prosecution. Further, the sanction order was accorded without application of mind. So also, the statement of the accused recorded by the Dy.S.P. Choudhary is not placed on record and therefore, it creates doubt about the story of the prosecution. For all these reasons and keeping in mind, the parameters laid down by the Apex Court in the case of P. Somaraju (supra), I am not inclined to interfere in the judgment of acquittal dated 07.12.2011 passed by the learned Special Judge, Warora in Special (ACB) Case No.11/2008. The Trial Court has not committed any error in acquitting the respondent. After appreciating the entire evidence in its true perspective, the following order is passed.

### ORDER

(i) Appeal is dismissed

-----  
2026(1)AICC94

**IN THE HIGH COURT AT CALCUTTA**

[From JALPAIGURI BENCH]

(Hon'ble Judge: Debangsu Basak; Md Shabbar Rashidi)

M A T No 69 of 2024 **dated 24/11/2025**

*State of West Bengal & Ors*

**Versus**

*Subrata Dutta & Ors*

### **BANK ACCOUNT SEIZURE**

Indian Penal Code, 1860 Sec. 477A, Sec. 420, Sec. 409, Sec. 468, Sec. 471, Sec. 467, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 102 - Prevention of Corruption Act, 1988 Sec. 13 - Bank Account Seizure - Appeal preferred by State against order

quashing seizure of respondent's bank accounts - Seizure challenged on ground of delayed filing of report under Section 102(3) of Code of Criminal Procedure - Contention raised that delay vitiated seizure - State submitted delay due to multiple investigating officers and procedural oversight - Reference made to Shento Varghese decision clarifying that delay in filing report does not invalidate seizure - Explanation for delay accepted as plausible - Court held that impugned order misapplied ratio of Shento Varghese - Seizure upheld though disciplinary action may be taken against erring officer - Impugned judgment set aside - Appeal Allowed

**Law Point: Delay in reporting seizure under Section 102(3) of Criminal Procedure Code does not invalidate seizure itself if reasonable explanation exists though departmental action may lie against investigating officer**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 477A, Sec. 420, Sec. 409, Sec. 468, Sec. 471, Sec. 467, Sec. 120B

Code of Criminal Procedure, 1973 Sec. 102

Prevention of Corruption Act, 1988 Sec. 13

**Counsel:**

Sourav Ganguly, Bedashruti Bose, Anirban Banerjee, Subham Ghosh, Mayank Roy

**JUDGEMENT**

**Debangsu Basak, J.-** [1] Appeal is at the behest of the State and its functionaries and directed against the judgment and order dated May 22, 2024 passed in WPA 253 of 2021.

[2] Learned Advocate appearing for the appellants submits that, the impugned judgment and order notices **Shento Varghese vs. Julfikar Husen and Others**, 2024 7 SCC 23 However, learned Single Judge misapplied the ratio of such decision.

[3] Learned Advocate appearing for the appellants submits that, five bank accounts (one current bank account and four savings bank accounts) of the private respondent were seized by the Investigating Officer. It is alleged as against the appellants that, report under Section 102(3) of the Criminal Procedure Code, was filed belatedly and, therefore, the seizure of the accounts should be lifted. He submits that, in view of the ratio of **Shento Varghese** (supra), the delay in reporting such seizure to the jurisdictional Court would not vitiate the seizure itself. Such delay if remains unexplained may at best reflect upon the conduct of the Investigating Officer and at the highest disciplinary proceedings may be initiated.

[4] Learned Advocate appearing for the appellants submits that, in the facts and circumstances of the present case, the police case was investigated into by seven different Investigating Officers. Of the seven Investigating Officers, five superannuated. One Investigating Officer prior to the last one who actually filed the

report under Section 102(3) of the Criminal Procedure Code is yet to superannuate. Therefore, a departmental proceeding can at best be initiated against only one Investigating Officer. He points out that, such Investigating Officer was in charge of the police case for a limited point of time.

[5] Learned Advocate appearing for the appellants submits that, it was due to sheer oversight that a report under Section 102(3) of the Criminal Procedure Code was not filed before the jurisdictional Court, till its actual filing. As and when such lacuna was discovered by the last Investigating Officer, such report was immediately filed before the jurisdictional Court.

[6] Learned Advocate appearing for the private respondent submits that, the delay in filing the report under Section 102(3) of the Criminal Procedure Code is established. He submits that, there were a number of Investigating Officers. The report was submitted before the jurisdictional Court only after a writ petition to such effect was filed before the High Court. According to him, in the facts and circumstances of the present case, the impugned judgment should not be interfered with.

[7] As noted above, police in course of investigation with regard to a First Information Report being Pradhan Nagar Police Station FIR No.457 of 2013 under Sections 120B/409/467/468/471/477A/420 of the Indian Penal Code read with Section 13(2)/13(1)(c) and (d) of the Prevention of Corruption Act, 1988, seized five accounts belonging to the private respondent and directed them to remain frozen.

[8] Subsequent to such accounts being seized and directed to be frozen, report under Section 102(3) of the Criminal Procedure Code was filed only on January 5, 2022. Accounts were frozen on August 12, 2013 and September 16, 2013.

[9] Private respondent assailed the notices directing freeze of the five accounts dated August 12, 2013 and September 16, 2013 by way of a writ petition filed in 2021. Private respondent also did not take any steps with regard to freeze on such accounts for a period of eight years from the date of such accounts being directed to be frozen.

[10] Allegation in the police complaint is that, private respondent as a contractor was a recipient of benefits from the Siliguri Jalpaiguri Development Authority in respect of a tender for installation of closed circuit television camera. Subsequent enquiry into such tender suggested that the cameras installed under the tender were not of specification and were of spurious quality. First Information Report was lodged with regard to such tender in which, police on investigation attached five bank accounts of the private respondent.

[11] **Shento Varghese** (supra) considered the provisions of Section 102 of the Criminal Procedure Code. It is of the following view:

**"28. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3) CrPC, the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the**

**expression, "forthwith" as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against."**

[12] Last sentence of Paragraph 28 of **Shento Varghese** (supra) is emphatic. It suggested that, the act of seizure would not get vitiated by virtue of the delay in filing a report under Section 102 of the Criminal Procedure Code.

[13] In the facts of the present case, the last Investigating Officer filed report under Section 102 of the Criminal Procedure Code albeit belatedly.

[14] In our view, on the strength of the ratio of **Shento Varghese** (supra), the seizure by itself is not vitiated. At best, the State can proceed against the delinquent, if they may be called so, Investigating Officers, who did not file the report, departmentally.

[15] In the facts and circumstances of the present case, a plausible explanation was put forward by the State. The explanation is that the Investigating Officer overlooked the initial non-filing of the report before the jurisdictional Court. The first Investigating Officer overlooked it. The subsequent Investigating Officers did not scrutinize the case diary appropriately to find out such lacuna. As and when such lacuna was discovered, report was submitted.

[16] In our view, learned Single Judge did not apply the ratio of **Shento Varghese** (supra) correctly in the facts and circumstances of the present case.

[17] Consequently, we set aside the impugned judgment and order.

[18] **Mat 69 of 2024** is **allowed** without any order as to costs.

[19] I agree

-----  
2026(1)AICC97

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

(Hon'ble Judge: A Badharudeen)

Crl A (Criminal Appeal) No 880 of 2010, 852 of 2010 **dated 24/11/2025**

*Sainalabdheen @ Sine S/o Shamsudheen; Raju K Abraham S/o Babykutty*

**Versus**

*State of Kerala; Deputy Superintendent of Police Vigilance and Anti Corruption Bureau*

**BRIBERY CONVICTION CHALLENGE**

Indian Penal Code, 1860 Sec. 34, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 374, Sec. 428 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 20, Sec. 7 - Bribery Conviction Challenge - Appeals filed by Village Officer and Village Assistant challenging conviction for demanding and accepting bribe for mutation of property - Defence contended no credible proof of demand and acceptance of illegal gratification - Attendance register revealed first accused on leave on alleged date of demand - Defence relied on official documents showing mutation process already completed before trap - Court found prosecution failed to establish essential chain of demand, acceptance and recovery - Mere recovery of money insufficient without proof of initial demand - Investigation found to have lapses and contradictions - Court extended benefit of doubt to accused - Conviction recorded by trial court set aside - Appeals Allowed

**Law Point: In corruption cases, demand of bribe is sine qua non for conviction under Prevention of Corruption Act - Mere recovery of tainted money without proof of demand and acceptance cannot sustain conviction**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 34, Sec. 120B

Code of Criminal Procedure, 1973 Sec. 374, Sec. 428

Prevention of Corruption Act, 1988 Sec. 13, Sec. 20, Sec. 7

**Counsel:**

B Raman Pillai (Senior Advocate), Ressil Lonan, Mahesh Bhanu S, Joel George Kampiyil, Rekha S, Rajesh A, Anil K Muhamed, R Anil, T Anil Kumar, Joseph P Alex, Sujesh Menon V B, Shyam Aravind

**JUDGEMENT**

**A Badharudeen, J.- [1]** These criminal appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for short) by accused Nos.1 and 2 respectively in C.C.No.239/2008 on the files of the Special Court, Kottayam, challenging the conviction and sentenced imposed against them as per judgment dated 12.04.2010.

**[2]** Heard the learned senior counsel for the appellants/accused Nos.1 and 2 and the learned Public Prosecutor in detail. Perused the impugned verdict and the decisions placed by the learned senior counsel for the accused.

**[3]** The prosecution case is that the 1st accused, while working as Village Officer, and 2nd accused, while working as Village man in Konny village, being public servants, entered into criminal conspiracy. In pursuance of the said conspiracy, on 26.02.2004, the 2nd accused demanded Rsd.500 from Sri.Saseendran for himself and for the 1st accused, and he accepted Rs.200 from Sri.Saseendran on the same day, as

illegal gratification for effecting mutation in respect of 11.5 cents of property in survey No.500/3/H/1/1 Konny village owned by Sri.Saseendran. The further case of the prosecution is that the 1<sup>st</sup> accused demanded the balance bribe of Rs.300 from Sri.Saseendran on 26.02.2004 itself. The 2<sup>nd</sup> accused again demanded bribe from Sri.Saseendran on 03.03.2004 at Konny village office for the same purpose and in pursuance of that, at 1:00 pm on 06.03.2004, at the office room of village office Konny, 1<sup>st</sup> accused accepted Rs.200 and the 2<sup>nd</sup> accused accepted Rs.100 from Sri.Saseendran. Thereby they abused their official position and obtained undue pecuniary advantage for themselves. On this premise, the prosecution alleges commission of offences punishable under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988, (hereinafter referred to as 'PC Act, 1988' for short) and Section 120B of the Indian Penal Code (hereinafter referred to as 'IPC' for short) by the accused.

