ABC 2025 (II) 214 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Pankaj Mithal & Ahsanuddin Amanullah, JJ.)

Criminal Appeal No.391 of 2017

Decided on 17 July 2025

M SAMBASIVA RAO *- Appellant(s).*

Versus

STATE OF ANDHRA PRADESH *- Respondent(s).*

Law Covered:-*(A) Prevention of Corruption Act, 1988 -- Sections 7, 11, 12, 13(2) read with 13(1)(d) -- Indian Penal Code, 1860 -- Section 120B (Bharatiya Nyaya Sanhita, 2023 -- S. 190) -- Appeal Against Acquittal -- Standard of Appellate Interference -- Held, where two views are possible on the same evidence &the Trial Court's view favours the accused, the Appellate Court shall not ordinarily interfere unless the findings are perverse or unreasonable &based on no evidence -- In a case of acquittal, there is a double presumption of innocence in favour of the accused -- The High Court should have reversed the acquittal only on cogent grounds -- The High Court erred in reversing the well-reasoned judgment of the Trial Court which had scrutinized all the evidence minutely. (Paras 10, 34)*

(B) Prevention of Corruption Act, 1988 -- Sections 7 & 13(1)(d) -- Proof of Demand& Acceptance of Illegal Gratification -- Sine Qua Non for Conviction -- Proof of Demand&acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non to establish guilt -- This fact can be proved by direct evidence (oral or documentary) or by circumstantial evidence in the absence of direct evidence -- Mere acceptance or receipt of an illegal gratification without anything more would not make it an offence -- The presumption of fact with regard to Demand&acceptance may be made by a court only when foundational facts have been proved by relevant evidence -- The presumption under Section 20 of the Act is a mandatory legal presumption distinct from a discretionary presumption of fact. (Para 24)

(C) Prevention of Corruption Act, 1988 -- Sections 7, 12 & 13 -- Indian Penal Code, 1860 -- Section 120B (Bharatiya Nyaya Sanhita, 2023 -- S. 190) -- Criminal Conspiracy -- Proof of -- Inferences from Circumstantial Evidence -- Inference of conspiracy cannot be based on conjectures &surmises -- A single telephone call between co-accused, without any evidence of its contents, is insufficient to prove conspiracy -- The protection of Article 20(3) of the Constitution applies, &an accused

cannot be compelled to disclose the nature &content of a conversation -- An adverse inference for not divulging the contents of a call ought not to be drawn – Constitution – Art. 20(3). (Paras 27-28)

(D) Prevention of Corruption Act, 1988 -- Trap Proceedings -- Material Contradictions -- Effect on Prosecution Case -- Glaring contradictions in prosecution evidence cumulatively shake the foundations of the prosecution case -- Material contradictions regarding the presence of a senior police officer (SP) in the trap proceedings, the colour of a seized shirt, &the recovery of phenolphthalein powder from a surface not initially treated with it, create serious doubts on the veracity of the trap -- The High Court misdirected itself by engaging deeply with minor inconsistencies while not providing sufficient reasoning for accepting the most glaring contradictions. (Paras 31-33)

(E) Code of Criminal Procedure, 1973 -- Section 378 (Bharatiya Nagarik Suraksha Sanhita, 2023 -- Section 419)-- Appeal Against Acquittal -- Double Presumption of Innocence -- While dealing with an appeal against acquittal, the appellate court has to consider whether the trial court's view can be termed as a possible one -- An order of acquittal adds up to the presumption of innocence in favour of the accused -- Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal -- Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. (Para 34)

(F) Criminal Trial -- Standard of Proof -- Two Views Possible -- Benefit of Doubt -- Where two views are possible, the Court should err on the side of caution &lean in favour of the defence -- Life &liberty are not matters to be trifled with, &a conviction can only be sustained in the absence of reasonable doubt -- The presumption of innocence in favour of the accused &insistence on the Prosecution to prove its case beyond reasonable doubt are not empty formalities -- Their origin is traceable to Articles 21 &14 of the Constitution of India. (Para 36)

Facts:-*The appeal challenged the High Court's judgment which reversed the Trial Court's acquittal &convicted the appellant (a former Assistant Administrative Officer in an insurance company) &his brother (Accused No. 3) for offences under the Prevention of Corruption Act, 1988 &Section 120B of the Indian Penal Code, 1860. The prosecution alleged that the appellant demanded a bribe from the complainant (PW1) to liaise with the Regional Manager (Accused No. 2) for the settlement of an insurance claim. A trap was laid, &the bribe money was allegedly handed over to Accused No. 3, who in turn passed it to Accused No. 2.*

The Supreme Court, after a thorough analysis, found that the prosecution failed to prove the Demand&acceptance of the bribe beyond reasonable doubt. The Court highlighted material contradictions, including the unexplained presence of the Superintendent of Police at the trap, the discrepancy in the colour of a seized shirt, &the dubious recovery of phenolphthalein powder. It also held that a single telephone call, without evidence of its contents, could not prove criminal conspiracy. Emphasizing the double presumption of innocence in favour of the accused in an appeal against acquittal, the Court restored the Trial Court's judgment of acquittal.

