

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

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Krishan Chander vs. the State of Delhi

(2016) 3 SCC 108

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ABSTRACT

The Prevention of Corruption Act, 1988 (referred to as 'the Act') is the main anti-corruption legislation in India. It addresses bribery and corruption offences committed by public servants. Section 7 of the Prevention of Corruption Act, 1988 deals with public servants taking gratifications other than legal remuneration (illegal gratifications) in respect of an official act, while Section 13 of the Act pertains to criminal misconduct by public servants. Both sections are fairly broad in scope, and over the years, their scope and ambit have been interpreted by judicial precedent.

In this case, the Supreme Court postulated the essential factors for determining whether bribery, as contemplated under Section 7 read with Section 13 of the Act, has been committed. The court held that in order to prove an offence under these sections, it is necessary to establish that the public servant both demanded and accepted the bribe. The Supreme Court also dealt with the evidentiary value of a hostile witness's evidence and held that his or her evidence could not be ignored in its entirety merely because the witness has become hostile.

Keywords: *corruption, public servant, panch witness, illegal gratification, the sine qua non.*

I. FACTS IN BRIEF

The appellant (Krishan Chander) – a constable in the police department – was alleged to have demanded a bribe of Rs.5,000/- from the complainant (Jai Bhagwan) to release the complainant's brother on bail. Allegedly, the complainant, under duress, immediately paid Rs. 4000/- as a bribe to the appellant to secure bail for his brother. After which, the said person was released on bail, and the appellant and complainant agreed that the complainant would pay the remainder/ balance amount of the bribe Rs. 1000/- on a later date.

The complainant approached the office of Anti Corruption Branch, Delhi Police and made a written complaint regarding the demand of bribe by the appellant from him. The bureau then set up a trap using marked currency notes (serial number and phenolphthalein powder), which

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were to be given to the accused. An independent witness (Panch witness) was also brought in to witness payment of the bribe, he was supposed to remain close to the complainant to overhear the conversation between the complainant and the appellant, and he was instructed to give a signal to the raiding party when the cash was handed over to the accused. The tainted GC notes were given to the complainant.

All members of the raiding party reached the pre-decided spot on the day of the raid. The appellant reached the spot and had a conversation with the complainant. After some time, the complainant took out the tainted GC notes and gave them to the appellant. Soon after the said transaction, the panch witness gave the pre-determined signal to the raiding team, upon which the team rushed to the spot.

According to the prosecution, the accused was caught demanding and accepting the marked currency notes (bribe money of Rs.1000/-) from the complainant. The tainted GC notes were immediately taken from the appellant. The serial numbers of the recovered GC notes were matched with those noted in the pre-raid proceedings. The wash of the hands and shirt pocket of the appellant were taken in a solution of sodium carbonate, which turned pink. The solution was sealed and labelled in glass bottles. Thereafter, the appellant was arrested, and FIR was registered against him for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Act.

(A) Trial Court decision

During the trial, the complainant withdrew his original statement and refused to support the prosecution's case that the accused had demanded illegal gratification. However, the Trial Court relied on, among other things, the fact that the accused was caught red-handed accepting the marked currency notes and convicted him of offences under Sections 7 and 13 of the Act, sentencing him to rigorous imprisonment for two years, along with an Rs.5000 fine for the offence punishable separately under both Section 7 and 13(2) of the Act and in default to undergo simple imprisonment for two months. Both the sentences imposed upon him for the offences were to run concurrently.

(B) High Court Appeal

Aggrieved by the court's orders, the accused appealed to the High Court. The High Court has dismissed the appeal filed by the appellant and upheld the order of conviction and sentence passed against the appellant by the court of Special Judge, Delhi. When the High Court refused to interfere and upheld the trial court decision, the accused appealed to the Supreme Court, requesting that the High Court's decision be impugned.

II. ISSUES RAISED

- Whether the demand and acceptance of illegal gratification is *sin quo non* for attracting the provisions of Sections 7 and 13(1)(d) read with Section 13(2) of the Act, 1988?
- Whether the Police Statement can be admitted into evidence in case the witness turns hostile during their testimony in court?

III. RULES APPLIED

- Sections 7, 13(1)(d) read with 13(2) and 20 of the Prevention of Corruption Act, 1988
- Sections 145 and 154 of the Indian Evidence Act, 1872
- Sections 161 and 162 of Criminal Procedure Code, 1973
- Sections 279 and 337 of Indian Penal Code, 1860

IV. ANALYSIS

The appellant contended that the High Court has failed to appreciate the fact that Krishan Kumar, at the time of occurrence, was already released on bail in connection with the case registered in FIR by the appellant. Thus, the demand for bribe money of Rs.1000/- by the appellant from the complainant is highly improbable.