[4] Acting on the final report, the special court took cognizance of the case and proceeded with trial. During trial, on the side of prosecution, PW1 to PW10 were examined, Exts.P1 to P17 and MO1 to MO12 were marked. DW1 was examined and Exts.D1 to D5 were marked on the side of the defence.

[5] The learned Special Court on appreciation of the evidence found that the accused committed offences punishable under Sections 7 and 13(2) r/w Section 13 (1) (d) of the PC Act, 1988 as well as under Section 120B of IPC and sentenced him as under:

"In the result, both accused persons are convicted under Sec. 7 of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for 2 (two) years each and fine Rs.15,000/-(fifteen thousand) each and in default to undergo simple imprisonment for 6 (six) months each, convicted under Sec.13(2) r/w 13 (1) (d) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for 2(two) years each and fine Rs.15,000/- (fifteen thousand) each and in default to undergo simple imprisonment for 6 (six) months each and convicted under Sec. 120-B IP.C. and sentenced to undergo rigorous imprisonment for 1 (one) year each. The sentences shall run concurrently. Both accused are entitled for set off from 06/03/2004 till 09/03/2004 under Sec.428 Cr.P.C.. M.O.1 series shall be returned to PW1 and M.O.2 to 12 shall be destroyed, after the appeal period is over or after the disposal of appeal, if any."

[6] The learned senior counsel appearing the appellants/accused Nos.1 and 2 mainly contended that there is no convincing evidence available in this case to prove the demand of bribe either by the 1<sup>st</sup> accused or by the 2<sup>nd</sup> accused. It is pointed out that PW1 given evidence that he visited the village office on 03.03.2004 and met the Village Officer for the purpose of effecting the mutation. However, as per Ext.P11, the attendance register for the relevant period, which was tendered in evidence through

PW6, it could be gathered that on 03.03.2004, the 1st accused was on casual leave. Therefore, the evidence of PW1 in this regard is incorrect. It is pointed out further that, in this case, as per the prosecution allegation, the complainant, who was examined as PW1, deposed that he had put up an application for effecting mutation on 26.02.2004 before the Village Officer and he had remitted the fee for the same, for which receipt also was issued by the Village Officer and on the same day, the Village Officer and the Village Assistant (in fact, referred the Village Assistant, the 2nd accused, as the village man) demanded Rs.500 for effecting mutation after tracing out the records. It is further pointed out that during evidence also, PW1 deposed about 'something was asked by the Village Officer' but in the Chief Examination, he did not state anything regarding any demand made by the 2nd accused. Therefore, the points pressed by the learned senior counsel for the accused is that there is no evidence to prove the demand of bribe by accused Nos. 1 and 2.

[7] Apart from that, he pointed out the non-conduct of pre-trap verification in this case. According to him, even though CW6, the Village Man, was cited as a witness on the side of the prosecution, he was not examined.

[8] According to the learned senior counsel for the accused, even though the prosecution suppressed the documents recovered as per Ext.P4, without producing the same before the Special Court, by examining DW1, the Special Village Officer, Ext.D3, i.e., Form A prepared on 26.02.2004 for the purpose of effecting mutation in respect of the property of PW1 was proved through DW1. According to the learned senior counsel for the accused, since the application submitted by PW1, for effecting mutation, where there was subdivision of the property, was forwarded as early on 27.02.2004, there is no grievance for the petitioner to pay bribe in the matter of mutation. Thus, the prosecution case otherwise is in the midst of doubts. The learned senior counsel would submit that the accused are entitled for the benefit of doubt in this matter. In support of this contention, he has placed decision of the Apex Court in State by Lokayuktha Police Davanagere v. C. B. Nagaraj, 2025 KHC 6519, where the Apex Court held as under:

"The observation of the High Court to this extent is correct that just because money changed hands, in cases like the present, it cannot be ipso facto presumed that the same was pursuant to a demand, for the law requires that for conviction under the Act, an entire chain - beginning from demand, acceptance, and recovery has to be completed. In the case at hand, when the initial demand itself is suspicious, even if the two other components - of payment and recovery can be held to have been proved, the chain would not be complete. A penal law has to be strictly construed."

[9] Similarly, another decision of the Apex Court in Sambasiva Rao M v. State of Andhra Pradesh, 2025 KHC 6618, the Apex Court granted benefit of doubt to the accused after discussing the evidence as under:

"We say so, in view of three glaring contradictions in the prosecution evidence which cumulatively shake the foundations of the prosecution case and render its death knell. Having analysed the evidence threadbare and considered the entire evidential gamut, we find that the prosecution has not proved beyond reasonable doubt the demand of and acceptance of the bribe in the trap laid by PW12. This is, to be charitable to the investigative agency, at best a case of a botched-up trap with serious lapses committed by the investigative agency. The role of the SP and PW12 also calls for a detailed look, but in view of the fact that they are not before us, we refrain from further comment. At its worst, this case is an example of fabrication and attempted frame-up. Whatever be the truth of the matter, the fact remains that in either scenario, benefit of doubt has to flow to the appellant. It would be unsafe to uphold the conviction of the appellant in any view of the matter. In view of our foregoing discussion, we set aside the Impugned Judgment and restore the Judgment and Order of the Trial Court."

**[10]** Another decision of the Apex Court in *Madan Lal v. State of Rajasthan*, 2025 KHC 7187 also has been placed by the learned senior counsel for the accused, wherein the apex court observed in paragraph No.15 as under:

"15. On an examination of the evidence, there is considerable doubt raised in our mind, which qualifies as reasonable doubt, as to whether there was acceptance of bribe amounts by both the accused. True, the officers of the trap team spoke about the handing over of the money by the complainant to the 1st accused who handed over half, to the 2nd accused; which amounts were said to have been put by both the accused in their trouser pockets. PW 8 who led the trap team merely spoke of a recovery of the bribe amounts from the possession of the accused and the hands and trousers of the accused having positively reacted to the test solution. The said deposition is contrary to the statements made by the independent witnesses that some notes were found thrown on the floor. None of the officers spoke of any of the accused having taken out the notes and thrown it on the floor."

**[11]** Another decision of this Court in *Meena Balwant Hemke v. State of Maharashtra*, 2000 KHC 1785 also has been placed to contend that prosecution has to prove the charge beyond reasonable doubt and accused should be considered innocent, till it is established otherwise by proper proof of acceptance of the illegal gratification, the vital ingredient, necessary to be established to procure a conviction for the offences under consideration. Currency note in question was not recovered from the person or from the table drawer, but when the trap party arrived was found only on the pad on the table and seized from that place only. Such recovery does not conclusively lead to inference of acceptance of bribe by accused.

**[12]** Another decision of this Court in *Hariharan P.A. v. State of Kerala*, 2021 3 KHC 85 also has been placed to contend that the demand and acceptance are essential to prove the offence under Sections 7 and 13(2) r/w Section 13(1)(d) of the PC Act,

1988 and in the said case, this Court convicted the accused where no evidence forthcoming to see the demand.

**[13]** Apart from that, the learned senior counsel placed decision of the Apex Court in *Mir Mustafa Ali Hasmi v. State of A.P.*, 2024 KHC 6354, and the same discussed the necessity of the convention that, in trap laying cases, the trap laying officer has to verify the factum of demand by the public servant for vitiating the trap proceedings.

**[14]** Repelling the contentions raised by the learned senior counsel for the accused, the learned Public Prosecutor submitted that in this case, as far as demand of bribe by accused Nos.1 and 2 after having hatched to do so, is concerned, the evidence of PW1 to the effect that after filing the application for effecting mutation on 26.02.2004, accused Nos.1 and 2 demanded Rs.500 to expedite the proceedings, and intimated that there would be delay otherwise would suffice. Apart from that, the learned Public Prosecutor pointed out that PW1 deposed about the demand made by the 1st accused during chief examination and the 2nd accused during cross-examination, and thereafter, acceptance of the same by both of them. Therefore, the recovery of the amount, as deposed by PW2 and PW6, would show that there was demand and acceptance.

**[15]** The learned Public Prosecutor fairly conceded that in this case, there is no pre-trap verification and the same is not mandatory in all cases. According to him, non-conduct of pre-trap verification by itself could not be sufficient to wash away convincing evidence available to prove the guilt of the accused. Regarding non-production of the documents, recovered as per Ext.P4, particularly, Ext.D3, the learned Public Prosecutor would submit that Ext.P15 register, showing preparation of Form A on 26.02.2004, was produced by the prosecution and therefore, non-production of other documents on the same fact could not be held as suppression of material evidence. It is also pointed out that even though CW6, the village man, cited as a witness, he was not examined since the points to be proved by him was proved through other witnesses and therefore, his non-examination was not deliberate.

**[16]** Having considered the rival contentions, the points arise for consideration are;

1. Whether the Special Court went wrong in finding that the accused committed offence punishable under Section 7 of the PC Act, 1988?
2. Whether the Special Court went wrong in finding that the accused committed offence punishable under Section 13(2) r/w 13(1)(d) of the PC Act, 1988?
3. Whether the Special Court went wrong in finding that the accused committed offence punishable under Section 120B of IPC?
4. Whether the verdict would require interference?
5. The order to be passed?

**[17]** Point Nos.1 to 5

In the instant case, after 313(1)(b) Cr.P.C. examination, accused Nos.1 and 2 were questioned and after questioning, the Village Officer put up a case that, at 4.00 pm on 25.02.2004, Sri.Saseendran submitted an application for mutation of his property. After examining the related documents in the village, he and the Village man went for site inspection, that on the next day, the applicant remitted the mutation fee of Rs. 10 and returned with the receipt and on the next day, the documents relating to the mutation were prepared and signed by him and he entrusted the same with the Village Assistant. The said documents were sent to the Taluk office on 27.02.2004. He was on leave on 03.03.2004. The applicant came to the village office on 06.03.2004 and enquired whether the mutation had been effected. He asked the Village man to bring the 'pokkuvaravu register'. Village man brought the same. He asked whether mutation had been sanctioned and returned to the village office. The Village man verified the register and told that the documents had been sent to the Taluk office on 27.02.2004 and the same had not been returned yet. The complainant shook his right hand saying that it was a big help as the documents had been sent on 27.02.2004 itself. Then the complainant shook both hands of the village man and expressed his gratitude. complainant turned back, 4-5 persons entered into the room and forcibly held their hands. As indicated by the complainant, the Dy.S.P. took the notes from the book. Then the hands of himself and Village man were forcibly dipped in some solution and shirts were removed and then they were taken to the Dy.S.P. office and then to the Court. In the proceedings on the application submitted by the complainant he did not demand any money or did not accept. He is innocent.

