2026:CGHC:12943

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
10.02.2026	18.03.2026	--	18.03.2026

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 860 of 2006

1 - Jitendra Nath Mukherjee Babu (Died) Through LRs. (As Per Honble Court Order Dated- 22-09-2011 and 23-07-2025)

1.1 - Chandna Mukharjee, W/o Jitendra Nath Mukherjee, aged about 55 Years, R/o Dumurkunda, P.S. - Chirkunda, District- Dhanbad, Jharkhand.

... Appellant

versus

- Union of India Through CBI Jabalpur (M.P.)

... Respondent

For Appellant. - Mr. Leekesh Kumar and Mr. Manish Kumar Chandra, on behalf of Ms. Renu Kochar, Advocate.

For Respondent - Mr. Vaibhav Goverdhan, Advocate.

Hon'ble Smt. Justice Rajani Dubey

(C.A.V. Judgment)

1. This appeal arises out of the judgment of conviction and order of sentence dated 21.11.2006 passed by the Special Judge (C.B.I.), Raipur (C.G.) in Special Criminal Case No.54/2004 convicting and sentencing the accused/appellant as under :-

CONVICTION	SENTENCE
Section 7 of the Prevention of Corruption Act.	R.I. for one year and fine of Rs.5000/-, in default of payment of fine amount, additional R.I. for 04 months.
Section 13(2) r/w 13 (1)(D) of the Prevention of Corruption Act.	R.I. for 01 year with fine of Rs.5000/-, in default of payment of fine amount, additional R.I. for 04 months. All the sentenced were directed to run concurrently.

2. During the pendency of the appeal, the original appellant expired and his wife, being his legal representative, was permitted to continue the present appeal.

3. The prosecution story, in brief, is that complainant, Michael Masih, was posted as Electrical Fitter Grade-IV at Korea Colliery under S.E.C.L., Chirimiri Area. He had submitted an application seeking withdrawal of an advance amount of Rs. 2,50,000/- from his Provident Fund account. At the relevant time, accused, J. N. Mukherjee (since deceased), was

posted as Personal Manager at West Chirimiri Colliery. The application of the complainant for sanction of provident fund advance was required to be processed and approved through the office of the accused. It was alleged that the accused demanded illegal gratification of Rs. 5,000/- from the complainant for facilitating and approving the said advance application. Being aggrieved by the demand of bribe, the complainant approached the Central Bureau of Investigation (CBI) and lodged a complaint. Upon receipt of the complaint, the CBI organized a trap proceeding to apprehend the accused while accepting the bribe amount. On 27.02.2004, at the residential premises of the accused, being Quarter No. 2 situated at Korea Colliery, the accused allegedly demanded and accepted the bribe amount of Rs. 5,000/- from complainant, Michael Masih, in the presence of an independent witness, S.S. Kashyap. Immediately thereafter, the CBI trap team apprehended the accused red-handed and recovered the bribe amount from his possession. It was further alleged that in order to screen himself from legal punishment, the accused caused disappearance of the original provident fund advance application submitted by the complainant.

4. After completion of usual investigation, the CBI obtained

prior sanction for prosecuting the accused from the competent authority, namely the Chairman of Coal India Limited, being the disciplinary authority of the accused, and thereafter filed a charge-sheet before this Special Court for offences punishable under Sections 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, (for short 'the PC Act') and Section 201 of the Indian Penal Code. The learned Trial Court framed charges against the accused/appellant under Sections 7 and 13 (1) (d) read with section 13 (2) of the P.C. Act., to which he abjured his guilt and pleaded for trial.

5. So as to hold the accused/appellant guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the incriminating circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No witness was examined by the accused/appellant in his defence.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record has convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment. Hence, this appeal.

7. Learned counsel for the appellant submits that the

prosecution has utterly failed to prove the essential ingredients of the alleged offences beyond reasonable doubt. It is contended that the foundational facts necessary to sustain conviction under Section 7 and Section 13(2) read with Section 13(1)(d) of the P.C. Act have not been established by cogent and reliable evidence. It is further submitted that the prosecution has not been able to substantiate the alleged demand of Rs. 5,000/- by way of illegal gratification by the appellant from the complainant. Demand of bribe being sine qua non for conviction under the aforesaid provisions, its non-proof is fatal to the case of the prosecution. Learned counsel also contends that the prosecution has failed to properly obtain and prove the valid sanction for prosecution of the appellant as required under law, thereby vitiating the entire trial. It is further argued that the learned Trial Court erred in holding that the alleged currency notes amounting to Rs. 5,000/- were seized from the exclusive possession and with the conscious knowledge of the appellant. In this regard, attention was invited to paragraphs 22, 23 and 24 of the deposition of PW-5 Michael Masih and paragraphs 19 to 22 of the deposition of PW-10 B. Panir Selbum, which, according to the appellant, create serious doubt about such alleged recovery. It is submitted that the learned Trial Court failed to appreciate the evidence on record in its proper perspective.

