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2026:CGHC:40724

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

THE DATE WHEN THE CASE IS RESERVED	THE DATE WHEN THE JUDGMENT IS PRONOUNCED	THE DATE WHEN THE JUDGMENT IS UPLOADED ON THE WEBSITE	
		Operative	Full
07.9.2026	18.9.2026	****	18.9.2026

CRA No. 569 of 2017

Murli Prasad Choudari S/o Shri Bansi Choudary Aged About 41 Years Occupation Accountant Office Of Surajpur District Education Officer, R/o Mishra Gali Bhayianath Road Surajpur, District Surajpur, Chhattisgarh., Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through E O W / A C B, Police Station A C B Raipur, District Raipur, Chhattisgarh., Chhattisgarh

... Respondent

For Appellant	:	Mr. Ashutosh Trivedi, Advocate
For Respondent/State	:	Mr. DR Minj, Dy. Advocate General

(Hon’ble Shri Justice Naresh Kumar Chandravanshi)

CAV JUDGMENT

1. This criminal appeal has been preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (henceforth, Cr.P.C.) challenging the judgment of conviction and order of sentence dated 30.03.2017 passed by Special Judge, Prevention of Corruption Act, 1988 (for brevity, “Special Judge”), Surajpur Distt. Surajpur in Special Session Case No. 04/2015, whereby the learned Special Judge, after holding the appellant guilty, convicted and sentenced him in the following

manner:-

Conviction U/s	Sentence
7 of Prevention of Corruption Act, 1988	RI for Three years with fine of Rs.5,000/-, in default thereof to undergo SI for Six months
13(1)(d) read with 13(2) of the Act, 1988	RI for Four years with fine of Rs.5,000/-, in default thereof to undergo SI for Six months.
Both the sentences are directed to run concurrently	

2. The prosecution case, in brief, is that complainant Mohit Ram Rajwade (PW-1) made a written complaint vide Ex-P/1 before Superintendent of Police, Anti Corruption Bureau, Bilaspur complaining inter alia that he is the President/Manager of *Maa Saraswati Shiksha Samiti*, and he approached the office of the District Education Officer in connection with recognition of the school run by the Samiti. It was alleged that on 20.06.2014, the appellant-Murali Prasad Choudhary, who was the Accountant of the said office, demanded a bribe of ₹15,000/- from the complainant and asked him to pay ₹5,000/- immediately, out of which ₹4,900/- was allegedly paid. Thereafter, on 21.06.2014, the complainant approached the Anti-Corruption Bureau, Bilaspur and submitted a written complaint. During verification, the complainant was instructed to record his conversation with the appellant. Conversations dated 23.06.2014 and 24.06.2014 were allegedly recorded on the complainant's mobile phone, during which the alleged demand was reduced to ₹8,000/-. On the basis of the complaint and the alleged recorded conversation, the ACB arranged a trap on 30.06.2014. Two independent panch witnesses and members of the trap team were associated with the proceedings. The complainant produced the second complaint, the recorded

conversation and ₹8,000/- in sixteen currency notes of ₹500/- each. The currency notes were treated with phenolphthalein powder and their numbers were noted in the relevant panchnama. Other necessary proceedings were also conducted. According to the prosecution, during the trap, the appellant accepted ₹8,000/- from the complainant, counted the money and kept it in the left pocket of his trousers. Thereafter, he was caught by the police personal. Upon being questioned, he allegedly disclosed the place where the money had been kept. The prosecution further alleged recovery of ₹8,000/- towards bribe, from the pocket of the trouser of the appellant, along with ₹1,000/- stated to have been given towards ABO, totalling ₹9,000/-. During investigation, the relevant documents, mobile SIM and material relating to the phenolphthalein test were seized. Statements of the complainant, panch witnesses and members of the trap team were recorded, and the seized material was sent to the FSL and the F.S.L. report (Ex-P/49) was thereafter obtained.

3. After completion of investigation, charge-sheet for the offence under Sections 7, 13(1)(d) & 13 (2) of the Prevention of Corruption Act, 1988 (henceforth referred as 'the PC Act, 1988') was filed against the appellant before competent Court.

4. The learned Special Judge framed charge(s) under Section 7, 13(1)(d) read with section 13(2) of the PC Act against the appellant, who abjured his guilt and claimed trial.