**[18]** The contention of the 2<sup>nd</sup> accused is that he worked as Village man for 8 years in Konny village office before the date of incident in this case. On 25.02.2004 at 4:00 P.M, as directed by the 1<sup>st</sup> accused, he verified the documents of the property of Sri.Saseendran and entrusted the same with the Village Officer. They went for site inspection and returned. On 03.03.2004, the complainant came to the village office and he was informed that Village Officer was on leave and his application was sent to the Taluk office. On 06.03.2004, in the afternoon, Village officer asked him to bring 'pokkuvaravu' register and accordingly, he went to the Village Officer's room with the register. Sri.Saseendran was present in the room. He replied to the Village officer that the documents were sent to Taluk office on 27.02.2004 and it was not returned with sanction. The complainant was shown the relevant pages in the register. Then Sri.Saseendran shook hands of the 1<sup>st</sup> accused. Then he shook his both hands expressing his pleasure and saying that it was a big help as the document was sent on 27th day itself. Sri. Saseendran tried to place something inside the register and he withdrew the register. Then 4-5 persons entered into the office, held their hands forcibly. As pointed out by the complainant, the Dy.S.P., took the notes from the book. Then their fingers were forcibly dipped in solution and their shirts were removed, then they were taken to the Dy.S.P. office and then to the Court. He has no right or

responsibility in taking any action on the application given by the complainant. He did not demand or accept money. He is innocent.

[19] Coming to the evidence available to establish the ingredients of the offences under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988, found to be committed by accused Nos.1 and 2, it is necessary to discuss the same.

[20] The prosecution has given heavy reliance on the evidence of PW1 to prove the demand and acceptance of bribe by accused Nos.1 and 2. PW1 deposed that, he had purchased 111/2 cents of property in the year 1994 from one Shaila, and he submitted application for mutation on 26.02.2004 to the Village Assistant (actually, the Village man), Sri.Sainalabdheen at Konny village office. He remitted the fees and the receipt was given at the office itself. The Village officer, Raju Abraham, and the Village Assistant told him that there would be delay in effecting the mutation and the same would be effected without delay if he would give Rs.500 to them. Accordingly, he gave Rs.200 to the Village Assistant and he had accepted the same. Then both of them told him that the mutation would be effected if the balance amount would be paid. He further testified that on the same day itself, Village Officer and Village Assistant inspected the property and after their return to the village office, the Village Assistant prepared the records and asked him to give to the Village Officer. Accordingly, he gave the same to the Village Officer, and at that time, the Village Officer asked PW1 about the balance amount as said by the Village Assistant, when PW1 replied that the balance money was not with him as he did not have money at that time, the Village Officer told him that there would be delay. He again approached the Village Assistant and he was told to give the balance amount and to obtain the records. Village Assistant told him that out of Rs. 200 given to him, he gave Rs.100 to the Village Officer. On 03.03.2004, he again went to the village office, he was not given with the records and the Village Officer told him that if the balance amount would be given papers could be given by hand. He approached the Village Assistant and he also told him the same. He had given a complaint at the vigilance office on 06.03.2004 and Ext.P1 is the complaint reduced into writing at the Vigilance office and he put signature therein. PW1 further stated that he produced 3 currency notes of the denomination Rs.100 before the Dy.S.P., that the officers Sri.Venugopal and Sri.Mohanan were present at that time, that the Dy.S.P. and the said witnesses initialled on the notes.

[21] The evidence of PW1 on the date of trap is that, when the trap team, along with him, reached the Village Office, the police men waited outside and he entered the room of the Village Officer and given Rs. 200 to the Village Officer and Rs. 100 to the Village Assistant. Thereafter, he enquired the Village Officer whether the other things got ready and the Village Officer replied that those are ready and would be issued. According to him, both of them accepted the money and put the money in their pockets. According to PW1, he had given Rs. 200 to the Village Officer when the Village Officer demanded as to whether other thing brought. PW1 deposed further that

when he had given Rs. 100 to the Village Assistant, he agreed to ready the documents. Thereafter, he came out and gave the signal as directed. Then the Vigilance party entered the room and recovered the money.

[22] In the instant case, the prime contention raised by the learned senior counsel for the appellants is that, there was no demand of bribe by the appellants/accused Nos.1 and 2. On scanning the evidence of PW1, it could be seen that the prosecution alleges hatching of conspiracy in between accused Nos.1 and 2 in the matter of demand of Rs. 500 from PW1 for effecting mutation acting on the application submitted by PW1 on 26.02.2004 in respect of 11.5 cents of property purchased by PW1 from one Shaila in 1994. PW1 categorically deposed that the Village Officer, Sri.Raju Abraham and the Village Assistant, Sri. Sainalabdheen, who were at the dock, said to him that in order to effect mutation, there would be delay to search out the documents and both of them said to PW1 that if Rs. 500 would be paid to them, the mutation process would be expedited. PW1 has a specific version that on 26.02.2004, ie., on the date of application, he handed over Rs. 200 to the Village Assistant as demanded and was accepted by him. According to PW1, then the 2nd accused agreed to effect the mutation if he would reach the office along with the balance amount. In continuation of the same, on the date of trap, when he entered the office of the Village Officer, he asked as to whether the other item [1] was brought and he replied that the same was brought. Then the Village Officer demanded to give the same. Accordingly, he had paid Rs. 200 to the Village Officer and Rs. 100 to the Village Assistant and the Village Assistant agreed to ready the records on getting the money.

[23] Pw2 deposed that he was U.D. Clerk in Consumer Dispute Redressal Forum, Pathanamthitta in the year 2004 and on 06.03.2004, as per the direction of the President, he went to assist in a vigilance case. He reached the vigilance office at about 10:15-10:30 A.M, Sri.Mohanan who was Clerk in District Medical Store was also present, the Dy.S.P. read over the complaint to them, that the complainant produced Rs.300 before the Dy.S.P. and he and the other witness and Dy S.P. initialled on the notes. PW2 and PW6 had identified the said notes as M.O.1 series.

[24] Pw6, the then Dy.S.P., V.AC.B, Pathanamthitta deposed that at 9:30 A.M, on 06.03.2004 he recorded the statement given by PW1 and registered V.C. 01/2004 under Sections 7 and 13(2) r/w 13(1) (d) of the PC Act, 1988 and Section 34 of IPC and Ext.P1 (a) was the F.I.R. As per his requisition, the official witnesses Sri.Mohanan and Sri.Venugopal reached at the Vigilance office and the F.I.R. was read over to them.

[25] Pw6 further stated that phenolphthalein powder was smeared on the notes through Head Constable, another Head Constable touched the notes and when his fingers were dipped in sodium carbonate solution, the fingers and the solution turned pink and MO2 is the bottle containing the said solution. The notes were given back to PW1 with direction that the same should be given to the accused persons only if they demanded. PW1 and PW2 corroborated the said version. PW6 further said that Ext.P2

is the mahazar prepared by him regarding the things done at the vigilance office and PW2 deposed that he had signed in it. PW2 and PW6 deposed that they went to Konny village office at about 12:15 P.M., and upon reaching there, PW1 and one constable were sent to the village office. PW6 stated that policemen were deputed to relay the signal that would be given by PW1 after the accused persons accepted the bribe.

[26] Pw6 deposed further that after getting signal from the police men, he and the witnesses entered the village office. PW1 was standing in front of the office, and he introduced himself to the Village Officer and the Village Assistant. PW1 deposed that the Village Officer and the Village Assistant were inside the room, that the Village Officer asked him about the balance amount, and that he replied he had brought it. He further stated that he gave Rs. 200 to the Village Officer and Rs. 100 to the Village Assistant, and that they placed the money in their shirt's pockets. He further testified that he and the witnesses dipped their fingers in sodium carbonate solution and that there was no color change and MO3 was the bottle containing the said solution. In another glass the solution was taken, and the fingers on the left hand of the accused were dipped in it, there was no color change and when the right hand fingers of the village officer were dipped in sodium carbonate solution, the solution showed pink color change. The said solution was taken in a bottle, sealed, labeled and marked as 'C' and he and the witnesses signed it. He identified MO4 as the bottle which contains the signature. He identified the 1st accused in the dock as the said village officer. When he asked the village officer about the money he replied that he did not demand money and that PW1 placed the notes there and he showed a rough book. The witness Sri.Mohanam took the notes and on examination, it was found that the notes were the same notes entrusted with PW1 as per mahazar. When the corner of the notes were dipped in sodium carbonate solution, the dipped portion and solution turned pink. MO5 was the bottle containing the said solution. 1st accused had additionally had Rs. 4,130 with him. His shirt was removed and on dipping the pocket portion in sodium carbonate solution, the said portion turned pink. MO6 was the bottle containing the said solution. MO11 is the shirt worn by 1st accused at that time.

[27] Pw6 further said that when the Village Assistant Sri.Sainalabdheen was questioned, he replied that he did not demand money and he saw PW1 placing something inside a book and something fell down when he took the book. PW1 replied that he had given the money into the hands of the 2nd accused and it was put in the pocket of the shirt. A Rs.100 rupee note in a wrinkled manner was found on the floor where the 2nd accused was standing. The witness Venugopal took it and on examination, it was found to be the same note given as per the entrustment mahazar. When the left hand fingers of the 2nd accused was dipped in sodium carbonate solution, it turned pink. MO7 was the bottle containing the said solution. Then the right hand fingers of the 2nd accused were dipped in sodium carbonate solution, the same also showed pink colour change. MO8 was the bottle containing the said solution. When the corner portion of the Rs.100 note was dipped in sodium carbonate

solution, then the dipped portion and solution turned pink. MO9 was the bottle containing the said solution. The witness Sri.Mohanan conducted his body search and there was other notes in his shirt. His shirt was removed and on dipping in sodium carbonate solution, it turned pink. MO10 was the bottle containing the solution and MO12 was the shirt worn by 2nd accused at that time.

[28] In comity with the decisions argued by the learned senior counsel for the accused based on the decisions referred herein above, it is necessary to address the ingredients to prove the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988. The same are extracted as under:-

**"Section 7:- Public servant taking gratification other than legal remuneration in respect of an official act.** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government Company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

**Section 13:- Criminal misconduct by a public servant.** (1) A public servant is said to commit the offence of criminal misconduct,-

a) xxxxx

(b) xxxxx

(c) xxxxxx

(d) If he,- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. xxxxx

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine".

[29] In this connection, it is relevant to refer a 5 Bench decision of the Apex Court in **Neeraj Dutta v. State**, 2023 AIR(SC) 330 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."

**[30]** Thus, the legal position as regards to the essentials under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act, 1988, is extracted above. Regarding the mode of proof of demand of bribe, if there is an offer to pay bribe by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant. The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands. The mode of proof of demand and acceptance is either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant. Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law.