The appellant argued that proof of a demand for illegal gratification was paramount to finding that an offence had occurred under Sections 7 and 13 of the Act. Without such proof, guilt could not be established. It was further contended that the demand of illegal gratification by the accused (Krishan Chander) is a *sine qua non* for constitution of an offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. Mere production of the tainted money recovered from the appellant along with positive result of phenolphthalein test, sans the proof of demand of bribe, is not enough to establish the guilt of the charge made against the appellant. In support of the legal submission, the appellant placed reliance upon the judgments of this Court in the cases of *B. Jayaraj v. State of Andhra Pradesh* (2004), *A. Subair v. State of Kerala* (2009) and *State of Kerala & Anr. v. C.P. Rao* (2011), wherein this Court, after interpreting Sections 7 and 13(1)(d) of the Act, has held that the demand of bribe money made by the accused in a corruption case is a *sine qua non* to punish him for the above said offences. The appellant also placed reliance upon the decision of this Court in the case of *P. Satyanarayana Murthy v. The Dist. Inspector of Police, State of Andhra Pradesh & Anr.* (2015), referring to the judgment on the question of the necessity of demand of bribe money by the accused.

It was further contended that the High Court had failed to consider the fact that the complainant

turned hostile during his examination before the trial court and did not support the prosecution case that the demand of Rs.1000/- as illegal gratification was made by the appellant from him for release of Krishna Kumar on bail.

It was further contended that the High Court has failed to re-appreciate the evidence on record that Panch witnessed, who was directed to remain close to the complainant to hear the conversation and see the transaction between the appellant and the complainant. Though it is contented as the sequence of events that took place on that day, the panch witness could not hear the conversation between the appellant and the complainant. Therefore, there was no occasion to reach the conclusion that the appellant demanded any bribe from the complainant. Consequently, he has failed to bring to light the factum of the demand of bribe money by the appellant from the complainant.

The court referred to *Sat Paul v. Delhi Administration (1976)*, where it was held that even when a witness is cross-examined and contradicted with the leave of the court, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge to consider in each case whether, as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed regarding a part of his testimony.

The trial court found a part of the complainant testimony reliable and held that the demand of bribe money by the appellant from the complainant to release his brother could be said to be proved. The trial court found the fact that the appellant was caught red-handed accepting the bribe money at a Bus Stand holding and found this evidence was sufficient to show that the complainant was asked by the appellant to bring the said amount as illegal gratification.

The prosecution in the trial court urged that the complainant turned hostile witness in the case; the complainant was retracting his allegation against the accused. However, the statement of evidence of Anoop Kumar Verma and inspector-Sunder Dev was found to be sufficient to support the prosecution's case regarding the acceptance of the bribe amount by the appellant from the complainant. The High Court believed that whenever a prosecution witness turns hostile, his testimony cannot be discarded altogether. In this regard, reliance was placed on the case of *Rabindra Kumar Dey v. State of Orissa (1976)*, in which it was argued that "the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness to exclude his evidence from consideration altogether." However, in this case, clearly, the complainant turned hostile on two important aspects, namely, demand and acceptance of a bribe by the appellant, which is the sine qua non for constituting the alleged offences.

It is the well-settled position of law that the demand for the bribe money is the sine qua non to convict the accused of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. The same legal principle has been held in the case of B. Jayaraj, A. Subair and P. Satyanarayana Murthy, upon which the appellant placed reliance.

In the B. Jayaraj case, it was considered, in so far as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is the sine qua non to constitute the said offence and mere possession and recovery of currency notes from the accused without proof of demand would not establish an offence under Section 7 as well as 13(1)(d)(i)&(ii) of the Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. In the absence of any proof of demand for illegal gratification, the use of corrupt or criminal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act.

V. CONCLUSION

The Supreme Court analysed the law laid down in *Satvir Singh v State of Delhi* (2014) and *Satyanarayana Murthy v Dep Inspector of Police Andhra Pradesh* (2015). And after carefully examining and due consideration towards all material facts, including the evidence on record, the Supreme Court held that although the Act does not explicitly stipulate the requirement of demand and acceptance, these are essential factors that must be fulfilled before a public servant can be convicted of an offence under the Act.