5. In order to establish the charges against the appellant/ accused, the prosecution examined as many as 10 witnesses and exhibited 52 documents. Statement of the appellant under Section 313 of the Cr.P.C. was recorded, in which he denied all the incriminating circumstances appearing against him in the prosecution evidence claiming himself to be innocent and

false implication. Apart from this, appellant has examined Nilambar Maharaj (DW-1) as a defence witness.

6. After considering evidence adduced by both the parties, learned Special Court (PC Act) convicted the appellant for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act and sentenced him, as has been mentioned in opening paragraph of the judgment. Against which, instant appeal has been preferred by the appellant questioning the same.

7. Learned counsel for the appellant submits that in order to establish the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, it is incumbent upon the prosecution to prove the essential ingredients of '*demand and acceptance*' of the bribe. However, in the instant case, the complainant Mohit Ram Rajwade (PW-1) and his accompanying witnesses Kunwar Sai (PW-3) has completely turned hostile and they have not supported the case of the prosecution at all. It is further submitted that the learned Trial Court has held the factum of demand to be proved primarily on the basis of the transcripts (Ex.-P/26) allegedly prepared from the conversation recorded on 30.06.2024, i.e., on the date of the trap. However, the Investigating Officer, Ramakant Sharma (PW-10), has himself admitted in paragraph 21 of his cross-examination that no certificate under Section 65-B of the Evidence Act was obtained in respect of the recording of the said conversation from the tape recorder. He has further admitted that the recording was downloaded into a CD and thereafter the alleged transcription (Ex.-P/26) was prepared, but neither the voice sample of the appellant nor the identity of the voice in the said conversation has been duly proved by the prosecution. Learned counsel further submits that, although the prosecution case is that the tainted amount of Rs.8,000/- was recovered from the left pocket of the appellant's trouser, the complainant himself has not supported

the prosecution version that the appellant demanded the said amount as illegal gratification and thereafter accepted the same from him. On the contrary, Kunwar Sai (PW-3) has narrated an entirely different version, stating that the complainant had forcibly placed the said amount in the pocket of the appellant. It is, therefore, contended that, in view of these material contradictions and the failure of the material witnesses to support the prosecution case, the essential ingredients of demand and acceptance of illegal gratification have not been established beyond reasonable doubt. Learned counsel submits that the Special Court has recorded the conviction merely on the basis of suspicious circumstances, which, in law, cannot constitute the sole basis for recording a finding of guilt in a criminal case. Hence, it is prayed that the appeal be allowed and the appellant be acquitted of the charges levelled against him. To substantiate his submissions, learned counsel for the appellant has placed reliance upon the judgments rendered in **CrA No.2674/2025 (Suresh Kurre vs. State of CG)** decided on 11.03.2026; **CrA No.52/2018 (Lavan Singh Churendra vs. State of CG)** decided on 01.7.2025 and **CrA No.782/2005 (Rishi Ram Paraste Vs. State of Chhattisgarh)** decided on 03.02.2025, by Coordinate Bench of this Court.

8. Per contra, learned counsel appearing for the State, while supporting the impugned judgment, submits that the tainted bribe amount was recovered from the left pocket of the appellant's trousers, which is also supported by the independent witness (PW-2) as well as the police witnesses. It is, therefore, contended that the learned Trial Court, upon proper appreciation of the evidence available on record, has rightly convicted the appellant and that the impugned judgment does not warrant any interference in the present appeal. Hence, it is prayed that the instant appeal be dismissed. To substantiate his argument, he placed reliance in the case of

ACQA No.260/2019 (State of Chhattisgarh vs. Tobius Xaxa) Order dated 16.02.2026, by the Coordinate Bench of this Court.