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

"12. Indubitably in **Neeraj Dutta's** case (supra) the Apex Court held in paragraph No. 69 that there is no conflict in the three judge Bench decisions of this Court in B. Jayaraj and P. Satyanarayana Murthy with the three judge Bench decision in M. Narasinga Rao, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no conflict between the judgments in the aforesaid three cases. Further in Paragraph No. 70 the Apex Court held that in the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and 13(1)(d) r/w Section 13(2) of the Act based on other evidence adduced by the prosecution. In paragraph No. 68 the Apex Court summarized the discussion. That apart, in **State by Lokayuktha Police's** case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the offences punishable under Section 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and held that demand and acceptance of bribe are necessary to constitute the said offences. Similarly as pointed out by the learned counsel for the petitioner in **Aman Bhatia's** case (supra) the Apex court reiterated the same principles. Thus the legal position as regards to the essentials to be established to fasten criminal culpability on an accused are demand and acceptance of illegal gratification by the accused. To put it otherwise, proof of demand is sine qua non for the offences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and de hors the proof of demand the offences under the two Sections could not be established. Therefore mere acceptance of any amount allegedly by way of bribe or as undue pecuniary advantage or illegal gratification or the recovery of the same would not be sufficient to prove the offences under the two Sections in the absence of evidence to prove the demand."

[32] In the instant case, as per the evidence discussed, the prosecution relied on the evidence of PW1 to prove the demand of bribe by the accused persons on 24.02.2004 and on 06.03.2004. It is true that, PW1 deposed about the demand of bribe by accused Nos. 1 and 2 on 03.03.2004 also. But as per Ext. P11 attendance register, the 1st accused was on casual leave on that day. In this connection, it is relevant to note

that when public servants, such as Village Officers, may usually present in the office, sometimes even they would be on leave. Otherwise, the date stated by PW1 may be a mistake. Otherwise eschewing demand on 03.03.2004 in the above context, then also, demand of bribe by accused Nos.1 and 2 jointly on 26.02.2004 on the date of putting the application for mutation, and acceptance of the same after demand on 06.03.2004 to be read out from the evidence of PW1. Regarding the phenolphthalein test conducted at the hands of the accused, recovery of the same from the shirt's pockets of accused Nos.1 and 2 and consequential colour change observed in MO1, MO3, MO4 etc. to prove the acceptance of bribe money by accused Nos.1 and 2 respectively was found to be convincing and PW2, the decoy witness, also categorically stated so. It is true that recovery of the money from the 2nd accused was from the floor of the office since the same fell down from the note book where the 2nd accused had placed the same. On identifying the Rs. 100 note recovered from the floor, which was alleged to have been accepted by the 2nd accused, it was verified and found to be the note described in the entrustment mahazar, as deposed by PW6 and PW2. PW6 and PW2 also deposed about dipping of the left hand and right hand fingers of the 2nd accused in the sodium carbonate solution and its colour change. MO7 and MO8 are the solutions so collected.

[33] Coming to the first contention raised by the learned senior counsel for the appellants/accused that as evident from Ext.D3 as well as Ext.P4, Form-A was prepared for mutating the property of PW1 on 26.02.2004 and forwarded the same on 27.02.2004 and therefore, there is no necessity to pay bribe thereafter on the date of trap on 06.03.2004, it has to be observed that the preparation of Form A on 26.02.2004 and forwarding, as evident from Ext.D3 and Ext.P4, are matters known to the accused persons or other officials of village office. As far as PW1, a third party, is concerned, unless he was not specifically informed of those steps, his impression would be that his application for mutation would be addressed by moving further steps only when the demanded bribe amount would be given. In this matter, the evidence given by PW1 would indicate that PW1 bona fide believed that only when he would pay the bribe, part of which was paid on 26.02.2004 itself and the balance paid on the date of trap, his application for mutation would not be materialised and accordingly, he had given the bribe on demand of the same. Therefore, Ext.D3 and Ext.P4 would not take away the case of the prosecution, supported by PW1 in the above line. Therefore, this contention is set at rest. Same is the position as regards to non-examination of DW1 on the prosecution side, since the purpose of his examination was satisfied by the prosecution otherwise.

[34] Regarding non-conduct of pre-trap verification in the instant case, as submitted by the learned Public Prosecutor, there was no pre-trap verification. It is true that pre-trap verification is a convention being followed with a view to avoid false implication of government officials based on flimsy allegations. However, when there is an allegation and, without pre-trap verification, FIR was registered and consequently

the trap was succeeded and the same was proved by evidence, non-conduct of pre-trap verification by itself would not affect the prosecution case in any manner. Therefore, this contention is also dispelled.

[35] Thus on re-appreciation of evidence, what could be found is that there was demand by accused Nos.1 and 2 to pay Rs.500 to effect mutation of the property of PW1, as part of conspiracy hatched between them and out of which Rs. 200 was demanded and accepted by the 2nd accused on 26.02.2004 itself. Thereafter, on the date of trap also, they demanded and accepted the money. Therefore, the Special Court is right in holding that the prosecution succeeded in proving the offences punishable under Section 7 and 13(1)(d) r/w 13(2) of PC Act, 1988 and in such view of the matter, the conviction does not require any interference. Coming to the sentence, I am inclined to modify the sentence to the statutory minimum, in the interest of justice.

[36] In the result, this appeal is allowed in part. The conviction imposed against the appellants/accused Nos.1 and 2 is confirmed and the sentence stands modified.

1. The appellants/accused Nos.1 and 2 are sentenced to undergo rigorous imprisonment for a period of six months each and to pay fine of Rs. 10,000 each for the offence punishable under Sec. 7 of the Prevention of Corruption Act, 1988 r/w 120B of the Indian Penal Code. In default of payment of fine, both the accused shall undergo rigorous imprisonment for a period of one month.

2. The appellants/accused Nos.1 and 2 are sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs. 10,000 each for the offence punishable under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. In default of payment of fine, both the accused shall undergo rigorous imprisonment for a period of one month.

3. The appellants/accused Nos.1 and 2 are sentenced to undergo rigorous imprisonment for a period of six months.

4. The sentences shall run concurrently. Both accused are entitled for set off from 06/03/2004 till 09/03/2004 under Sec.428 Cr.P.C.

[37] The order suspending sentence and granting bail to accused Nos.1 and 2 stands vacated, with direction to the accused to appear before the special court forthwith to undergo the modified sentence, failing which, the Special Court is directed to execute the sentence, without fail.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith for information and compliance

-----

2026(1)AICC113

**PUNJAB AND HARYANA HIGH COURT**

(Hon'ble Judge: Tribhuvan Dahiya)

CrM M (Criminal Main) No 56380 of 2025 dated 07/11/2025

*Bhupinder Singh Hooda*

**Versus**

*Central Bureau of Investigation*

**POSTPONEMENT OF TRIAL**

Indian Penal Code, 1860 Sec. 420, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 120B - Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 397, Sec. 309 - Prevention of Corruption Act, 1988 Sec. 13 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528, Sec. 346 - Postponement of Trial - Petition under Sec. 528 BNSS filed for quashing order refusing postponement of trial - FIR registered alleging conspiracy to drop land acquisition proceedings causing wrongful gain to private entities - Application seeking adjournment rejected by Special Judge - Contention raised that in absence of stay against co-conspirators charge cannot be framed - Court observed petitioner never challenged earlier order refusing discharge and same attained finality - Stay granted to co-accused does not entitle petitioner to same benefit - Proceedings against petitioner can continue separately - Trial under Prevention of Corruption Act cannot be stayed under Sec. 19(3)(c) PC Act - Petition devoid of merit - Petition Dismissed

**Law Point: Stay of trial cannot be granted in Prevention of Corruption Act cases as Sec. 19(3)(c) expressly prohibits such stay even under inherent jurisdiction of High Court.**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 420, Sec. 468, Sec. 465, Sec. 471, Sec. 467, Sec. 120B  
Code of Criminal Procedure, 1973 Sec. 482, Sec. 173, Sec. 397, Sec. 309  
Prevention of Corruption Act, 1988 Sec. 13  
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528, Sec. 346

**Counsel:**

R S Cheema (Senior Advocate), Pardeep Singh Poonia (Senior Advocate), Sumanjit Kaur, Tarannum Cheema, Satish Sharma, Ravi Kamal Gupta

**JUDGEMENT**

**Tribhuvan Dahiya, J.- [1]** The petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS) for quashing the orders dated 19.09.2025, Annexures P-1 and P-2, passed by the Special Judge, CBI, Panchkula, whereby the petitioner's application seeking postponement of trial proceedings has

been dismissed, and the case has been fixed for framing of charge against the accused, including the petitioner, in whose favour no stay has been granted by the Supreme Court, in case FIR no. RCCHG 2015A0019 dated 15.09.2015, under Sections 420, 471 and 120-B of the Indian Penal Code, 1860 (IPC), and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, (PC Act) titled CBI v. Bhupinder Singh Hooda and others.

[2] An FIR no.510, dated 12.08.2015, under Sections 420, 465, 467, 468, 471 and 120-B IPC and Section 13 PC Act, was registered at Police Station Manesar, District Gurugram, for dropping the acquisition proceedings of land acquired by the State Government. Investigation of the case was transferred to the respondent/Central Bureau of Investigation (CBI) on 14.08.2015, which registered the case in question dated 15.09.2015, Annexure P-3. Final report/chargesheet, dated 01.12.2018, under Section 173 Cr.P.C. was presented before the Special Judge against the petitioner, along with other accused, for commission of offences punishable under Sections 420, 120-B IPC and Section 13(1)(d) read with 13(2) PC Act. The arguments on the point of framing of charge against the petitioner and other accused were heard and the prayer for discharge of the accused was declined by the trial Court vide order dated 01.12.2020. By the same order, five prosecution witnesses were summoned as additional accused in the case. Separate petitions were filed by seven accused, excluding the petitioner, namely, Murari Lal Tayal (A-2), Chattar Singh (A-3), Sudeep Singh Dhillon (A-4), Jaswant Singh (A-5), Anil Kumar Batra (A-23) and Frontier Home Development Limited, Guru Nanak Infrastructures Developers Private Limited (A-31), challenging the order dated 01.12.2020, directing framing of charge. The five additional accused, namely Rajeev Arora, Surjit Singh, Dhare Singh, Kulwant Singh Lamba and D. R. Dhingra, also filed separate petitions before this Court challenging the order summoning them. Both batches of petitions were finally dismissed vide separate orders passed by this Court on 15.05.2025, Annexure P-5. The trial remained stayed till passing of these orders. Both the orders were challenged before the Supreme Court by way of separate SLPs by the co-accused, and further proceedings before the trial Court were stayed vide separate orders passed between 29.05.2025 to 22.09.2025, Annexure P-6, qua accused A-2 to A-5, as also the additional accused. In these circumstances, the petitioner filed an application before the trial Court for postponement of proceedings primarily on the ground that due to the stay charges cannot be framed against him alone as all of them are accused of conspiracy on the same set of allegations, and even the additional accused are part of this conspiracy. The application was, however, dismissed vide the impugned order dated 19.09.2025, and the case was fixed for framing of formal charge on 30.10.2025 against the petitioner and other accused in whose cases stay was not granted by the Supreme Court.