The Supreme Court further held that mere recovery of marked money is insufficient to convict a public servant without clear evidence to prove that the money was voluntarily taken as a bribe. The Supreme Court opined that while there was evidence to prove the acceptance of money, there was nothing to show that the public servant had demanded a bribe. The Supreme Court emphasised that proof of a demand for illegal gratification is the gravamen of offences under Sections 7 and 13 of the Act, and, in the absence thereof, charges cannot be upheld.

The Supreme Court, in part, relied on the complainant's testimony, who had turned hostile during the trial and had denied that the accused had demanded or accepted a bribe. In doing so, the Supreme Court took the view that merely declaring a witness as hostile is insufficient to render the witness unreliable and exclude his or her evidence from consideration altogether. The High Court in the case is erroneous as it has relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant by the appellant though

there is no substantive evidence in this regard.

The prosecution had failed to establish/ prove the factum of demand, which is the sine qua non for convicting him for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. Thus, the judgment and order of the High Court is not only erroneous but also suffers from error in law and, therefore, liable to be set aside. The appeal is allowed. The release of the appellant from the Jail is ordered.

VI. COMMENTARY

The ruling has several implications for companies doing business in India. The Court's decision means that a discovered payment from a private citizen to a public servant, even when the payment is believed or reasonably inferred to be improper, may be insufficient to establish a violation of the Act. The stricter evidentiary standard under the Act, as clarified by the Krishan Chander decision, may make it harder to win future bribery convictions—and therefore potentially embolden corrupt officials, who believe the Act's enforcement is unlikely, to request improper payments.

Under the Act, a rebuttable presumption is created against a public servant if he or she accepts gratification other than legal remuneration. Therefore, the cornerstone for penalising a public servant should not be the mere acceptance of gratification – rather, a clear case that the public servant has demanded and accepted gratification must be made.

It has thus been clarified that in the absence of any proof of a demand for illegal gratification, a public servant's use of corrupt or illegal means or abuse of his or her position to obtain any valuable object or pecuniary advantage cannot be proven.

Thus, proof of demand has been held to be essential for a conviction under Sections 7 and 13 of the Act. The Supreme Court's judgment has clarified that mere evidence of the payment of monies without proof of demand and acceptance of the bribe is insufficient to ensure conviction under the Act.

VII. IMPACT OF THE CASE

The Supreme Court of India clarified the standard necessary to prove violations of the Prevention of Corruption Act, 1988, in a ruling that may limit enforcement of the Act and that has potential ramifications for multinational companies operating in the country. The Act is India's major anti-corruption law and is designed to combat corruption in government agencies and public sector businesses. Among other things, the Act prohibits public servants from “taking gratification other than legal remuneration in respect of an official act” and obtaining

“any valuable thing or pecuniary advantage” by unlawful means. Through the ruling of the Supreme Court in this landmark case, the justices held that “the proof of demand of illegal gratification . . . is the gravamen of the offense” under Sections 7 and 13(1)(d) of the Act, holding that proof that a public servant had accepted a payment, without also proving that the public official had affirmatively demanded a bribe, is insufficient to sustain a conviction under the Act. On appeal, the Indian Supreme Court reversed the trial court’s ruling, holding that although the complainant had been cross-examined regarding his initial written complaint, those statements had not been independently introduced into evidence and could not form the basis of a conviction. Furthermore, the other police officers who testified that they had observed the appellant accepting bribe had not actually heard the appellant make any statement requesting the payment or acknowledging the payment as improper. While the Act does not specifically enumerate requirements of both demand and acceptance, the Supreme Court nonetheless held that the appellant’s conviction had to be set aside because the prosecution has failed to prove the factum of demand of bribe money by the appellant- which is the *sine qua non* for convicting him.

The Indian Supreme Court’s relatively strict construction of the Act lies in distinct contrast to the broad interpretations that other courts have given to international anti-corruption laws such as the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. It is important that multinational companies subject to the FCPA and UKBA continue to implement robust compliance programs and educate employees in their Indian operations on the scope of those laws, to ensure that they are protected against all possible unlawful activities.

VIII. KEY JUDICIAL FINDINGS

When the factum of demand is not proved by substantive evidence, judgment and order of the High Court and Trial Court is not only erroneous but also suffers from being an error in law and therefore must be set aside. Because the proof of demand is indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act.

The complainant turned hostile on two points -- demand and acceptance of a bribe, because of which conviction under Section 7 and 13(1)(d) is not only erroneous in law but suffers from error in law. And that the court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court.