9. Heard learned counsel for the parties and perused the material available on record.

10. The primary pillar of any corruption case is the testimony of the complainant. In the present case, complainant Mohit Ram Rajwade (PW-1), was examined by the prosecution to prove the demand and acceptance of bribe, but he completely turned hostile and did not support the prosecution case. PW-1 categorically deposed that the appellant, Murli Prasad Choudari, never demanded any bribe from him. He stated that one Dr. Pratap had informed him that a bank account (Fixed Deposit) needed to be opened for getting the school's recognition, and he handed over Rs. 9,000/- to Dr. Pratap for that purpose. The complainant clearly stated that he did not give any bribe to the appellant and that the appellant did not demand any money from him and that the signatures on police documents and panchnamas were obtained from him at the Rest House under instructions without reading their contents. However, his complaint letters Ex-P/1 & Ex-P/13 were relied by the prosecution and documents in respect of getting school's recognition vide Ex-P/2 to P/11A were marked in evidence. On cross-examination, nothing was elicited to establish the demand and acceptance of bribe by the accused, as alleged by the prosecution.

11. Karmu Ram Gangeshri (PW-2), a punch witness, has stated that while working as a Sub-Divisional Officer in the PWD National Highway Sub-Division, Bilaspur, he was instructed by the Collectorate and the Protocol Officer to act as a witness for the Anti-Corruption Bureau (ACB). On June 30, 2014, he visited the ACB office in Bilaspur, where he was introduced to co-witness Mr. Khunte (PW-7). Accompanied by the ACB team, they went to

Surajpur and stayed at Sunday House, where they met complainant Mohit Ram Rajwade and Kunwarsai. After reading the written complaint submitted by Mohit Ram, both witnesses signed, which is marked as Exhibit P-13. The complainant thereafter played on his mobile phone a recorded conversation concerning a monetary transaction. The ACB officials prepared a CD of the said conversation and seized it vide Ex.P-15. The complainant also handed over ₹8,000/- to the ACB officials, in respect of which a panchnama (Ex.P-16) was prepared. This witness further stated that Inspector Ramakant Sharma directed peon Shinde to apply phenolphthalein powder to those currency notes. This witness searched the complainant's shirt pocket and found nothing therein. The tainted currency was thereafter placed in the complainant's pocket by Shinde. The complainant was instructed not to shake hands with anyone until he had spoken to the accused. A solution was prepared by Constable Vedram Sinha (PW-9). The hands of other persons were initially dipped in the solution, which remained without any change in colour. When Shinde's hand was subsequently dipped, the solution turned pink. The solution was seized by the ACB officials. The entire team thereafter proceeded to the office of the District Education Officer. This witness along with other panch witness Khunte and Inspector Sharma remained outside the office, while the complainant and a constable went inside. After receiving the pre-arranged signal from the complainant, Constable Sinha entered the premises and caught hold hand of Murli Prasad Choudari (appellant), who had come out into the verandah. The ACB officials disclosed their identity and took the accused inside, where the panch witnesses also joined them. He (this witness) was searched and thereafter, he searched the accused's pocket, from which currency notes were recovered. On being dipped those currency notes in the solution prepared by the ACB personal, the solution

turned pink. Relevant documents were prepared at the spot and signed by the witnesses. The accused was thereafter handed over to the police.

11.1 The team returned to the Rest House, where a Patwari was called and a spot map was prepared. The accused was also medically examined. The witness identified his signatures on various documents, including the complainant's personal-search panchnama (Ex.P-17), voice-recorder handing-over panchnama (Ex.P-18), preliminary panchnama (Ex.P-19), the accused's personal-search panchnama (Ex.P-28), recovery and seizure documents relating to the tainted currency and other articles (Exs. P-29 to P-33), the seizure of the CD containing the recorded conversation (Ex.P-15A), the spot chemical-test proceedings (Ex.P-34), spot map (Ex.P-23), arrest panchnama (Ex.P-35), proceedings panchnama (Ex.P-24), and transcription panchnamas (Exs.P-25 and P-26). He, however, stated that his statement had not been recorded by the police.

11.2 In cross-examination, Karmu Ram Gangeshri (PW-2) has admitted that he had previously acted as a witness in three or four ACB cases. On June 30, 2014, he traveled from Bilaspur to Surajpur in a same vehicle with Inspector Sharma, a constable, a peon, and the co-witness, arriving at Sunday House around 9:00–9:30 a.m. He admitted that neither the police nor the panch witnesses searched one another before departure, and no local police were informed or called either at Sunday House or prior to visiting the District Education Officer's (DEO) office. At the Sunday House, the recorded mobile conversation was played, a CD was prepared, phenolphthalein was applied to the currency notes and the chemical-test solution was prepared. He could not state the name of the person who prepared the CD and stated only that it was prepared by the police operator. This witness further admitted that, even when they proceeded from the

Sunday House to the office of the District Education Officer, the ACB officials had not informed the local police. The two panch witnesses and Inspector Sharma remained outside the office gate, approximately 50 metres away from the office, while the complainant and a constable went inside. He expressly admitted that, since the panch witnesses remained outside and the accused was inside his office, he had no knowledge of what transpired between the complainant and the accused inside the accused's room.