[3] In this factual background, learned senior counsel for the petitioner has contended that allegations against the petitioner involve a single transaction. He

statedly conspired with government functionaries, accused A-2 to A-5, and others in deliberately allowing the land acquisition proceedings to lapse. As the trial against co-conspirators, A-2 to A-5, has already been stayed, charge cannot be framed against the petitioner alone, nor can the trial proceed. The evidence against all these accused is common, and none of the witnesses can be examined in the absence of either of them. Secondly, he has submitted that the trial Court has failed to exercise the jurisdiction vested in it under Section 309 Cr.P.C. (Section 346 BNSS), which empowers the Court to adjourn the proceedings for valid reasons. There cannot be a better case for adjournment as no charge can be framed against the petitioner in the circumstances explained above.

[4] Per contra, learned counsel for the respondent/CBI contends that there is no infirmity in the order passed by the trial Court rejecting the petitioner's application for postponement of proceedings, as the order dated 01.12.2020 declining his prayer for discharge has not been challenged. Further, the Supreme Court has not granted stay of trial proceedings qua the petitioner, as has been the case with some other accused who filed SLPs before the Court which are pending consideration. The case in question was registered pursuant to directions issued by the Supreme Court in **Rameshwar and others v. State of Haryana and others**, 2018 6 SCC 215, and postponement of proceedings would only delay the trial which will be in violation of the directions. Still further, he has placed reliance upon the judgment in **Satya Narayana Sharma v. State of Rajasthan**, 2001 8 SCC 607, holding that trial in cases under the PC Act cannot be stayed by the High Court even in exercise of inherent jurisdiction under Section 482 Cr.P.C., as there is a specific bar against it under Section 19(3)(c) of the Act.

[5] Submissions made by learned counsel for the parties have been considered.

[6] The petitioner is accused of committing offences under Sections 420, 120-B IPC and Section 13(1)(d) read with 13(2) PC Act, for dropping the land acquisition proceedings in the aforementioned FIR. The allegations are that he being the Chief Minister and other senior functionaries of the Government, i.e., Principal Secretary to Chief Minister (A-2), Additional Principal Secretary to Chief Minister (A-3), Director, Town and Country Planning Department (A-4) and District Town Planner (HQ), Town and Country Planning Department (A-5), in conspiracy with each other, and other co-accused, deliberately allowed acquisition proceedings of the land at Manesar to lapse by ensuring that the award determining compensation is not passed within the statutorily prescribed period. Before that the land owners were forced to sell their land holdings in panic on the threat of acquisition by the Government for public purposes, and after abandonment of the acquisition proceedings, various licenses and permissions for change of land use (CLUs) were issued to ineligible builders/applicants. This caused huge loss to the State exchequer as well as the land owners, and wrongful gain to private builders/entities/accused. After presentation of the final report/chargesheet dated 01.12.2018, the petitioner filed an application before

the trial Court seeking discharge which was dismissed vide order dated 01.12.2020, directing framing of charge against him as well as other accused. The petitioner never challenged the order, though it was challenged by some of the co-accused, including A-2 to A-5, before the High Court by filing separate petitions. The trial remained stayed during pendency of the petitions. The same were finally dismissed vide orders dated 15.05.2025, which are under challenge before the Supreme Court in separate SLPs; stay has been granted on proceedings before the trial Court only in those cases. Taking a cue, the petitioner also sought postponement of proceedings before the trial Court which has been declined on the ground that there is no stay on proceedings against him. The contention by Mr. Cheema that in the absence of coconspirators as trial qua them has been stayed the petitioner cannot be charged for conspiracy, is without substance. It is because the petitioner himself has not challenged the order, dated 01.12.2020, declining his application for discharge. It has attained finality qua him, leaving no option with the trial Court but to frame the charge. He cannot be permitted to impede the obvious outcome of that order by alluding to an interim order of stay granted in favour of the co-accused. His attempt to do so is imprudent and clearly an afterthought as he has accepted the order directing framing of charge against him, dated 01.12.2020. Besides, stay of trial against the coaccused cannot be a ground to postpone the trial against the petitioner as well, since despite this stay charge can be framed and evidence can be recorded. He is not accused of the offence of conspiracy alone, other offences under the IPC and the PC Act are also there. In case the SLPs against the co-accused are to be finally dismissed, they can be charged separately and evidence can then be taken against them; and in case their SLPs are to be allowed, it will have consequence only for the offence of conspiracy so far as the petitioner is concerned. Accordingly, framing of charge and proceeding with the trial will not cause any prejudice to the petitioner. In this view of the matter, the second argument by Mr. Cheema also loses steam as it cannot be said there exists any valid reason for the trial Court to adjourn the proceedings by invoking the powers vested under Section 346 BNSS.

[7] Further, as laid down in Satya Narayana Sharma case *ibid.*, trial of cases under the PC Act cannot be stayed by the High Court in exercise of its inherent jurisdiction. It is apt to refer to following observations of the Court in this regard:

13. We find that what has happened in this case is happening in a large number of matters. Corruption in public offices is becoming rampant. When public servants are sought to be prosecuted under the said Act, by filing revisions under Section 397 Criminal Procedure Code, 1973 or by filing petitions under Section 482 Criminal Procedure Code, 1973 stay of the trials are obtained and parties successfully manage to delay the trials. The stays are granted by Courts without considering and/or in contravention of Section 19(3)(c) of the said Act. This has an adverse effect on combating corruption amongst public servants. It has therefore become necessary to

reiterate the law. We have thus heard this Petition only on the question of law as to whether or not trials under the Prevention of Corruption Act could be stayed.

14 to 23 xxx xxx xxx

24. We see no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

25. Thus in cases under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code, 1973 is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned Court to expedite the hearing of that petition. However, merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.

[8] In view of the discussion, there is no merit in the petition and it stands dismissed

-----  
2026(1)AICC117

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

(Hon'ble Judge: A Badharudeen)

Crl A (Criminal Appeal) No 913 of 2018, 905 of 2018 **dated 06/11/2025**

*A Salahudeen; O Azeez*

**Versus**

*State of Kerala; Deputy Superintendent of Police*

**BRIBE TRAP**

Indian Penal Code, 1860 Sec. 120B - Prevention of Corruption Act, 1988 Sec. 13, Sec. 7 - Bribe Trap - Accused public officials convicted for accepting bribe - Defence argued no proof of demand and complainant deceased - Evidence from son and officer insufficient - Tape recording missing - Prosecution failed to prove essential ingredient of demand - Court found conviction based on suspicion - Absence of direct evidence fatal to prosecution - Conviction set aside and appeals Allowed - Appeals Allowed

**Law Point: Proof of demand and acceptance of bribe are sine qua non for conviction under Sections 7 and 13 of Prevention of Corruption Act.**

**Acts Referred:**

Indian Penal Code, 1860 Sec. 120B

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7

**Counsel:**

M V S Nampoothiry, S Presannakumar, Rekha S, Rajesh A, V Vijitha, Sruthy N Bhat, P Vijaya Bhanu (Senior Advocate)

**JUDGEMENT**

**A. Badharudeen, J.-** [1] These Criminal Appeals have been filed by accused Nos.1 and 2 in C.C.No.3 of 2014 on the files of the Enquiry Commissioner & Special Judge, Thiruvananthapuram. The appellants impugn judgment dated 30.06.2018 in the above case. Respondent is State of Kerala represented by Vigilance Anti Corruption Bureau ('VACB' for short).

[2] Heard the learned counsel appearing for accused Nos.1 and 2. Also heard the learned Public Prosecutor appearing for the VACB. Gone through the verdict under challenge and the decisions placed by the learned counsel appearing for the accused.

[3] The prosecution case herein is that the 1st and 2nd accused, who were the Village Officer and the Part-time Sweeper, Punnakkal Village respectively hatched criminal conspiracy to obtain illegal gratification from Sri Kuttappan, the complainant, for effecting mutation of his property and in consequence thereof, on 20.09.2011 accused Nos.1 and 2 accepted bribe. Thus the prosecution alleges commission of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act ('PC Act, 1988' for short) as well as Section 120B of the Indian Penal Code ('IPC' for short), by accused Nos.1 and 2.

[4] The Special Court proceeded with trial acting on the final report filed. During trial, PW1 to PW6 were examined and Exts.P1 to P40 were marked. Apart from that, MO1 to MO12 also were marked on the side of the prosecution. No defense evidence was adduced. On appreciation of the evidence tendered, the Special Court found that accused Nos.1 and 2 committed offences under Sections 7 and 13(1)(d) read with 13(2) of the PC Act, 1988 and 120B and accordingly they were sentenced as under:

"(a) Both accused are found guilty, convicted and sentenced to undergo rigorous imprisonment for a period of two years (2 years) and fine to the tune of Rs.10,000/- in default to undergo rigorous imprisonment for 90 days under each count U/s.7, 13(1)(d) r/w 13(2) of P.C Act and U/s.120B of IPC.

(b) The substantive sentence shall run concurrently."

[5] The learned Senior Counsel appearing for the 1st accused vehemently submitted that the entire trap proceedings are vitiated or in the midst of doubt. He has pointed out that even otherwise, Kuttappan, the complainant, was no more and therefore his evidence was not recorded to prove the demand and acceptance of bribe. According to the learned Senior Counsel appearing for the 1st accused, as far as the ingredients to prove the demand, no evidence is available and the evidence of PW1, the son of Kuttappan, supporting the prosecution evidence, in no way would suggest that the accused had demanded the amount and accepted the same. He also pointed out that even though PW1 had given evidence that he had forwarded the recording of

demand made by the 1st accused during September and forwarded the same to the Vigilance Officer through blue-tooth, no such evidence is forthcoming and the Investigating Officer PW6 deposed that since PW1 deleted the original of the same from his phone, the evidence with regard to the same could not be collected. The sum and substance of the argument at the instance of the learned Senior Counsel appearing for the 1st accused is that there is no convincing evidence forthcoming to see the demand made by the accused. Therefore, for want of evidence to prove one of the most essential ingredients, that is, demand, the Special Court went wrong in finding that the 1st accused committed offences alleged against him.