8. It is also contended that the prosecution has withheld material witnesses, namely Arvind Kumar and S.D. Devasthale, whose non-examination has caused serious prejudice to the defence. Learned counsel further submits that there are material contradictions and omissions in the statements of prosecution witnesses, particularly PW-5 Michael Masih (complainant), PW-4 Upendra Narayan Singh, PW-7 Ramshanker Tiwari, PW-8 K.C. Sahu, PW-3 Ashok Sahu and PW-10 B. Panir Selbum. In view of such inconsistencies, no implicit reliance could have been placed upon their testimonies. It is further argued that the statement of PW-5, the complainant, has not been corroborated by independent and reliable evidence on material particulars. In absence of such corroboration, the conviction recorded by the learned Trial Court is wholly illegal and unsustainable in law. Learned counsel also submits that there was no prior action such as seizure, panchanama, or any official proceeding initiated by the appellant against the complainant so as to create any circumstance for coercion or compulsion for demand of bribe. It is further contended that no independent witness has been examined by the

prosecution to prove the actual delivery of the alleged bribe amount of Rs. 5,000/-. The solitary testimony of PW-5 Michael Masih is insufficient to establish payment beyond reasonable doubt. The appellant's case, as argued, is that on 27.02.2004 the complainant was eager to get his work done and himself offered the money, which was refused by the appellant. However, the learned Trial Court has erroneously disbelieved this defence and held otherwise.

9. It is further submitted that the alleged phenolphthalein test has not been duly proved in accordance with law. The pink-coloured solution was neither marked nor exhibited as a material article before the Court. The primary evidence, namely the sealed bottle containing the solution, was not proved and produced with proper seal and signature, and no explanation has been offered for such non-production. Hence, the alleged chemical test remains unproved. Learned counsel argues that neither the demand nor the payment of bribe has been proved beyond reasonable doubt. In such circumstances, the presumption under Section 4(1) of the P.C. Act cannot be invoked against the appellant. It is further submitted that mere recovery of certain currency notes from the premises of the appellant, without proof of voluntary acceptance pursuant to demand,

is insufficient to raise any statutory presumption. In this context, reliance is placed upon the judgments of the Hon'ble Apex Court in ***Sita Ram v. State of Rajasthan reported in AIR 1975 SC 1432, Suraj Mal v. State (Delhi Administration)*** reported in ***AIR 1979 SC 1498***, ***Banshi Lal Yadav v. State of Bihar*** reported in ***AIR 1981 SC 1235 (1981) 3 SCC 69, P. Somaraju Vs. State of Andhra Pradesh*** reported in ***2025 LiveLaw (SC) 1040*** and this Court ***judgment dated 19.08.2025*** passed in ***CRA No.294/2009 and other connected appeal [Umesh Kumar Yadav Vs. Union of India (Neutral Citation No. 2025:CGHC:41830)]***, wherein it has been held that mere recovery of money separated from proof of demand and voluntary acceptance is not sufficient to sustain conviction, and that before raising statutory presumption, the prosecution must first prove that the accused accepted gratification for himself. It is lastly contended that the learned Trial Court erred in shifting the burden upon the appellant to disprove the demand of illegal gratification, whereas in law the initial burden squarely lies upon the prosecution to establish demand and acceptance by reliable and independent evidence. These facts cannot be said to have been proved merely on the basis of circumstantial evidence and the uncorroborated testimony of the complainant. Thus, the impugned judgment of conviction and order of sentence is liable to be set aside.