IX. JURISPRUDENCE THEORY

In this case, the major question that arose was regarding evidentiary value of the testimony of a hostile witness under the law of Evidence. The court followed the precedents that had been set in similar cases that appeared before the Supreme Court, as have been mentioned in the Analysis. The court, in this instance, believed that a witness might turn hostile at any stage during the trial (initial stage, during examination-in-chief or during cross-examination). In certain cases where the witness even turns hostile and is declared under Section 154 of the Evidence Act as a hostile witness, the testimony will not be discarded from consideration altogether, simply because the witness is hostile. The court will investigate the testimony if it could be corroborated with any other facts or reliable evidence for the truth to prevail in a matter submitted. In comparison, most American jurisdictions allow a party to impeach the witness on the ground that a party is not responsible to the court for the testimony merely because the party has called the witness in the hope of supporting his case. This case also raises the question- why do we have so many hostile witnesses in India. An analysis of the cases of such nature reflects reasons as threats or intimidation, inducement by various means, use of muscle and money power, use of stock witnesses, protracted trials, hassles faced by witnesses during investigation and trial, lack of legislation for witness protection and their fear of perjury for deposing false evidence for turning hostile in several cases.

X. IMPROVEMENTS & SUGGESTIONS

As discussed above, the judiciary, with the help of legislatures and executives, come up with better witness protection methods so that witnesses cannot be intimidated by opposing parties. It is human nature to protect oneself and those closest to us, unless and until a witness feels protected by the system- delivery of justice will suffer, and the rule of law will be compromised. Another thing that appeared unusual in this matter was that the matters of facts were not studied by the Special Judge in the Trial Court and High Court justice in detail. The precedents of allowing testimony of a hostage witness into evidence was set by many Supreme Court cases, so was the precedents of both demand and acceptance of bribe being essential elements in proving the violation under Section 7 and 13 (1)(d) of the Act. The many cases that lay down these precedents have been mentioned in the Analysis, the honourable justices of the Supreme Court mention these cases and the relevant paragraphs in this case's judgement. A detailed view of the evidence at hand and judicial precedents on the matter would have been plenty to convince any court that the respondent does not have enough evidence to lead to the conviction of the complainant. As in a criminal matter, such as this case, the guilt of the accused must be

proved beyond a reasonable doubt- which the case of the respondents fails to make.

This case lays down the importance of both the demand and acceptance of a bribe to prove the offence in point, though it is not a principle laid down in the Act. Now, this does airtight the case of corruption. However, it is challenging for executive (CBI, police department) to create a set-up and collect evidence that proves the intentions of the accused, on top of all the procedural processes (tainting GC notes, arranging for a witness, explaining the procedure to the person paying the bribe, process of arresting and seizing of necessary evidence), now the executives would likely have to rely on intrusive evidence collecting techniques such as taping cellphones, setting up visual cameras, setting up audio recordings tools that must be in regulation with the Indian Evidence Act and Information Technology Act. It is a common placed understanding that the accused succeeded in his appeal in this case due to the new principle set by the Supreme Court calling for proof of demand and acceptance of the bribe. This precedent would mean that it will end up becoming even more difficult to make a case of bribery against any public servant engaged in the practice of corruption. And many criminals will have to escape prosecution based on a less than adequate amount of evidence that can surely beyond any reasonable doubt prove the intent of demanding and accepting an illegal gratification (bribe) by a public servant.

This case also highlights the need for a speedy trial, the incident that led to the registration of the FIR happened in 2004, and it took the complainant three courts and nearly 12 years in all too clear his name. If getting justice becomes so difficult for anyone involved in a criminal case, how many will have the resources, strength and patience to seek justice. Because the original sentence of the trial court was only rigorous two-year imprisonment- it makes little sense and is highly unlikely that anyone wronged by the legal system will resort to such an extensive legal procedure to get justice, and this is something that all the stakeholders must find a solution for those who rely on the judiciary for a speedy and reasonable trials.

It can be difficult to prove in the court as a public servant the distinction between receiving a gift without any intention of performing an official duty instead of the gift and what is an illegal gratification. While public officials will know themselves as to the nature of such gift, it can be difficult to prove the nature of such gift (gratification) in the court of law. Regulations must be brought into place, the way it is in the United States, where a public official/ servant cannot accept any gift received out of good intention, which is above a certain monetary threshold. This is to avoid prosecution on a later date with regards to the acceptance of said gift (perceived as a bribe) for the performance of an official duty of the public servant.