[6] The learned counsel for the 2nd accused also shared the argument of the learned counsel for the 1st accused and submitted that in the instant case there is no evidence to show that the 2nd accused demanded money either from Kuttappan or from anybody. It is pointed out that the 2nd accused is a Part-time Sweeper, who was assisting the 1st accused as an obedient subordinate to him, and his complicity in this matter is otherwise not fully established. The learned counsel for the 2nd accused placed decision of the Apex Court , **Neeraj Dutta v. State (Government of NCT of Delhi)**, 2023 4 SCC 731 to highlight the ingredients necessary to prove the offences under Section 7 as well as 13(1)(d) of the PC Act, 1988. Apart from that, another decision of the Apex Court **Madan Lal v. State of Rajasthan**, 2025 INSC 340 in this regard.

[7] Whereas the learned Public Prosecutor would submit that as per the ratio in **Neeraj Dutta** (supra), the Apex Court found that there is no apparent conflict in between the three Judge Bench decision of the Supreme Court 2014 5 SCC(Cri) 543 , **B.Jayaraj v. State of A.P**, 2014 13 SCC 55[: (2016) 1 SCC (Cri) 11], **P.Satyanarayana Murthy v. State of A.P**, 2015 10 SCC 152 and [: 2001 SCC (Cri) 258], **M.Narsinga Rao v. State of A.P**, 2001 1 SCC 691 with regard to the nature and quality of proof necessary to sustain a conviction for the offences under Sections 7 or 13(1)(d)(i) and (ii) of the PC Act, 1988, and in this case the Special Judge relied on **M. Narsinga Rao v. State of A.P.** (supra) to find that, in the absence of the complainant to give evidence in support of the prosecution regarding demand and acceptance, the attending circumstances, including the evidence of PW1, the son of Kuttappan, who accompanied him along with the trap team, sufficiently proved the demand of bribe by accused Nos.1 and 2. Therefore, the conviction and sentence are liable to be confirmed.

[8] Having considered the rival contentions the points arise for consideration are:

- (i) Whether the Special Court went wrong in finding that the appellants/accused committed offence punishable under Section 13(1)(d) r/w 13(2) of the PC Act, 1988?
- (ii) Whether the Special Court went wrong in finding that the appellants/accused committed offence under Section 120B of IPC?
- (iii) Is it necessary to interfere with the verdict under challenge?

(iv) The order to be passed?

[9] In the instant case no dispute is raised with regard to sanction Ext.P9 proved through PW3, who identified the signature of Sri Mohanan, who was no more at the time of evidence.

[10] It is relevant to note that the prosecution mainly relied on the evidence of PW1 supported by the evidence of PW2, the decoy as well as PW6, the trap laying officer, to establish that accused 1 and 2, as part of conspiracy hatched between them demanded and accepted a sum of Rs.1,500/- from Kuttappan, who is now no more. In this regard, evidence of PW1 assumes significance.

[11] According to PW1, his father had filed a petition before the Village Officer, Punnala Village, for effecting mutation of the landed property originally owned by his paternal grandmother. PW1 identified Ext.P1 as the petition filed by his father. He deposed about the production of the encumbrance certificate and a copy of the assignment deed before the Village Office. The further evidence of PW1 is that the Village Officer subsequently informed his father that there were certain technical issues in effecting the mutation, and accordingly, the Village Officer received Rs.700/- from his father and his aunt. Thereafter, both accused visited the property for taking measurements, and at that point of time, the 1st accused raised a demand of Rs.2,000/- as illegal gratification. The mother of PW1 paid Rs.1,000/- and requested the 1st accused to effect mutation at the earliest. But the matter was prolonged for a period of more than six or seven months. When the father of PW1 contacted the 1st accused over phone with regard to the inordinate delay caused he again raised a further demand for Rs.1,500/- and asked his father to come to the Village Office with the above amount on 16.09.2011. As the matter being prolonged even after paying the requested amount, PW1 became distressed and he took his father, the complainant, to the Vigilance Office, Kollam on 16.09.2011 for filing a petition.

[12] The evidence of PW1 is corroborated by PW2 as well as PW6, the trap laying officer, in the matter of pre and post trap proceedings.

[13] On evaluating the evidence of PW1, PW2, and PW6, it could be gathered that on the date of the trap, i.e., 20.09.2011, Kuttappan met the Village Officer at the Village Office and later Kuttappan talked to the Village Officer. Then accused Nos.1 and 2 reached Kumbanattupadi in an autorickshaw. Kuttappan and PW1 followed accused Nos.1 and 2. After all of them reached Kumbanattupadi, Kuttappan spoke with the 1st accused, and thereafter handed over the MO1 series currency notes, which were subsequently recovered as per Ext.P6. Initially Kuttappan entrusted MO1 series bribe money to PW6 and it was recovered by PW6 after preparing entrustment mahazar. Then PW6 had entrusted back money to the complainant. On the date of trap, the complainant handed over the same to the 2nd accused and the 2nd accused entrusted the same to the 1st accused. Later, the Deputy Superintendent of Police had intervened and conducted the phenolphthalein test on the hands of the officials as well

as the accused persons. The further evidence of PW6 is that, as informed by the 1st accused, the MO1 currency notes were found beneath the back seat of the autorickshaw and were identified as the same notes that had been entrusted to the complainant by the Dy.S.P.

[14] 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.

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

"12. Indubitably in **Neeraj Dutta's** case (supra) the Apex Court held in paragraph No.69 that there is no conflict in the three judge Bench decisions of this Court in B.Jayaraj and P.Satyanarayana Murthy with the three judge Bench decision in

M.Narasinga Rao, with regard to the nature and quality of proof necessary to sustain a conviction for offences under Section 7 or 13(1)(d)(i) and (ii) of the Act, when the direct evidence of the complainant or "primary evidence" of the complainant is unavailable owing to his death or any other reason. The position of law when a complainant or prosecution witness turns "hostile" is also discussed and the observations made above would accordingly apply in light of Section 154 of the Evidence Act. In view of the aforesaid discussion there is no conflict between the judgments in the aforesaid three cases. Further in Paragraph No.70 the Apex Court held that in the absence of evidence of the complainant (direct/primary,oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and 13(1)(d) r/w Section 13(2) of the Act based on other evidence adduced by the prosecution. In paragraph No.68 the Apex Court summarized the discussion. That apart, in **State by Lokayuktha Police's** case (supra) placed by the learned counsel for the accused also the Apex Court considered the ingredients for the offences punishable under Section 7 and 13(1) (d) r/w 13(2) of the PC Act,1988 and held that demand and acceptance of bribe are necessary to constitute the said offences. Similarly as pointed out by the learned counsel for the petitioner in **Aman Bhatia's** case (supra) the Apex court reiterated the same principles. Thus the legal position as regards to the essentials to be established to fasten criminal culpability on an accused are demand and acceptance of illegal gratification by the accused. To put it otherwise, proof of demand is sine qua non for the offences to be established under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act, 1988 and de hors the proof of demand the offences under the two Sections could not be established. Therefore mere acceptance of any amount allegedly by way of bribe or as undue pecuniary advantage or illegal gratification or the recovery of the same would not be sufficient to prove the offences under the two Sections in the absence of evidence to prove the demand."

[16] On scrutiny of the evidence of PW1, it is emphatically clear that he had deposed about the pre trap as well as post trap proceedings in tune with the version of PW2 as well as PW6. Though PW1 deposed that Rs.700/- had been paid to the Village Officer by his father and aunt, it was revealed during cross-examination that this version was only hearsay in so far as PW1 is concerned. According to PW1, in order to give bribe, he along with his father and his friend followed accused 1 and 2 on two different two-wheelers and stopped near a bunk shop at Kumbanattupadi. Then the accused along with another person had reached there in an autorickshaw, which was stopped there and 3 persons from the autorickshaw got down there. Soon the 2nd accused reached near his father and talked something to him. Soon, the 1st accused, along with another person, also arrived, and the 1st accused entered the autorickshaw. The 2nd accused then moved towards the 1st accused along with his father. His father spoke to the 1st and 2nd accused and then entered the autorickshaw. Thereafter, his father again spoke to both accused, took the money from his pocket, and handed over

the bribe money to the 2 nd accused and was accepted by the 2nd accused. PW1 identified the 2nd accused at the dock. PW1's further version is that the 2nd accused handed over the money to the 1st accused. As regards to demand of the bribe money by the 1st and 2nd accused, PW1's evidence is not clear, and his evidence is that there was some talk between Kuttappan and accused Nos.1 and 2. But whether accused Nos.1 and 2 demanded any bribe from Kuttappan, the evidence of PW1 is not specific as he did not divulge what was the talk in between Kuttappan and accused Nos.1 and 2.

[17] Thus insofar as demand, the evidence of PW1 is not convincing. Apart from the evidence of PW1, no other witnesses deposed in support of the prosecution to show that there was demand by the 1st and 2nd accused. Insofar as the demand through telephone from Kuttappan by the 1st accused is concerned, though it was deposed by PW1 that conversation forwarded by him to the police through blue-tooth, the same not forthcoming in evidence.

[18] Thus on an overall evaluation of the evidence available, the inference is that the prosecution failed to establish the demand of bribe by accused Nos.1 and 2 in this case with the aid of convincing evidence though the evidence available would show recovery of MO1 series from the backside of the autorickshaw as shown by the 1st accused. In such a case, the accused persons are entitled to get the benefit of doubt.

[19] Holding so, I am inclined to set aside the verdict of Special Court giving the benefit of doubt to the accused.

In the result, these appeals are allowed. Conviction and sentence imposed against accused 1 and 2 are set aside and they are set at liberty. Their bail bonds have been cancelled.