10. On the other hand, learned counsel appearing for the respondent/C.B.I. submits that the judgment of conviction passed by the learned Special Judge is well-reasoned, legal and based upon proper appreciation of oral and documentary evidence available on record. It is contended that the prosecution has successfully established all the essential ingredients of the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the P.C. Act beyond reasonable doubt. It is submitted that the demand of illegal gratification of Rs. 5,000/- by the appellant has been clearly and consistently proved through the testimony of the complainant (PW-5), which inspires confidence and remains unshaken on material particulars. The evidence of the complainant is duly corroborated by the independent witness present at the time of trap proceedings as well as by the members of the trap team. Learned counsel further submits that the acceptance of the bribe amount by the appellant stands conclusively established. The appellant was apprehended red-handed immediately after accepting the tainted currency notes. The recovery of

the said amount from his possession has been proved by cogent evidence. The phenolphthalein test conducted during the trap proceedings yielded positive results, thereby scientifically corroborating the prosecution case regarding handling of the tainted currency notes by the appellant. It is contended that minor discrepancies or omissions in the testimonies of prosecution witnesses are natural and do not affect the substratum of the prosecution case. The learned Trial Court has rightly appreciated the evidence in its proper perspective and has recorded findings after careful scrutiny of the entire material on record. Learned counsel further submits that once demand and acceptance of illegal gratification have been proved, the statutory presumption under Section 20 of the P.C. Act squarely applies. The appellant has failed to rebut the said presumption by leading any reliable defence evidence or by eliciting material contradictions in cross-examination sufficient to probabilise his defence. It is argued that the defence plea that the complainant voluntarily offered money which was refused by the appellant is an afterthought and is not supported by any credible evidence. The learned Trial Court has rightly disbelieved such defence, as the circumstances of the trap and the recovery of tainted currency notes clearly negate the said contention. It is submitted that the findings recorded by the learned Trial Court are based on evidence and do not suffer from perversity or misappreciation warranting interference in appeal. Thus, the appeal being devoid of merit deserves is liable to be dismissed.

11. I have heard learned counsel for the parties and perused the material available on record.

12. It is clear from the record of the learned trial Court that the learned trial Court framed charges against the accused/appellant under Sections 7 and 13 (1) (d) read with section 13 (2) of the P.C. Act. & after appreciation of oral and documentary evidence, the learned trial Court convicted the accused/appellant accordingly.

13. Complainant Michael Masih (PW-5) has stated that on 19.01.2004, he had submitted an application (Ex.P-8) for CPF loan along with the requisite documents in the office of the Superintendent, Koriya Colliery. After submitting the loan application, he approached the accused/appellant to ascertain the status of his application. However, the accused allegedly demanded Rs. 5,000/- and stated that no action would be taken on the application unless the amount was paid. Thereafter, the witness informed the accused that he would return once he had arranged the money.

14. He has further stated that on a subsequent occasion, he went to meet the accused, but the accused was not present in the office. Later, he met the accused near the Central Bank, where this witness informed the accused that he had arranged the money and asked where he should meet him. The accused then asked whether he had seen his house. Thereafter, the witness went to the house of the accused. Prior to this, the witness had already contacted the CBI. The CBI officials came to his house, where he narrated the entire incident and conversation regarding demand of bribe. He has further stated that on 27.02.2004, he submitted a written complaint (Ex.P-1) to the CBI stating that the accused had demanded Rs. 5,000/- for processing his CPF loan application and that he was unwilling to pay the bribe.

15. He also stated that he handed over a copy of his loan application (Ex.P-8) to Inspector Devsthale of the CBI, which was seized vide seizure memo (Ex.P-6). Thereafter, the CBI officials demonstrated the trap procedure and prepared the pre-trap memorandum (Ex.P-2) at his house. The witness further stated that he, along with the CBI personnel, proceeded on foot towards the house of the accused. He and one Kashyap went to the accused's house, knocked the door, and the accused came out. The

accused asked whether he had brought the money, to which the witness replied in the affirmative. Upon handing over the amount to the accused, Kashyap gave a pre-arranged signal to the CBI team. After that, the CBI trap party immediately entered the house and apprehended the accused red-handed.

16. He further stated that Inspector Devsthale caught hold of the left hand of the accused, disclosed his identity as a CBI Inspector, and informed the accused that he had been caught while accepting a bribe. The accused, however, stated that he had not taken any bribe from the complainant and claimed that the money was repayment of a loan given to the complainant.

17. In paragraph 16 of his cross-examination, the witness stated that on 19.01.2004, he had submitted his CPF loan application to clerk Upendra Kumar in the receipt and dispatch section, and an acknowledgment was given on another copy bearing seal and signature. He further stated that although the application was submitted on 19.01.2004, the acknowledgment was issued on 20.01.2004, and he did not submit the application on 20.01.2004.