Law of relief:-*(i) A single telephone call between co-accused, without any evidence of its contents, is insufficient to prove conspiracy.*

(ii) The protection of Article 20(3) of the Constitution applies, & an accused cannot be compelled to disclose the nature & content of a conversation.

Counsel:-

For Petitioner(s): *Venkateswara Rao Anumolu.*

For Respondent(s): *Mukesh Kumar Maroria.*

Cases Referred:-

1. *Jafarudheen v. State of Kerala: (2022) 8 SCC 440 (Para 17)*
2. *Suresh Thipmppa Shetty v. State of Maharashtra: 2023 SCC OnLine SC 1038 (Para 19)*

JUDGMENT

Ahsanuddin Amanullah, J.: -

1. The present appeal challenges the Final Judgment and Order dated 21.08.2015/09.09.2015 passed in Criminal Appeal No.548/2006 (hereinafter referred to as the 'Impugned Judgment') by the then High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh (hereinafter referred to as the 'High Court'), whereby the appellant/accused no.1 and accused no.3 (Mr. M Venkata Siva Naga Prasad) were convicted, by reversing the finding of acquittal C.C. No.17/2000 on the file of the Court of the learned Special Judge for CBl Cases, Visakhapatnam (hereinafter referred to as the 'Trial Court'), and sentenced to undergo rigorous imprisonment for a period of one year, alongwith imposition of fine (s). Accused no.2 (Mr. N Govindarao Naidu) passed away during the pendency of the appeal in the High Court on 15.12.2013.

THE FACTUAL MATRIX:

2. The appellant/accused no.1 was posted as an Assistant Administrative Officer in United India Insurance Company (hereinafter referred to as the 'Insurance Company'), Branch Office-II, Guntur (hereinafter referred to as the 'branch'), in the year 1999. His duty was, *inter alia*, to assist the Branch Manager in processing of claims submitted in the branch. Accused no.2 was posted as the Regional Manager, Visakhapatnam Region from June-October, 1999 and it was his duty to process claims submitted through the branches and forward it to higher authorities for approval. The branch supra of the Insurance Company fell under his jurisdiction. Accused no.3 is the appellant's younger brother and is engaged in agriculture and business.

3. Mr. L Laxman Reddy had taken a Janata Personal Accident policy (hereinafter referred to as the 'policy') from the branch on 21.11.1997 for a sum of Rs.8,00,000/- (Rupees Eight Lakhs). After the accidental death of the insured on 28.03.1999, his wife and nominee for the policy, Mrs. Srilakshmi (PW2), submitted claim dated 05.06.1999 for the insured sum in the branch This claim was submitted through Mr L Srinivasa Rao, the surveyor appointed by the branch as instructed by the appellant. The complainant/Mr. T Kotireddy (PW1) is the maternal uncle of Mrs. Srilakshmi and was authorized to pursue the settlement of the claim.

4. During investigation, it emerged that Mr. L Srinivasa Rao had submitted Investigation Report dated 13.07.1999 on the claim of PW2 to the Manager of the branch on 20.07.1999. Thereupon, the appellant made his recommendation on 16.08.1999 and sent the file to the Branch Manager, who made his recommendation on 20.08.1999 and referred the file to the Senior Divisional Manager, who in turn, on 15.09.1999, recommended settlement of the claim and ordered to refer the file to the Regional Office for approval. The claim was sent for settlement and onward transmission to higher authority to the office of the accused no.2 on 18.09.1999.

5. Meanwhile, PW1 after submitting the claim met the appellant and requested for early disposal of the claim. Such request, for early settlement of the claim, was reiterated by PW1 when he met the appellant once again on 15.10.1999. It is then that the appellant told him, as the prosecution's story goes, to arrange an amount of Rs.40,000/- (Rupees Forty Thousand) as bribe for himself and accused no.2 for settlement of the claim and travel with him on 17.10.1999 to Hyderabad, where accused no.2 was available, to give him his share

of the bribe. PW1 did not agree to pay the bribe and did not go to Hyderabad. Thereafter, PW1 again met the appellant on 20.10.1999 when the appellant told him that accused no.2 was still in Hyderabad and PW1 should arrange for the bribe and book two train tickets for their journey to Hyderabad by the Narsapur-Hyderabad Express on 22.10.1999. The appellant also told PW1 to arrange for a bottle of whisky as accused no.2 was fond of liquor. PW1 was told to convey his confirmation to the deal in the morning of 21.10.1999.

6. PW1 gave a complaint on 21.10.1999 to Mr. N Vishnu (PW12), Inspector of Police, Central Bureau of Investigation (hereinafter abbreviated to 'CBI'), Visakhapatnam, who was camping at the Railway Retiring Room of the Vijayawada Railway Station, and on his instructions, he purchased the tickets and called the appellant to inform that the arrangement of money and berths in the train had been done. The appellant was to meet PW1 near his coach at the Guntur Railway Platform on 22.10.1999. Accordingly, PW12 secured the presence of another CBI Inspector, Mr. S B Shanker and two independent mediators, Mr. M Radhakrishnan and Mr. M Nagaraju (PW3), Excise Inspectors, and along with the complainant prepared the first mediators' report dated 22.10.1999. The report noted that the tainted currency of Rs.40,000/- (Rupees Forty Thousand) and whisky bottle was handed over to PW12. The numbers of each of the eighty (80) tainted notes of Rs.500 denomination and batch number of the whisky bottle was noted down. PW1 was instructed to signal by wiping his face with a handkerchief soon after the demand and acceptance of the tainted currency and the whisky bottle.