Registry is directed to forward a copy of this judgment to the Enquiry Commissioner and Special Judge, Thiruvananthapuram, for information and compliance

-----  
2026(1)AICC123

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

(Hon'ble Judge: A Badharudeen)

Crl Rev Pet (Criminal Revision Petition) No 324 of 2022, 2 of 2024, 5 of 2024  
**dated 05/11/2025**

*M Gunasekharan S/o E Mannangatty; Central Bureau of Investigation Acb Cochin*

**Versus**

*Central Bureau of Investigation, Spe Kochi; J Ashok Shivaram; M Gunasekharan S/o E Mannangatty*

**HABITUAL BRIBERY**

Code of Criminal Procedure, 1973 Sec. 397, Sec. 306, Sec. 401 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 14, Sec. 9, Sec. 8, Sec. 12 - Habitual Bribery - Revisions filed challenging discharge orders under Prevention of Corruption Act - Allegation that accused habitually abetted public servant by repeated payments as bribe - Trial court partly discharged - Evidence included bank documents, forensic report and approver statements - Consideration of statutory meaning of habitual offence under Sec.14 - Held that repeated payments alone insufficient to constitute habitual offence unless prior conviction or declaration established - Discharge for habitual offence upheld - Refusal of discharge for abetment proper - Partial Discharge Confirmed

**Law Point: For constituting habitual offence under Sec.14 of Prevention of Corruption Act, proof of prior conviction or legally recognised habitual conduct required; mere repetition of bribe instances not sufficient.**

**Acts Referred:**

Code of Criminal Procedure, 1973 Sec. 397, Sec. 306, Sec. 401

Prevention of Corruption Act, 1988 Sec. 13, Sec. 14, Sec. 9, Sec. 8, Sec. 12

**Counsel:**

T N Suresh, Dhanuja Vettathu, Monsy K V, Korah Joy, Sreelal N Warriar, Yedu Krishna S, Aiswarya Unnikrishnan, Indu Menon M, Prakash P George, Sader E Reaz

**JUDGEMENT**

**A. Badharudeen, J.- [1]** Dated this the 5th day of November, 2025 CrI.Rev.Pet. No.324/2022 has been filed under Sections 397 and 401 of the Code of Criminal Procedure [hereinafter referred as 'Cr.P.C.' for short] by the 4th accused in C.C. No.7/2014 on the files of the Court of the Special Judge (SPE/CBI)-II, Ernakulam, challenging the common order dated 08.04.2022 in CrI.M.P. No.5/2021 along with CrI.M.P. Nos.212/2020 and 213/2020 in the above case, whereby the discharge plea at the instance of the 4th accused, who alleged to have committed the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act, 1988', for short] was dismissed by the learned Special Judge.

**[2]** CrI.Rev.Pet. No.5/2024 has been filed by the Central Bureau of Investigating (CBI) challenging the same common order, whereby the 4th accused (the revision petitioner in CrI.R.P. No.324/2022) was discharged for the offence punishable under Section 14 of the P.C. Act, 1988.

**[3]** CrI.Rev.Pet. No.2/2024 is also at the instance of the CBI, challenging the same common order in CrI.M.P. No.212/2020 in the above case, whereby the 2nd accused was discharged for the offences punishable under Sections 14 and 12 of the P.C. Act, 1988.

[4] Heard Sri.T.N.Suresh, the learned counsel for the revision petitioner in CrI.Rev.Pet. No.324/2022 as well as the learned Special Public Prosecutor, in detail. Also heard Sri.Prakash P. George, the learned counsel appearing for the respondent in CrI.Rev.Pet.No.2/2024. Perused the common order impugned and relevant records available.

[5] Parties in these criminal revision petitions shall be referred as 'accused' and 'prosecution', hereafter.

[6] In this matter, the prosecution allegation against the 2nd accused is that, the 2nd accused habitually abetted the 1st accused in committing offences under sections 13(2) read with 13(1)(a) of the P.C. Act, 1988, while the 1st accused was employed in FACT as Chief Sales Manager, Chief Distribution Manager, Dy.General Manager (Fertiliser), DGM(Finance), GM(Finance) Co-ord. and G.M. (Corporate Finance) Co-ord. at Udyogamandal, by habitually paying him bribes for a total amount of Rs.50,000/- in 6 installments at the rate of Rs.5000/- each on 24.10.2005 and 24.02.2006, Rs.10,000/- each on 24.02.2009, 21.09.2009, 07.09.2010 and 09.09.2011 through the SB account No.30012379332 of the 1st accused held at SBI, Palarivattom branch. On this premise, the prosecution alleges commission of offences punishable under Section 14 read with 12 of the P.C. Act, 1988, by the 2nd accused.

[7] Similarly, the 4th accused alleged to have habitually abetted the 1st accused committing offence under sections 13(2) read with 13(1)(a) of the PC Act, 1988, while the 1st accused was employed in FACT as DGM (Finance), GM (Finance) Co-ord. And GM(Corporate Finance) Co-ord. at Udyogamandal, by habitually paying him bribes for a total amount of Rs.1,01,000/- in 8 installments at the rate of Rs.5000/- each on 05.11.2007 and 23.01.2008, Rs.10,000/- on 30.11.2007, Rs.6000/- on 10.09.2008, Rs.17,000/- on 15.10.2008, Rs.15,000/- on 21.01.2009, Rs.20,000/- on 21.12.2009 and Rs.23,000/- on 26.09.2010 through the SB account No. 30012379332 of the 1st accused held at SBI, Palarivattom branch. On this premise, the prosecution alleges commission of offences punishable Section 14 read with 12 of the P.C. Act, 1988, by the 4th accused.

[8] According to the learned counsel for the 4th accused, even though the allegation against the 4th accused is confined to payment of Rs.1,01,000/- in eight installments, the prosecution did not produce any documents to substantiate the same in full. It is submitted by the learned counsel for the 4th accused that, as per document No.8 produced by the prosecution, three payments made in the name of the 1st accused, to the tune of Rs.17,000/- on 15.10.2008, Rs.6,000/- on 10.09.2008 and Rs.15,000/- on 21.01.2009, has been produced by the prosecution to show that the said remittance was by the 4th accused. According to the learned counsel for the 4th accused, as per document No.72 the Examination Report/Opinion of the Central Forensic Science Laboratory, Hyderabad, opinion No.9 would suggest that Q33 and Q38 pertaining to D8 series documents are written by one and the same person. However, the learned counsel zealously argued that, merely relying on the expert

opinion alone, criminal culpability could not be fastened against the 4th accused for the offence punishable under Section 12 of the P.C. Act, 1988. In this connection, he has placed the order dated 17.03.2020 in CrI.Rev.Pet.No.926/2019, whereby this Court, while discharging the accused in the said case, who alleged to have committed the offence punishable under Section 12 of the P.C. Act, 1988, observed in paragraph Nos.8 and 9, as under:

8. Detailed statement was filed by the prosecution, wherein, it has been asserted that the fact of deposit of Rs.10,000/- by the second accused in the account of the first accused is established by the handwriting identification and by forensic examination. It is pertinent to note that, this is the only solitary piece of material unearthed by the prosecution as against the petitioner. In the light of this, CBI was directed to file a statement to place on record the materials which they relied to support the allegation against the revision petitioner other than the factum of deposit of Rs.10,000/-. A statement was filed by the CBI, wherein, CBI has taken a stand that, this is the solitary material available against the second accused. However, the prosecution allegation was that, the amount was deposited pursuant to the conspiracy hatched between the accused persons, there is no other relationship or transactions between the accused to make the payment other than by way of bribe.

9. Materials on record indicate that, there was only one payment allegedly made by the second accused in the account of the first accused. None of the witnesses has stated that, the amount was a consideration received by the second accused from any dealers to whom favours were shown by the first accused. There is absolutely no material to indicate that the first accused had entered into a conspiracy with the second accused. There is nothing on record to show that the amount so deposited was not the source of income of the first accused or that, it was the money handed over by any other person who is the beneficiary to the dealings of the first accused. No presumption can also be arrived at, at this stage, by assuming that the petitioner had no other transaction with the first accused. Hence, in the absence of any other materials than the solitary deposit made by the second accused in the account of the second accused, I feel that, no prima facie case can be levelled against the second accused.

[9] The learned Special Public Prosecutor appearing for the CBI resisted this contention and submitted that, apart from document No.8 series supported by document No.72, the statements of CW1 and CW17 are available against accused No.4. Therefore, even otherwise the ratio in the order dated 17.03.2020 in CrI.Rev.Pet.No.926/2019 has no application in the present case. It is also pointed out by the learned Special Public Prosecutor that, as far as the 2<sup>nd</sup> accused is concerned, the allegation of the prosecution is that, he had paid bribe to the tune of Rs.50,000/- in six installments through the SB account of the 1st accused.

[10] The document No.1, SBI Madhuranagar branch letter, document No.6 receipt memo dated 27.08.2014 along with voucher, document No.7 SBH Nehru Ganj branch letter dated 14.12.12 along with voucher, document No.9 SBI Nellore Town branch

letter, document No. 12 and 13 SBI Palarivatom branch statements, document No.14 receipt memo of SBH Nehruganj branch etc. are there to prove the alleged payments made into the account of the 1 st accused by or at the behest of the 2nd accused. However, document No.72 Central Forensic Science Laboratory, Hyderabad examination report along with specimen signatures of the 2nd accused was produced in order to impress upon the court that the 2nd accused had actually written the pay in slips. Added to that there are approver statements recorded under section 306(4) Cr.P.C. of witnesses Shri.Ravishankar and Shri.Murali Mohan Raju.

[11] Adverting to Section 14 of the P.C. Act, 1988, it is argued by the learned Special Public Prosecutor that, when the Special Court found that there are evidence against the 4 th accused that he made three payments as bribe to the 1 st accused and the 2nd accused had made six payments as bribe to the 1st accused, the Special Judge went wrong in holding that the 2nd and 4th accused did not commit the offence punishable under Section 14 of the P.C. Act, 1988. According to the learned Special Public Prosecutor, prima facie, the offence punishable under Section 14 of the P.C. Act, 1988, also is made out as against accused Nos.2 and 4.

[12] Resisting this contention, the learned counsel for the 4th accused submitted that, in order to substantiate offence of habitual committing of offences under Sections 8, 9 and 12, there shall be previous cases of the same nature. Mere allegation in one case, would not suffice the requirement.

[13] First of all, I shall address, whether the offence under Section 12 of the P.C. Act, 1988, is made out as against 4th accused, so that the discharge refused by the Special Court for the offences under Section 12 of the P.C. Act, 1988, is justifiable.

[14] At this juncture, it is apposite to refer Sections 12 and 14 of the P.C. Act, 1988. Section 12 of the P.C. Act, 1988 reads as under:

**12. Punishment for abetment of offences defined in section 7 or 11.-** Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than [three years] but which may extend to [seven years] and shall also be liable to fine.

[15] Section 14 of the P.C. Act, 1988 reads as under:

**14. Habitual committing of offence under sections 8, 9 and 12.-** Whoever habitually commits,-

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12, shall be punishable with imprisonment for a term which shall be not less than [five years] but which may extend to [ten years] and shall also be liable to fine.

[16] In India, a habitual offender has different meaning and dimensions based on the interpretations of various statutes. The P.C. Act, 1988, does not define the term 'habitual offender' embodied in Section 14 of the P.C. Act, 1988. When P.C. Act, 1988

was amended as per the P.C. (Amendment) Act, 2018, Section 14 has been worded differently from Section 14 of the P.C. Act, 1988. As per the amended provision, Section 14 deals with punishment for habitual offender. It has been provided that, whoever convicted of an offence under this Act (P.C. Act, 2018) subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine. Thus, habitual offender under the P.C. (Amendment) Act, 2018, is a convicted person.