18. He has also stated that on 22.01.2004, he visited the office to inquire about the status of his loan application, where

Rama Shankar informed him that the application had been forwarded to the Personnel Department.

19. In paragraph 17, the witness stated that upon being informed by clerk Rama Shankar about certain errors in the Patwari documents, he approached the Patwari on the same day, got the errors corrected, and resubmitted the documents in the office on the very same day. He further stated that before approaching the Patwari, he had met the accused and informed him about the errors, upon which the accused instructed him to get the documents corrected from the Patwari and also asked him to arrange Rs. 5,000/-. In paragraph 18, the witness admitted that he did not lodge any complaint with any higher authority regarding the alleged demand of bribe on 22.01.2004.

20. In paragraph 19, the witness admitted that he had informed Satpujan Mishra, President, who had accompanied him to meet the accused. However, he denied the suggestion that he, along with Satpujan Mishra, had conspired to falsely implicate the accused in the bribery case.

21. Upendra Narayan Singh (PW-4) is the Senior Clerk posted in Koriya Colliery at Receipt and Dispatch Section. He has stated that entry in register (Article 'F') at Sl. No.1665 was made by him on 20.01.2004, according to which, an

application of complainant Michael Masih of CPF loan was received. He has also stated that after receiving the said application, he immediately entered the said application in the dak-book and sent it to Shri Sahu, Manager. He has also stated that he does not know where is the original copy of application whose entry was made in the Article-F. He has also stated that the photocopy (Ex.P-8) is the copy of original application which was submitted by complainant Michael Masih (PW-5). This witness, in para 6 of his cross-examination, has admitted that there is no entry for 19.01.2004 in the register (Article -'F'), whereas the date was written. He has denied this suggestion that he made entry at Sl.No.1666 for 20.01.2004 leaving 4 lines empty after writing 19.01.2004.

22. Ramashankar Tiwari (PW-7) is the Senior Clerk who at the relevant time was posted in S.E.C.L. Chirmiri. He has stated that he look after the work of provident fund and its loan regarding work of the employees. This witness in para 2 of his examination-in-chief has explained the mode and manner in which applications of employees for CPF loan are being processes and disposed of. He has stated that on 20.01.2004, complainant Michael Masih (PW-5) had submitted an application (Ex.P-8) for CPF loan of

Rs.2,50,000/-. He has also stated that in the first week of February, 2004, the complainant had come to him and inquired about status of his application, on which, he told him that his application has not come yet. Thereafter, the complainant went to Personal Officer (accused) and came back to him and showing enclosed documents with application asked him whether the enclosed documents are correct or not. This witness in para 6 has stated that old application of complainant had not come to him, therefore, he did not take any action thereon. In para 8, this witness has admitted that he did not receive any application of complainant on 19.01.2004, however, he only showed documents to him. He has also admitted that no application of complainant dated 20.01.2004 was received by him through Superintendent Khan. He has also admitted that if any loan application is received by the Personal Officer, it is not sent to the Area Manager for approval until the accompanying documents are rectified.

23. S.S. Kashyap (PW-1) is the Assistant Administrative Officer who at the relevant time was posted in Life Insurance Corporation, Chirmiri. He has admitted his signature on complaint (Ex.P-1) of Michael Masih, preliminary proceeding (Ex.P-2), memorandum of entire proceeding in the house of

accused (Ex.P-3), spot map (Ex.P-4) and arrest memo of accused (Ex.P-5). This witness has stated that he went to the house of accused with complainant Michael Masih and accused had asked about him then complainant Michael Masih introduced him as his relative. This witness has denied this suggestion that complainant forcibly gave money to the accused.

24. Sanjay Dongaonkar (PW-6) is another witness of trap party. He has stated that he had gone to the house of accused with complainant Michael Masih (PW-5) and S.S. Kashyap (PW-1) as witness. Complainant Michael Masih gave money to accused in his house and thereafter gestured us then he along with CBI team entered the house of accused and seized money from the accused.