7. The trap party led by PW12 boarded the Narsapur Express at Vijayawada Station. The train left the station at 10:40 pm. When the train reached Guntur, the appellant, with accused no.3, came near S2 coach and informed PW1 that he was unable to come to Hyderabad due to some personal problem and, instead, the accused no.3 will accompany PW1. The train reached Secunderabad early in the morning of 23.10.1999 and PW1 and accused no.3 checked into the Rama Krishna Hotel. It is alleged that accused no.3 took an appointment with accused no.2 on a call and thereafter, both left for accused no.2's house. The trap team followed them. On reaching the house of accused no.2, the independent witnesses saw accused no.2 waiting outside his house. PW1 and accused no.3 along with accused no.2 went inside the house. Once inside, accused no.3 introduced PW1 as the party and told accused no.2 that he had brought the bribe.

Thereafter, accused no.2 sent PW1 outside the room and both these accused talked for some time, after which accused no.3 called PW1 inside. Thereafter, PW1 requested accused no.2 for settlement of the claim to which accused no.2 replied by stating that it would be settled without delay. Then, on demand made by accused no.3, PW1 handed over the bribe to accused no.3. Accused no.3 took out Rs.5,000/- (Rupees Five Thousand) and kept it in his shirt pocket and handed over the rest of the bribe amount i.e., Rs.35,000/- (Rupees Thirty-Five Thousand) to accused no.2, who instead of handling it, told accused no.3 to keep the same on the teapoy. Accordingly, accused no.3 kept Rs.35,000/- (Rupees Thirty-Five Thousand) on the teapoy. Accused no.3 also took the whisky bottle from PW1 and placed it by the right side of the sofa on which accused no.2 was sitting. After this, PW1 went outside and gave the pre-arranged signal to the trap team, which rushed inside the house. The cash from the teapoy and the shirt of accused no.3 was seized alongwith the whisky bottle. The hands of accused no.2 were subjected to phenolphthalein and sodium carbonate solution test and the solution remained colourless. After this, the hands and shirt pocket of accused no.3 were subjected to the chemical test and the resultant solution turned pink. The numbers of the currency notes and the whisky bottle tallied with the first mediators' report. The white shirt worn by accused no.3 was also seized. All of this was recorded in the second mediators' report dated 23.10.1999.

8. On the basis of the above investigation, Crime No.RC.23 (A)/99-VSP came to be registered on 24.10.1999 under Section 120B of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') read with Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act'). Chargesheet was filed against the three accused on 28.06.2000 under Section 120B, IPC along with Sections 7, 11, 12, 13(2) read with 13(1)(d) of the Act. During trial, the prosecution examined PWs 1 to 13 and got marked Exhibits P1 to P49 and also MOs 1 to 9. The appellant and accused no.3 did not lead any evidence in defence. Accused no.2, on the other hand, got examined DWs 1 and 2 and got marked Exhibits D1 to D6. After appreciation of the oral and documentary evidence, the Trial Court found the accused not guilty of the offences alleged and, accordingly, acquitted them of all the charges. Aggrieved, the State went up in appeal to the High Court by filing Criminal Appeal No.548/2006. After evaluation of the facts and evidence, the High Court *vide* the Impugned Judgment

allowed the appeal and convicted the appellant and accused no.3 as under:

Position	Sections	Sentence
Appel-lant/ accused no.1	Section 120B, IPC and Sections 7, 13(2) read with 13(1)(d) of the Act	1 year's rigorous imprisonment and fine of Rs.5,000 on three counts, and in default of payment of fine, additional simple imprisonment for 2 months.
Accused no.3	Section 120B, IPC and Sections 12, 13(1)(d) read with 13(2) of the Act read with Section 109, IPC	1 year's rigorous imprisonment and fine of Rs.5,000 on three counts, and in default of payment of fine, additional simple imprisonment for 2 months.

9. This Impugned Judgment, as noted above, is challenged before us.

APPELLANT'S SUBMISSIONS:

10. Mr Jayant Bhushan, learned senior counsel, at the outset submitted that where two views are possible on the same evidence, and the Trial Court's view favours the accused, the Appellate Court shall not ordinarily interfere unless the findings are perverse or unreasonable and based on no evidence. It was argued that, in a case of acquittal, there is a double presumption of innocence in favour of the accused and the High Court should have reversed the acquittal only on cogent grounds. In the present case, the High Court erred in reversing the well-reasoned judgment of the Trial Court, which has scrutinized all the evidence minutely.