12. Kunwar Sai (PW-3), who is said to be accompanying witness to the complainant, has stated that he knew both the complainant and the accused and he accompanied the complainant to the DEO office but remained outside and had no knowledge of their conversation. He categorically stated that the complainant forcibly put the money into the accused's pocket, whereupon the accused immediately said that no money was required and, while following the complainant outside, repeatedly asked him to take the money back. The accused was thereafter apprehended by the persons waiting outside. The witness denied the prosecution version regarding demand and acceptance of gratification and stated that he had not given any statement to the police. He further admitted that he did not know the contents or purpose of Ex.P-19 and had signed it at the instance of the police. Thus, his testimony does not support the case of the prosecution, that there was any demand or acceptance of any illegal gratification by the accused.

13. RL Khunte (PW-7), a Commercial Tax Officer, was second panch witness in this case. More or less, he has also supported the deposition of Karmu Ram Gangeshri (PW-2).

14. Ramakant Sharma (PW-10) was the investigating officer, who conducted the preliminary verification, the pre-trap formalities, and the

subsequent raid, resulting in the apprehension of the accused. The witness deposed regarding the receipt of the initial written complaint (Ex.P-01) from the complainant (Mohit Ram Rajwade) on 21.06.2014, the subsequent instructions given to record the bribe demand conversation, and the drawing up of the preliminary panchnama (Ex.P-12). The testimony details, the meticulous steps undertaken prior to the trap, including the requisition of panch witnesses (K.R. Gangeshri and R.L. Khunte), the verification of the second complaint (Ex.P-13), the recording of the demand conversation, and the serial numbering and phenolphthalein powder application on the trap money (Rs. 8,000/-) as recorded in Ex.P-16. Furthermore, the witness corroborated the demonstration and execution of the sodium carbonate solution tests, which yielded positive results, confirming the handling of tainted currency by the accused. This witness led the trap party to the District Education Office, Surajpur, on 30.06.2014, where the pre-arranged signal by the complainant was acted upon. The witness categorically deposed about apprehending the accused—holding his right wrist—immediately following the exchange, recovery of the tainted currency of Rs. 8,000/- alongwith an additional Rs. 1,000/- from the pocket of the accused's trousers (pursuant to recovery panchnamas Ex.P-28 and Ex.P-29), and conducting the mandatory post-trap hand-wash and pocket-wash solution tests which turned pink. The seizure of relevant documents, including the school recognition file (Ex.P-32), the mobile SIM card used for conversations (Ex.P-33), and the subsequent forwarding of the sealed chemical exhibits to the FSL Raipur (Ex.P-49), were duly affirmed by the witness during examination-in-chief, establishing an chain of custody and procedural compliance during the investigation.

14.1 A perusal of the cross-examination of the Investigating Officer reveals significant infirmities and contradictions that undermine the veracity of

the prosecution narrative. The witness admitted that several crucial material objects and seized articles—such as Article A-28 (currency notes) and Articles A-1 and A-2—bore no signatures of panch witnesses or mandatory seals at the relevant stages, and that the seized solutions in the vials had lost their characteristic pink color by the time of trial. More importantly, the witness conceded that no independent voice sample of the accused was taken, no FSL voice authentication of the alleged telephonic conversation was conducted, and no certificate under Section 65B of the Indian Evidence Act was furnished regarding the electronic audio records. These glaring omissions, coupled with the admission that the panch witnesses (K.R. Gangeshri and RL Khunte) remained seated in the vehicle outside and did not witness the actual conversation inside the office, cast serious doubts on the veracity of the trap proceedings and the independent corroboration of the alleged demand and acceptance.