25. K.C. Sahu (PW-8) who at the relevant time was posted as Superintendent Mines/Manager at Koriya Colliery has stated that he used to endorse all application forms for PF advance received through the receipt and dispatch section by writing note in english, **'Forwarded to the Personnel Manager for necessary action**,' and then affixing his signature. At this stage, when the witness was shown loan application (Ex. P-8) and questioned, he stated as follows:

'यह किसी आवेदन की फोटो कापी है, जिसके ऊपर दाहिने

कोने पर मेरे कार्यालय के आवक जावक शाखा की सील तथा रिसीप्ट नंबर आदि अंकित है। यह आवेदन पत्र कभी मेरे समक्ष रखा गया था या नहीं यह मै नही बता सकता। यदि मेरे सामने यह आवेदन पत्र प्रस्तुत होता, तो मै इस पर अपने हाथ से पर्सनल मैनेजर को मार्क करने का लेख लिखता। इस आवेदन पत्र में कही भी मेरे हाथ का कोई लेख नही है, इसलिए मै यह कह सकता हूं कि यह आवेदन मेरे समक्ष कभी कोई विचार हेतु नहीं आया था। '

26. H.L. Soni (PW-9) is the witness who at the relevant time was posted as Mines Superintendent/Manager in Koriya Colliery. He has stated that CBI Officer had summoned him with documents relating to loan application of complainant Michael Masih (PW-5). Thereafter, he along with K.C. Sahu and concerned dealing clerk had gone to CBI Office with documents. He has also stated that the CBI Officials had seized concerned documents under Ex.P-9 and obtained his signature thereon. He has also stated that he attested the complainant's certified copy of the application which the complainant submitted to the office on 02.03.2004. He has also stated that the complainant's previous application was not available at the office. The dealing clerk took photocopy of this application and photographs of other documents with him. The CBI Officer asked him to attest and sign the said photocopies. So, he signed them immediately, writing 'attested' on 33 documents. His signature is on all the seized documents.

27. P. Panir Selvam (PW-10) is the Inspector (C.B.I.). He has stated I n his examination-in-chief the mode and manner in which the preliminary proceeding and trap proceeding was conducted. In para 6 of his cross-examination, this witness has admitted that he did not note on Ex.P-1 that when and on what date this complaint was given to me. He has admitted that on Ex.P-1, the two witnesses S.S. Kashyap and Sanjay Dodgaonkar did not note that they had confirmed the complaint with the complainant.

28. Close scrutiny of the evidence of prosecution witnesses as discussed above makes it clear that in the entire case there is no concrete proof of demand of bribe amount by the accused. The trap witnesses have only deposed about the recovery of bribe amount. Notably, according to the complainant (PW-5), he had filed CPF loan application, which forms the very basis of the alleged demand, but it is surprising to note that original CPF loan application has not been produced and only a photocopy (Ex.P-8) has been brought on record, without proper foundational proof of its submission or movement through official channels.

29. The defence of accused is that the complainant (PW-5) and Union Leader have falsely implicated him in a false case. The accused, in his 313 Cr.P.C. statement has answered to

Q. No.120 has as under :-

> *'कोलियारी के कुछ नेता.नुमा कर्मचारी मुझसे चिढ़ते थे एवं नाराज़ रहते थे। माइकल मसीह भी उन्हीं के पार्टी का था। वह मुझसे अपने एक झूठे आवेदन पत्र के आधार पर लोन की स्वीकृत करवाना चाहता था जिसे मैंने इंकार कर दिया था। वह मेरे पास इसके बाद आवेदन पत्र लेकर कभी नहीं आया था, और न ही मुझे कोई लोन आवेदन पत्र दिया था। लोन आवेदन पत्र प्रक्रिया के अनुसार मेरे पास आते हैं। घटना दिनांक को मैं मध्यावकाश के कारण अपने घर में आराम कर रहा था। उसी समय किसी ने दरवाज़ा खटखटाया, जिस पर मैंने कहा कि दरवाज़ा खुला है तब दरवाज़ा खोलकर दो आदमी आए थे तब तक मैं पलंग से उठकर खड़ा हो गया था। मैंने देखा कि माइकल मसीह अपनी पैंट की जेब में हाथ डालकर नोट की एक गड्डी निकाला और मेरी ओर बढ़ाया और बोला कि मेरा काम कर दो। तब मैंने उसके हाथ में रखे नोटों समेत उसके हाथ को उसकी ओर झटका, जिसके कारण नोट का बंडल माइकल के हाथ से नीचे फर्श पर गिर गया। तब मैंने माइकल मसीह को डांटा कि यह क्या कर रहे हो, मैंने तुमसे रुपये कभी नहीं मांगे, तुम मुझे जबरदस्ती क्यों नोट दे रहे हो। इतने में चार-पांच लोग और कमरे में आ गए और मुझे डांटने लगे कि मैंने रुपये लिए हैं, जिस पर मैंने कहा कि मैंने रुपये नहीं लिए हैं, माइकल मुझे जबरदस्ती रुपया दे रहा था, जिसको मैंने हाथ से झटका तो रुपया फर्श पर गिर गया। इस पर एक व्यक्ति ने अपने आप को सीबीआई का इंस्पेक्टर बताते हुए लिखापढ़ी करना चालू कर दिया और मेरे हाथों को जबरन धुलवाया तथा 2 ढाई घंटे बाद मुझे कुछ कागजों पर दस्तखत करने को बोला। तब मैंने इन कागजों को पढ़ना चाहा, तब उन्होंने पढ़ने से मना कर दिया एवं केवल*