11. It was pointed out that the appellant made his recommendation on the claim on 16.08.1999 itself and sent the file to the Branch Manager, who made his recommendation on 20.08.1999 and referred the file to the Senior Divisional Manager, who in turn, on 15.09.1999, recommended settlement of the claim and ordered to refer the file to the Regional Office for approval. Thus, it was submitted that there was no occasion for the appellant to collude with accused no.2 and demand a bribe of Rs.40,000/- (Rupees Forty Thousand),

precisely for the reason that there was lack of any official favour pending with the appellant.

12. It was further submitted that the mother-in-law of PW2 had filed O.S. No.63/1999 before the II Additional District Judge and also preferred I.A. No.1163/1999 for restraining the Insurance Company from disbursing the policy amount to the nominee, pending the disposal of such suit. It was due to the order in this case that claim settlement was delayed and not due to the alleged demand of bribe by the appellant.

13. The only circumstance to establish conspiracy between the appellant and accused no.2 is the call made on the night of 21.10.1999. The High Court erred in drawing an adverse inference against the appellant for denying the call and not coming forth with the contents of the conversation. On the other hand, the Trial Court has rightly appreciated this circumstance in the view of the background facts and correctly noticed that if this was the only call, then the prosecution had failed to establish as to when the apparent quantum of the bribe was decided between the accused. The High Court also failed to take note of the most important fact i.e., that the appellant and accused no.2 were not on cordial terms as the accused no.2 had transferred the appellant twice to different offices after receiving complaint(s) against him. In such circumstance, it is inconceivable that the two would enter into a conspiracy, as alleged by the prosecution.

14. It was contended that the first mediators' report noted that phenolphthalein was only applied on the currency and not on the whisky box. However, surprisingly the second mediators' report conducted after the trap proceedings note that phenolphthalein powder was collected from the whisky box and the chemical solution turned pink. Learned senior counsel submitted that the High Court had given a bizarre explanation for the same when it reasons that since PW1 first handed over the tainted currency and then the whisky box, the powder must have transferred from the currency onto PW1's hand and then onto the box.

15. During trap proceedings, the white shirt worn by the accused no.3 was seized. However, the Trial Court notes that the shirt exhibited in evidence was not white but rather it was moss-coloured. Another bizarre explanation, in the learned senior counsel's opinion, that the High Court provides, is that the white shirt seized in 1999 would have turned moss-coloured as the colour would have withered away due to dust.

16. It was argued that there were multiple inconsistencies in the prosecution evidence. PW3 deposed that only two people went inside the house of accused no.2, whereas the second mediators' report provides that three people went inside the house. Further, there is inconsistency in the evidence with regard to the fact as to whether accused no.2 was watering the plants or standing at the gate, when the accused no.3 along with PW1 approached him. Moreover, there is material contradiction in the depositions apropos construction work going on in the upper portion of the house of accused no.2 on the relevant day. PW1 was sent out by the accused present in the house after entering the house. Some witnesses say that he came out after 2-3 minutes, whereas others estimate the time period to be 15 minutes. Furthermore, the second mediators' report was prepared belatedly. It was submitted that all these material inconsistencies and contradictions would go on to show that the entire trap proceedings are false and concocted.

17. It was further argued that accused no.2 in his defence states that the then Superintendent of Police (hereinafter abbreviated to 'SP'), Mr. A Sudhakara Rao came to his house and told him to be wise enough to come out of the case, to which accused no.2 did not agree. This, it was contended, is to be seen with the evidence of PW12 who had deposed to the effect that he did not inform the SP about laying of the trap from Hyderabad, but informed him about the same only after his return to Visakhapatnam. This evidence is falsified by the Tour Diary of the SP which shows that on 23.10.1999 he had reached Hyderabad and in that whole week, only a solitary trap case was registered. This goes to demonstrate, again, that the entire case was fabricated to falsely implicate the accused.

18. It was contended that there are too many loose ends in the case of the prosecution, which has miserably failed to prove the charges alleged against the appellant We were reminded across the bar that the two co-accused have passed away. The appellant is aged around 74 years and suffering from multiple ailments. In view of the above, learned senior counsel urged us to allow the appeal and acquit the appellant.

SUBMISSIONS OF THE RESPONDENT-STATE:

19. Per contra, Mr. Vikramjit Banerjee, learned Additional Solicitor General (hereinafter abbreviated to 'ASG'), contended that the Trial Court had misdirected itself in appreciating the evidence and the High Court has considered the same in the correct

perspective. The High Court, submitted the learned ASG, has every power to re-appreciate the evidence and facts and interfere when the Trial Court's judgment suffered from a perverse appreciation of the facts. It was submitted that the Impugned Judgment is based on cogent reasoning and does not call for any interference by this Court.

20. It was argued that the processing/clearing of the claim at the level of the appellant before the date of demand is of no consequence, as the demand made by the appellant was not to clear the file at his level but to liaison with accused no.2 to get the claim settled. This has been rightly noted by the High Court. The demand by the appellant and acceptance of the bribe by the other accused has been proven by the testimony of PW1, which remained unshaken in the cross-examination. The High Court has correctly analyzed the probative value of the evidence, including the deposition of PW1 and has rightly convicted the appellant. Reliance was placed on **D Velayutham v State, (2015) 12 SCC 348** to argue that the Court has, previously, taken note of the byzantine methods of bribe-taking, and where an evader escapes a trap, constructive receipt has to be an alternate means of fastening criminal culpability.