[17] As per the Kerala Habitual Offenders Act, 1960, a person, having been convicted for any of the scheduled offences, is by reason of such conviction or of the circumstances connected therein is declared to be habitual offender under the Act. Thus, as per the provisions of the Kerala Habitual Offenders Act, 1960, a person does not automatically becomes a habitual offender just because he committed crimes repeatedly, instead he must be declared as such person by the procedure laid down by the Act.

[18] In the decision **Dhanji Ram Sharma v. Superintendent of Police, North Dist., Delhi Police and Others**, 1966 AIR(SC) 1766 when the Apex Court considered Rules 23.9(2) and 23.4(3)(b) of the Punjab Police Rules, 1934, it was observed in paragraph No.7 as under:

7. A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police officer that the suspect is a habitual offender or is a person habitually addicted to crime is sufficient to justify action under Rr. 23.4 (3) (b) and 23.9 (2). Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds. The suspect may or may not have been convicted of any crime. Even apart from any conviction, there may be reasonable grounds for believing that he is a habitual offender.

[19] In the decision **Vijay Narain Singh v. State of Bihar and Others**, 1984 3 SCC 14 when the Apex Court dealt with preventive detention under the Bihar Control of Crimes Act, 1981 with reference to Sections 2(d)(i), (ii) and (iv) and 12, held in paragraph Nos.13 to 15 as under:

13. I find it difficult to share the view that whereas under sub-clause (iii) or sub-clause (v) of Section 2(d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-clause (i), sub-clause (ii) or subclause (iv) because of the word 'habitually' there should be a repetition of same class of acts or omissions referred to in sub clause (i), sub-clause (ii) or in sub-clause (iv) by the

person concerned to treat him as an 'anti-social element'.

14. I also do not see why Section 12(2) of the Act should be confined in its operation against habitual criminals who have a certain number of prior convictions

for offences of the 'character' specified. The definition of 'antisocial element' in Section 2(d) of the Act nowhere requires that there should be a number of prior convictions of a person in respect of offences of a particular type. I cannot also share the view that the commission of an act referred to in one of the sub-clause (i), subclause (ii) or sub-clause (iv) of Section 2(d) and any other act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an 'anti-social element'. Further, I do not think it is correct to say that merely because there was an acquittal of such a person, the detaining authority cannot take the act complained of leading to his trial into consideration. It may be that the trial of a dangerous person may end in an acquittal for paucity of evidence due to unwillingness of witnesses to come forward and depose against him out of fright. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or

abets the commission of offences punishable under Chapter XVI dealing with offences affecting human body or Chapter XVII dealing with offences against property of the Indian Penal Code, there is no reason why he should not be considered to be an 'anti-social element'.

15. It is not difficult to conceive of a person who by himself as a member or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. It however does not follow that because of the word 'habitually' in sub-clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of same class of acts or omissions referred to in sub-clause (i), sub-clause (ii) or in sub-clause (iv) by the person concerned before he can be treated to be an anti-social element and detained by the District Magistrate under Section 12(2) of the Act. In my view, it is not required that the nature or character of the anti-social acts should be the same or similar. There may be commission or attempt to commit or abetment of diverse nature of acts constituting offences under Chapter XVI or Chapter XVII of the Indian Penal Code. What has to be 'repetitive' are the anti-social acts.

[20] So the definition of habitual offender may vary according to circumstances with reference to the scheme of the legislation. Since the P.C. Act, 1988, does not define habitual offender and the Amended provision under Section 14 deals with punishment for habitual offender, in relation to a person already convicted of an offence under the P.C. Act, in order to fasten criminal culpability on an accused under Section 14 of the P.C. Act, 1988, on finding that he habitually committed offences under Sections 8, 9 and 12 of the P.C. Act, 1988, mere allegation alone would not suffice and there must be previous conviction for any one of the said offences. Otherwise, the offence under Section 14 of the P.C. Act, 1988, could not be attributed against an accused.

[21] In the instant case, Section 14 of the P.C. Act, 1988, was alleged by the prosecution on the premise that, accused Nos.2 and 4 paid bribe to the 1st accused repeatedly. The prosecution has no case that, the 2nd and 4th accused were convicted

for the offences under Sections 8 or 9 or 12 of the P.C. Act, 1988. In view of the legal position, in the instant case, it could not be held that, prima facie, accused Nos.2 and 4 committed offence punishable under Section 14 of the P.C. Act, 1988, warranting trial. Therefore, the finding of the Special Court that the 4th accused did not commit offence punishable under Section 14 of the P.C. Act, 1988, and subsequent discharge of the 4th accused for the said offence is only to be justified.

[22] Coming to the challenge raised by the 4th accused in CrI.Rev.Pet. No.324/2022, it is emphatically clear that as per document No.8 series, the 4th accused paid illegal gratification to the 1st accused on three occasions, i.e. Rs.17,000/- on 15.10.2008, Rs.6,000/- on 10.09.2008 and Rs.15,000/- on 21.01.2009. In order to support this contention, the prosecution produced receipts showing remittance by the 4th accused in the name of the 1st accused as substantive evidence, supported by the statement of CW17 and also the bank statements let in by the prosecution, supporting the allegations. In addition to that, the FSL report also has been produced. Although, it is argued by the learned counsel for the 4th accused that, the FSL report is without reasons, the FSL report would show that the opinion is supported by reasons, though not so lengthy. Therefore, the validity of the FSL report also is a matter of evidence and the same cannot be considered at the pre-trial stage. Contra argument at the instance of the learned counsel for the 4th accused is found to be unsustainable. Therefore, at this stage, it is too premature to hold that the 4th accused not committed the offence punishable under Section 12 of the P.C. Act, 1988, so as to discharge him for the said offence. Therefore, the Special Court rightly found that the discharge plea at the instance of the 4th accused insofar as Section 12 of the P.C. Act, 1988 is concerned, would not succeed.

[23] Coming to the discharge of the 2nd accused for the offences punishable under Sections 12 and 14 of the P.C. Act, 1988, is concerned, for the reasons herein above extracted, the discharge of the 2nd accused for the offence punishable under Section 14 of the P.C. Act, 1988, is only to be justified. Adverting to the discharge of the 2nd accused for the offence punishable under Section 12 of the P.C. Act, 1988, is concerned, the point argued by the learned Special Public Prosecutor is that disciplinary proceedings was initiated at the instance of the 1st accused against the 2nd accused and in order to avoid the same, the 2nd accused paid bribe to the 1st accused, as could be seen from document Nos.1, 7 and 9 (bank letters), document Nos.6 and 14 receipt memos, document Nos.12 and 13 bank account statements of the 1st accused, document No.72 FSL report. It is pointed out by the learned Special Public Prosecutor that, the Special Court erred in assuming that the said documents would not prove the prosecution case as to demand and payment of illegal gratification by the 2nd accused to the 1st accused. Per contra, the learned counsel appearing for the 2nd accused justified the order on the submission that none of the offences made out against the 2nd accused.

[24] On a perusal of the common order impugned, the prosecution has specific case that the 2nd accused paid Rs.50,000/- in 6 installments at the rate of Rs.5000/- each on 24.10.2005 and 24.02.2006, Rs.10,000/- each on 24.02.2009, 21.09.2009, 07.09.2010 and 09.09.2011 to the 1<sup>st</sup> accused through the SB account No.30012379332 of the 1<sup>st</sup> accused held at SBI, Palarivattom branch.

[25] The learned Special Judge, while addressing the discharge plea of the 2nd accused, found that page No.77 of document No.36 produced by the prosecution would show that there was recommendation by the 1st accused for closing the departmental action against the 2nd accused and as per page No.78, the said proceeding was closed. It is relevant to note that the learned Special Judge, referring to document No.167, 9 and 14 produced by the prosecution found that, there was transfer of money from the side of the 2nd accused to the 1st accused. That apart, document No.13 is a statement of account of the 1st accused, evidenced by the testimony of CW1 and others. Despite having these documents, the Special Judge found that there was virtually little scope for a successful prosecution as far as the allegations against the 2nd accused is concerned. At the same time, the learned Special Judge observed that, it could not be stated that there would exist even a grave suspicion towards commission of offences alleged against the 2nd accused.

[26] Going by the prosecution records referred by the prosecution and also referred by the learned Special Judge, the finding of the Special Court that, there is virtually little scope of successful prosecution by itself is not a ground to allow discharge. However, in the absence of prima facie case or a grave suspicion, it is permissible for the trial court to discharge the accused, even in cases where a mere suspicion is forthcoming.

[27] On perusal of the prosecution records, I have referred in particular viz. document Nos.62, 69, 77, 167, 9, 14 and 13 supported by the evidence of CW1 and the bank officials, it could be gathered that the 2nd accused also paid illegal gratification to the 1st accused on six occasions, as discussed, unlike the facts of the case dealt in Crl.Rev.Pet.No.926/2019 placed by the learned counsel for the 4th accused. Therefore, the ingredients to attract offence punishable under Section 12 of the P.C. Act, 1988, against the 2nd accused are made out prima facie or a grave suspicion could be found. Therefore, the finding of the learned Special Judge that even no grave suspicion could be found, cannot be justified. Thus, Crl.Rev.Pet. No.2/2024 is liable to succeed in part.

[28] In view of the above discussion, Crl.Rev.Pet. No.324/2022 stands dismissed and the order of the Special Judge not discharging the 4th accused for the offence punishable under Section 12 of the P.C. Act, 1988 is confirmed.

[29] Crl.Rev.Pet. No.5/2024 also stands dismissed and the order of the Special Judge discharging the 4th accused for the offence punishable under Section 14 of the P.C. Act, 1988, is confirmed.

**[30]** Crl.Rev.Pet. No.2/2024 stands allowed in part. The order of the Special Judge discharging the 2nd accused for the offence punishable under Section 14 of the P.C. Act, 1988, is confirmed, while setting aside the discharge of the 2 nd accused for the offence punishable under Section 12 of the P.C. Act, 1988, with direction to the 2nd accused to surrender before the Special Court on 19.11.2025 to undergo trial for the offence punishable under Section 12 of the P.C. Act, 1988.

**[31]** It is specifically ordered that, the observations made in this order are for the purpose of considering challenge against the impugned common order and the same have no binding effect during the trial and the Special Court shall decide the case on merits, after adducing evidence.

**[32]** Interim order of stay, if any, stands vacated. Registry is directed to forward a copy of this order to the Special Court, forthwith, for information and further steps.

<b>APPENDIX OF CRL.REV.PET 324/2022</b>	
<b>PETITIONER ANNEXURES</b>	
<b>Annexure1</b>	<b>ORDER DATED 08/04/2022 IN CMP NO: 5/2021 IN CC NO: 7/2014</b>

-----