दस्तखत करवा लिया। मैंने माइकल से रिश्वत नहीं मांगी थी और न ही मैंने कोई रिश्वत ली थी। माइकल ने मुझे अपना आवेदन नहीं दिया था। इस कारण मेरे द्वारा उसके दिए गए किसी आवेदन पत्र को नष्ट करने का कोई सवाल ही नहीं था। मैंने माइकल मसीह के किसी आवेदन पत्र को नष्ट नहीं किया था।

30. From the aforesaid answer to Question No.120, it is apparent that the accused has categorically denied having received any CPF loan application from the complainant and has further asserted that no demand or acceptance of bribe was ever made by him, instead that the complainant attempted to thrust money upon him. This defence version finds substantial corroboration from the evidence of prosecution witnesses Upendra Narayan Singh (PW-4), Ramashankar Tiwari (PW-7) and K.C. Sahu (PW-8), who have explained the prescribed procedure for processing loan applications and have not confirmed that any such application of the complainant was ever placed before the accused. In particular, PW-8 has stated that the noting ordinarily made by him on CPF loan application is absent on Ex.P-8, which also raised suspicion that any such application was filed. Furthermore, the original loan application itself has not been produced by the prosecution and only a photocopy (Ex.P-8) has been filed by the prosecution, thereby gives further support to the defence

plea and creating a serious doubt regarding the very existence and movement of the alleged application.

31. The Hon'ble Apex Court in ***P. Somaraju (supra)*** has held in para 20 and 21 as under :-

> *"20. In the present case, too, the sole basis of the prosecution to prove demand and acceptance is the narration of the complainant, a close scrutiny of which reveals serious infirmities. At the outset, the complainant has no proof other than his own oral statement that he visited the appellant on 25.09.1997, wherein the appellant allegedly made his first demand for a bribe. His nephew also admits he does not know when the complainant first informed him that the appellant had demanded a bribe. Moreover, as the Trial Court has already noted:*
>
> *(a) There is a material discrepancy as to when the complaint was written, as the complainant claims it was drafted on the morning of 25.09.1997. Yet, the alleged demand is said to have occurred in the evening of that very day. The High Court has dismissed this inconsistency as "innocuous" by reasoning that it may be attributed to the lapse of five years between incident and deposition;*
>
> *(b) The complainant itself refers to "Rama Raju" rather than the appellant, a mistake not corrected at the pre-trap stage on 26.09.1997. On this point, the High Court has said:*

"14) … Criminal law does not attach importance on names of the accused, but gives importance to identity of the accused. One person may be called with many names, but all those names refer to one and the same person and not different persons. It cannot be a circumstance either to disbelieve the prosecution case or to discredit P.W.-1's evidence."

21. Needless to say, the above observations are not tenable in law. Moreover, what we find particularly troubling is the complainant's conduct in directing Rajender, the mediator and accompanying independent witness, to remain outside the appellant's office during the crucial half-hour in which the alleged demand and acceptance occurred. This was contrary to the explicit instructions of the DSP. Rajender could consequently make no positive statement on whether the appellant demanded or accepted any bribe, and this gap is candidly admitted by the prosecution itself."

32. This High Court in the matter of ***Umesh Kumar (supra)*** held in para 16 to 22 as under :-

"16. S.I. Hussain (P.W.-9) stated that the bribe notes were recovered from the junk room.

In his cross-examination, he admitted this suggestion of defence that the conversation between the accused and

Budga were going on in a low voice, therefore, he could not hear it.