21. It was contended that the injunction order passed in O.S. No.63/1999 was only with respect to disbursal of the amount. It should be noted that despite the injunction, the Assistant Divisional Manager and the Senior Divisional Manager approved the claim and forwarded the file to the accused no.2 for settlement of the claim, subject to judgment in the case. PW5 has deposed that accused no.2 instructed him to keep the file pending. Further, there was no noting in the file to the effect that it is pending due to vigilance enquiry.

22. Learned ASG further submitted that the appellant and accused no.2 were on cordial terms, as evident from the phone call made on 21.10.1999. This is also clear from the fact that even after receiving corruption complaint against the appellant, accused no.2 transferred the appellant locally in Guntur. Hence, it is clear that the transfer(s) were done only as a formality. Another crucial fact noted by the High Court is the call made by accused no.3 to accused no.2 on the morning of 23.10.1999 to take an appointment. This call has been proved through oral and documentary evidence and clinches that a conspiracy was hatched.

23. It was further contended that minor inconsistencies in the evidence of the witnesses is natural and should be ignored by this Court. On principally these grounds, learned ASG urged us to

dismiss the appeal and uphold the conviction.

ANALYSIS, REASONING AND CONCLUSION:

24. We have heard the learned senior counsel for the appellant and learned ASG for the State, considered their submissions and perused the material on record. We have bestowed anxious consideration to the issues involved. It is imperative to, at the outset, note that there are multiple contested facts apropos the demand-and-trap proceedings and given that there are divergent opinions expressed by the Courts below, it is all the more appropriate to analyze and appraise the evidence adduced. We may gainfully refer to the discussion by a 5-Judge Bench in _**Neeraj Dutta v State (NCT of Delhi), (2023) 4 SCC 731** with regard to the evidentiary standard to prove offence(s) under the concerned provisions of the Act:

'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 bribegiver 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 Sections 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 Sections

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 Sections 13(1)(d)(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) 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. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) 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 sub-para 88.5 (e), above, as the former is a mandatory presumption while the latter is discretionary in nature.[1]

25. Keeping in mind the aforesaid decision, we turn to the evidence on record. On the point of demand of bribe by the appellant, the Trial Court opined that the appellant and other officers of the Branch Office had already approved the claim file and referred the file to the Regional Office for its approval on 15.09.1999 and thus, there was no occasion for the appellant to demand the bribe. The High Court, on the other hand, has observed that the demand was

made to liaison with the accused no.2. To drive home the act of liaison, it was alleged by the prosecution, and accepted by the High Court, that since the bribe was not paid by PW1, the claim file was kept pending in the Regional Office by accused no.2.

26. PW1 has spoken of the demand made by the appellant, wherein he is stated to have specifically demanded Rs. 40,000/- (Rupees Forty Thousand) i.e., 5% of the claim amount to be shared between himself and accused no.2, failing which, the claim will not be cleared. The prosecution would contend that it is apparent then, that the demand, if so made by the appellant, was clearly to liaison and the fact that the claim was cleared at the Branch Office cannot be used to discard the theory of demand. Having said so, this sole circumstance, as we later discuss, cannot by itself prove the factum of demand having been made by the appellant.

27. In order to present proof of criminal conspiracy between the appellant and accused no.2, the prosecution had placed reliance on the call made between them on 21.10.1999 at 21:45 hours. The Trial Court disbelieved the criminal conspiracy on the ground that if this was the only circumstance of conspiracy, then it was not proved as to when the accused had arrived at an understanding on the quantum of the bribe, which had been demanded earlier on 15.10.1999. The High Court, on the other hand, has preferred to take a more plausible view insofar as it states that it is not the prosecution's case that this call was the first instance for fixation of the bribe. However, the High Court then goes on to draw an adverse inference against the accused for not divulging the contents of the conversation holding the call to be a conspiratorial talk, which, in our view, ought not to have been done, as the reasoning for the same is based on shaky ground. The High Court's analysis of the call reads thus:

> ***'20) Another instance which clinches the conspiracy between AO1 and AO2, is the telephonic call made by AO1 on the night of 21.10.1999 from his residence telephone. PW9, the Chief Accounts Officer of Telecom Department, Guntur provided the particulars of the out going calls from the telephone to phone No.358621 belonging to AO1 under Ex.P36. Ex.P37 is the covering letter for Ex.P36. As per Ex.P36A entry, a phone call was made from this telephone No.7745462 which admittedly belonging to AO2 on the night of 21.10.1999 at 21.39 hours. <u>In the cross-examination of PW9 except denying that Ex.P36 particulars are not correct and unauthenticated nothing was brought on record to disprove the</u>***