15. Though KR Gangeshri (PW-2), Mahendra Kumar Gupta-Patwari (PW-4), Sitaram Yadav (PW-5), Anand Prakash Ekka (PW-6), RL Khute (PW-7), Lawrence Khes (PW-8) and Constable Vedram Singa (PW-9) supported the prosecution case regarding the procedure of trap proceedings, however, none of the witnesses deposed in support of demand of bribe by the accused.

16. Upon evaluation of the entire evidence adduced, it could be observed that none of the witnesses supported the most essential ingredient of the offence, namely, the demand for illegal gratification, as alleged by the prosecution. The Special Court, however, convicted the accused by inferring from the attendant circumstances, particularly based on the transcript (Ex-P/26) and recovery of currency notes from the accused, but the said transcript has not been proved in accordance with law, i.e. the said voice present on it is the voice of the appellant.

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. 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 v. State (Government of NCT of Delhi), (2023) 4 SCC 731**, 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 No.68, it has been held as under :

"88. What emerges from the aforesaid discussion is summarised as under:

88.1.(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.

88.2 (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.

88.3 (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.

88.4 (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

88.5 *(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.*

88.6 *(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.

88.7 (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.*

88.8 (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 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.

20. Further, in the recent judgment, the Hon'ble Apex Court in the matter of **P. Somaraju vs. The State of Andhra Pradesh (2025 SCC OnLine SC 2291)**, in para 18 it has held as under:-

18. The statutory presumption under Section 20 of the PC Act is not automatic and arises only once the foundational facts of demand and acceptance are proved. The same has been reiterated time and again by this Court; in the recent decision of Rajesh Gupta Vs. State through Central Bureau of Investigation (2022 INSC 359), it was held:-

“17. For an offence under Section 7 of the PC Act, the demand of illegal gratification is a *sine qua non* to prove the guilt. Mere recovery of currency notes cannot constitute an offence under Section 7 of the PC Act, unless it is proved beyond reasonable doubt that accused voluntarily accepted the money, knowing it to be a bribe, The proof of acceptance of illegal gratification can follow only if there is proof of demand.”

21. Accordingly, 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 dehors 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.

22. Reverting to the facts of the instant case, the complainant Mohit Ram Rajwade (PW-1) is the star witness on the question of demand. However, he has not supported the prosecution case. He categorically stated that the appellant never demanded any bribe from him and that he had not paid any bribe to the appellant. Aforesaid facts also do not get any support from alleged accompanying witness Kunwar Sai (PW-3) or panch witnesses Karmu Ram Gangeshir (PW-2) and RL Khute (PW-7) or any other witnesses.

23. The prosecution has relied upon the alleged electronic conversation and its transcript to establish demand. However, the evidentiary foundation for relying upon the said electronic material is itself seriously deficient. The Investigating Officer (PW-10) admitted in cross-examination that no certificate under Section 65-B of the Indian Evidence Act was obtained in respect of the electronic recording. No voice sample of the appellant was obtained and no forensic examination was conducted to establish that the voice in the alleged recording was that of the appellant.

24. Upon careful and comprehensive evaluation of the entire evidence on record, this Court finds that the foundational requirement for establishing the offence under the Prevention of Corruption Act, namely the proof of demand of illegal gratification, has not been proved by the prosecution. It is well settled that demand of illegal gratification is the gravamen of the offence and unless the prosecution proves such demand

beyond reasonable doubt, mere recovery of tainted currency notes from the accused cannot lead to conviction.

25. Consequently, the appeal succeeds. The judgment of conviction and order of sentence dated 30.03.2017 passed by the Special Judge, (constituted under PC Act, 1988), Surajpur, District Surajpur, in Special Sessions Case No.04/2015, convicting the appellant for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act, 1988, is hereby set aside/quashed. Resultantly, the appellant is **acquitted** of the said charges framed against him.

26. The appellant is reported to be on bail. His bail bond shall stand discharged at this stage and shall remain operative for a further period of six months in view of Section 481 of the Bharatiya Nagarik Suraksha Sanhita. The fine amount, if deposited, shall be refunded to the appellant in accordance with law.

27. Let a copy of this judgment along with the record of the trial Court be transmitted forthwith to the concerned Court for information and necessary compliance, if any.

28. Appeal allowed.

Sd/-

(Naresh Kumar Chandravanshi)
Judge