17. B. Paneer Selvam (P.W.-10) stated that the bribe money was recovered from the junk room at the instance of the accused persons.

18. Close scrutiny of statements of all witnesses makes it clear that there is no proof of any demand in this case and recovery of tainted notes was made from junk room.

19. In the matter of **B. Jayaraj** (supra) , Hon'ble Apex Court held in para 7 as under:-

> *"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P.[2] [(2010) 15 SCC 1] and C.M. Girish Babu v. CBI[3] [(2009) 3 SCC 779]."*

20. Again Hon'ble Supreme Court in the matter of **Mukhtiar Singh** (supra) held in paras 13 and 14 which are reproduced here in below:-

> 13. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the

attention of this Court on umpteen occasions. In A. Subair v. State of Kerala[5]; (2009) 6 SCC 587, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent. Carrying this enunciation further, it was exposited in State of Kerala v. C.P. Rao[6]; (2011) 6 SCC 450 that mere recovery by itself of the amount said to have been paid by way of illegal gratification would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

14. In P. Satyanarayana Murthy[2]; (2015) 10 SCC 152 this Court took note of its verdict in B. Jayaraj v. State of A.P.[7]; (2014) 13 SCC 55 underlining that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any

presumption thereunder would arise only on such proof of demand. This Court thus in P. Satyanarayana Murthy[2]; (2015) 10 SCC 152 on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC p. 159, para 23)

> "23 The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal b gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder." (emphasis supplied)

21. This Court in the matter of **Shivprasad Kuldeep** (supra) held in paras 14, 15 and 16 as under:-

"14. in (2009) 3 SCC 779 (C.M. Girish Babu v. CBI, Cochin, High Court of Kerala), the Supreme Court held thus:

> "18. In Suraj Mal v. State (Delhi Admn.), (1979) 4 SCC 725, this Court took the view that (at SCC p. 727,

para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

15. Further, in (2014) 13 SCC 55 (B. Jayaraj v. State of Andhra Pradesh), it was held by the Supreme Court as under:

"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P., (2010) 15 SCC 1 and C.M. Girish Babu v. CBI, (2009) 3 SCC 779.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1) (d) (i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal

> gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

16. Recently, in (2021) 3 SCC 687 (N. Vijayakumar v. State of Tamil Nadu), reiterating the judgment of C.M. Girish Babu case (supra) and B. Jayaraj case (supra), it was held by the Supreme Court as follows:

> "26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI, (2009) 3 SCC 779 and in B. Jayaraj v. State of A.P., (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial

> presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."
>
> *22. In light of above, in the present case, it is quite vivid that there is no proof of demand as it appears that the currency notes were recovered from junk room and statements of panch witnesses and investigating officer are contradictory to each other and other present witnesses did not support the prosecution case. It is also clear that the complainant stated in his application that the demand was made on 06.11.2004 but as per Ashish Adhikari (P.W.-4), accused Umesh Kumar was on leave on 06.11.2004 and the said fact is evident from Ex.D/1 and Ex.D/2. Thus, the prosecution has failed to prove the demand and acceptance of bribe by the appellants from the complainant beyond reasonable doubt."*

33. In the light of above, in the present case, it is quite vivid that the prosecution has failed to prove the essential ingredient of demand of bribe. The evidence on record shows that the original CPF loan application of the complainant (PW-5) was missing and only a photocopy (Ex.P-8) was filed, which weakens the prosecution case and raised serious doubt. Further, the prosecution witnesses dealing with the CPF loan application have not established that any such application was ever pending before the accused at the

relevant time of loan sanction. These circumstances gives support to the defence version made in answer to Q. No.120 in 313 Cr.P.C. statement that no application was received by the accused. Consequently, in the absence of reliable proof of demand and acceptance of illegal gratification, the prosecution has failed to prove its case beyond reasonable doubt.

34. For the foregoing discussion, the appeal is **allowed**. Conviction of the accused/appellant under Sections 7 and 13(2) r/w 13(1)(D) of the P.C. Act and sentenced imposed thereunder are hereby set aside. He is acquitted of the said charges.

35. Since, the instant appeal was prosecuted by the legal representative on account of death of the accused/appellant, therefore, after allowing the appeal, no direction is required for the LRs to furnish personal bond under Section 481 BNSS.

36. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Rajani Dubey)
JUDGE

pekde