authenticity of call particulars furnished by a responsible officer like PW9. Therefore, there is no reason to disbelieve Ex.P36A call particulars which would show that on the crucial date i.e. one day prior to the proposed visit of AO1 and PW1 to AO2 at Hyderabad, AO1 made a call to AO2. If AO1 and AO2 were not in good terms, there was no occasion for AO1 to make a call to AO2 that too when he was on leave and stayed in his house at Secunderabad. When we believe that the aforesaid call was made by AO1 to AO2 the logical conclusion is that AO1 owed a responsibility to divulge as to the reason for his calling AO2. As already stated supra, he was totally denying the authenticity of Ex.P36 and specifically Ex.P36A calls. It could have been a different thing had he admitted that he made a phone call to AO2 and gave a reason for calling. In such circumstances, the authenticity of his explanation would have been discussed and decided. On the other hand, he simply denied the authenticity of Ex.P36 and P36A. As already held, the authenticity of Ex.P36 cannot be doubted in view of evidence of PW9. It confirms that AO1 indeed made a phone call to AO2. His flat denial of making phone call on the pretext of inauthenticity of Ex.P36 prompts me to draw an adverse inference against him to the effect that the phone call was nothing but part of conspiratorial talk between AO1 and AO2. In my esteem, this phone call and another phone call made by A3 to AO2 about which I will discuss at the relevant part of the judgment, are the crucial pieces of evidence which fortify the prosecution case on one hand and blast away the defence of all the accused. Unfortunately the trial Court, it must be said, on a perverse appreciation, has discarded the aforesaid valuable piece of evidence. For discarding such a valuable piece of evidence covered by above two phone calls, the trial Court did not make a logical analysis basing on the facts, evidence and circumstances but came to slipshod conclusion. It is pertinent to narrate its conclusion covered by para-26 of the judgment which reads thus:

> ***"Para 26: Even with regard to the telephone calls allegedly made to A2 by A3, there is absolutely no dependable evidence as to who actually spoke those calls and as to what was that conversation. The same is the result of the analysis with regard to the telephone call allegedly made by A1 to A2 in the night of 21.10.1999."***

With regard to phone call made by A3 to AO2 and the perversity of finding of trial Court I will discuss later. a) Sofaras first

phone call made by AO1 to AO2 is concerned, from the above observation of the trial Court what we can understand is it disbelieved the said phone call on the ground that there is no dependable evidence about phone call and it is not known who actually spoke and what was the nature of conversation. This observation is quite inappreciable. Dependability of evidence is concerned, a responsible officer of calibre of PW9 avouched authenticity of Ex.P36 and P36A call data particulars. The trial Court did not give any plausible reason for not accepting his evidence. So, the dependability of Ex.P36 and P36A is not a question at all. Then, the question of who spoke is concerned, there can be no doubt because the call was emanated from the residential telephone of AO1 and not from a public booth or from some other telephone. The recipient of the call being the higher officer of AO1 none else than AO1 must have talked to AO2. It is true that the Court has no benefit of conversion between AO1 and AO2. However, as already observed supra, from the flat denial of every thing by AO1 the adverse inference can be drawn that they must have talked about the proposed visit of AO1 and PW1 to the residence of AO2. It must be noted that the trial Court gave illogical reasoning to hold that the conversion between AO1 and AO2 even if believed must not be in connection with the claim of PW2 and bribe etc. The trial Court observed that if the said phone call is accepted as the proof for the alleged criminal conspiracy between AO1 and AO2 to come to a common understanding regarding quantum of bribe of Rs.40,000/- how come that on that day morning itself PW1 could already mention the said amount as demanded by AO1 in Ex.P4—complainant and held that there was no conspiracy at all. It must be noted that it is not the case of the prosecution that through this phone call only, AO1 and AO2 for the first time conspired and fixed the bribe amount. They might have discussed about their conspiracy and fixed the bribe amount through another phone call by a different phone number. What the prosecution intended to establish is that the phone call in Ex.P36A is a part of their conspiracy but not the first one for fixation of bribe amount. Hence, the above circumstances clearly establish the conspiracy between AO1 and AO2.' (sic)

(emphasis supplied)

28. From the above extract, rather portions thereof, it is quite clear that the High Court itself has relied on inferences and conjectures alone. Even if the factum of phone call, as alleged, having

been made stands accepted, it is clear that the contents of the conversation are not available at all. That aside, surely the protection of Article 20(3) of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') would apply and the appellant could not be compelled to disclose the nature and content of the conversation, assuming it happened. In this background, much has also been said about the nature of the relationship between the appellant and the accused no.2. The prosecution has strived to prove that they shared a cordial relationship while the defence has argued that there was antagonism between them in view of the orders passed by accused no.2 transferring the appellant twice. At this juncture, it is pertinent to note that one Mr. K Venkata Reddy, stating to be a close friend of Mr. L Laxman Reddy (PW2's deceased-husband) had written a letter dated 04.08.1999 to accused no.2 informing him that the appellant is demanding a bribe to settle PW2's claim and requested for settlement of the claim as also suitable action against the appellant. This letter was forwarded by accused no.2 to Mr. K N Rasool (Vigilance Officer) for investigation which is apparent from letter dated 11.08.1999 sent by Mr. Rasool to the Head Office, Vigilance Department informing them about the complaint(s) received against the appellant. Thereafter, accused no.2 passed an Office Order dated 12.08.1999 transferring the appellant to the Divisional Office, Guntur. Subsequently, through another Office Order dated 07.10.1999, accused no.2, again, transferred the appellant to the Branch Office, Guntur. The High Court has termed the transfer orders as a fleabite in view of the transfers being made locally. No doubt, it is true that accused no.2 could have imposed harsher punishment/posting to the appellant and even assuming, for the sake of argument, that the two shared a cordial relationship, we are unable to persuade ourselves to the ultimate conclusion drawn by the High Court in this regard especially in view of the fact that it was accused no.2 himself who had forwarded the complaint against the appellant to the Vigilance Officer. Being so, it would militate against normal human conduct besides being extremely unwise and illogical, for accused no.2 to enter into a conspiracy with the very appellant, against whom he had complained to the Vigilance Officer, just a month later, being acutely aware of the scrutiny placed on the appellant by Mr. Rasool/the Vigilance Department and the ongoing investigation.

29. The prosecution further alleged that since the bribe was not paid by PW1, the claim file was kept pending in the Regional

Office by accused no.2. The Trial Court attributed the delay in clearing of the file by the Regional Office to the injunction order dated 18.08.1999 passed in O.S. No.63/1999 filed by PW2's mother-in-law. However, as rightly taken note of by the High Court, the injunction was only with regards to disbursing the policy amount and not on settling the claim filed by PW2. This is why, despite the injunction order, multiple officers in the Branch Office approved the claim and sent it to higher authorities for approval. The delay, therefore, cannot be attributed to the injunction order. The High Court has placed reliance on the testimony of PW5/Assistant General Manager, Regional Office, to hold that accused no.2 indeed kept the file pending as per the pre-arrangement between the accused persons. It has come in, by way of PW5's deposition, that if a complaint is received in respect of any file and the same is referred to the Vigilance Department, then the file will not be processed till instructions are received therefrom. On 04.10.1999, accused no.2 told PW5 to keep the file pending at his level but did not disclose any reason for the same. By this time, accused no.2 had already forwarded complaint dated 04.08.1999 to the Vigilance Officer and was aware of the pending vigilance inquiry in respect of the claim, therefore, it was incumbent on him to keep the file pending. However, he had to make an endorsement of this fact on the file which he failed to do. This conduct on his part raises some suspicion, however, we have some hesitation in accepting the theory of demand for the reason already noted *supra*, viz. that accused no.2 was well-aware of the vigilance inquiry against the appellant. In this scenario, it is not reasonably conceivable to believe that he would be audacious enough to hatch a conspiracy with the appellant. More importantly, after the file was dealt with by the appellant, he stood transferred to the Divisional Office on 12.08.1999 and then back to the Branch Office on 07.10.1999. By such time, the file in question had moved to the Regional Office, Vishakhapatnam where accused no.2 was posted. PW1-Complainant could not have been unaware of the fact that a close friend of the deceased had already written a letter on 04.08.1999 to accused no.2 complaining that the appellant was demanding a bribe to settle the claim and had also sought suitable action against him, which had resulted in the appellant's transfer from the Branch Office to the Divisional Office, with the file being referred to the Vigilance Department. Therefore, it does not stand to reason as to why he would approach the same officer and agree to offer him bribe and

further, that the appellant would agree to act as a liaison between PW1 and accused no.2 in respect of the same claim. Hence, as the facts reveal themselves to us, the allegation of demand of bribe, as projected by the prosecution, is shrouded in a cloud of dubiety. Nevertheless, *arguendo*, taking the allegation of the demand of bribe to be proved, even if we proceed to analyze the evidence put forth in support of the subsequent trap and post-trap proceedings, it would not be possible for this Court to sustain the Impugned Judgment.

30. We may take note that the Trial Court has pointed out several contradictions and inconsistencies in the prosecution evidence which, *inter alia*, relate to: i) placement of the whisky bottle in the house of accused no.2; ii) number of people that went inside the house of accused no.2; iii) accused no.2 watering the plants when accused no.3 and PW1 reached his house; iv) presence of labourers and ongoing construction work in the upper portion of the house of accused no.2, and; v) time-gap after which PW1 first came out of the house of accused no.2. We do not wish to dwell upon these aspects elaborately as in light of our eventual conclusion, we feel they are minor which are natural in the usual course of progression of a trial and more importantly as ultimately, for reasons below, we are unable to concur with the view taken by the High Court holding the demand and acceptance of the bribe as proved.

31. We say so, in view of three glaring contradictions in the prosecution evidence which cumulatively shake the foundations of the prosecution case and render its death knell. Firstly, the foremost aspect is the presence and participation of the SP/Mr. A Sudhakara Rao in the trap proceedings. This is all the more relevant in view of the specific defence raised by accused no.2 that the SP during the trap gave a sly hint that there is no case against him given that he is wise enough to come out of the case, which is also spoken of by DW2 (accused no.2's wife). It is his stand, that on his refusal, he has been falsely implicated in the case. Interestingly, PW12 has stated that he did not inform the SP about the laying of the trap from Hyderabad, but only after his return to Visakhapatnam, he informed the SP. Neither the prosecution witnesses nor any documentary evidence prepared during the trap proceedings record/indicate the presence of the SP and/or his participation in the trap proceedings. But on the other hand, the tour diary of the SP duly signed by him, shows that on 23.10.1999, the day of the trap, he reached Hyderabad from Chennai and participated in a trap. It further shows that during the

week commencing from 18.10.1999 to 24.10.1999, there was only one trap case registered i.e., RC 23(A)/99 which relates to the present case. This unimpeachable document, therefore, conclusively falsifies the PW12's evidence and raises serious doubts on the veracity of the trap proceedings. It speaks volumes that no prosecution witness, including PW12, indicated the presence of the SP. The justification provided by the prosecution that the SP came to Hyderabad to attend a meeting at the regional headquarters with the Deputy Inspector-General of Police is negated by the tour diary which speaks of no such meetings and provides in unambiguous terms that the SP 'reached Hyderabad and *participated in trap and started Hyderabad to Vishakhapatnam'*.

32. Secondly, prosecution witnesses have deposed to the effect that accused no.3 was wearing a white shirt with stripes. It is further their case that the shirt pocket was dipped in the chemical solution which turned pink and thereafter the white shirt was seized. Bizarrely enough, the shirt produced before the Trial Court was a green/moss-coloured shirt with stripes. The Trial Court after having seen the material object, i.e., the 'white' shirt has reached the conclusion that by no stretch of imagination can the shirt produced qualify to be a 'white' shirt. The High Court has taken a view that since the 'white' shirt was seized in 1999, due to the efflux of time, its white colour would have withered away due to dust. We are quite dumb-founded by the explanation offered by the High Court, to fill in a glaring gap in the prosecution case, which is beyond comprehension. The High Court should not have made such an incredulous and irrational leap, only to find some semblance of logic. It is to be kept in mind that during trial, material objects are exhibited and the Trial Court has the visual benefit of perceiving the material object's physical characteristics. The Trial Court, thus, has the advantage of direct examination, which may not be available to the appellate courts, who, more often than not, only have the benefit of testimonies or photographs. In such scenario, it was incumbent on the High Court to have either summoned the material object for examination by itself, in exercise of powers under Section 91 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') or to have accepted the view of the Trial Court which discerned that the shirt exhibited was a moss-coloured shirt and not white-coloured. There is also a sea of difference between a moss-coloured shirt and the yellowish/ brownish tinge that is accumulated due to disuse and withering of the

colour of a white shirt due to passage of time. While these may appear trivial to the layman at first blush, the Courts of law dealing with life and liberty cannot ever be too careful. The High Court ought not to have proceeded with such lack of care in simply accepting the explanation proffered by the prosecution.

33. *Lastly*, we find from the second mediators' report and the evidence of the prosecution witnesses, that a cotton swab was used to collect the phenolphthalein powder from the surface of the cardboard box of the whisky bottle and the same on being subjected to chemical test yielded positive result. Curiously, the first mediators' report which was prepared before the trap does not mention that any phenolphthalein powder was applied to the cardboard box or the whisky bottle. In such circumstances, it is doubtful how the phenolphthalein powder was recovered from the surface of the cardboard box in the first place. The High Court has reasoned that since PW1 first handed over the tainted cash to accused no.3 and thereafter handled the whisky box, the phenolphthalein powder must have transferred from his hands to the whisky box. We are afraid that such reasoning is based on conjectural assumptions alone, while hastening to add that we should not be understood as saying that transfer of phenolphthalein powder from the tainted cash to the hands of PW1 and thereafter from his hands to cardboard box is not possible at all. It may have been possible but to presume such fact in a criminal trial, having severe eventual penal consequences, is something that we express our clear reservation on. In fact, this is also indicative of the lack of care with which the High Court proceeded. The High Court misdirected itself in engaging deeply with the minor inconsistencies, while not providing sufficient reasoning for accepting the most glaring and obvious contradictions in the prosecution's case.

34. In a case of such nature, where the accused persons have been acquitted by the Trial Court, there is a double presumption of innocence which accrues in their favour. Reference may be made to _**Jafarudheen v State of Kerala, (2022) 8 SCC 440** which observed:

> *'25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the*

accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.'

(emphasis supplied)

35. Hence, it was all the more important for the High Court to have provided cogent reasoning for disturbing the finding of acquittal recorded by the Trial Court. Unfortunately, the Impugned Judgment does not sufficiently address the weakest links in the prosecution version, necessitating interference by this Court.

36. Even if we take the prosecution case at its highest, ignoring the chinks in its armour, it can, at best, be said that it is a case where two views are possible. When faced with this situation, the view of this Court has been only one – where two views are possible, the Court should err on the side of caution and lean in favour of the defence, as held in **_Suresh Thipmppa Shetty v State of Maharashtra, 2023 SCC OnLine 1038** in the following terms:

'18. On a deeper and fundamental level, when this Court is confronted with a situation where it has to ponder whether to lean with the Prosecution or the Defence, in the face of reasonable doubt as to the version put forth by the Prosecution, this Court will, as a matter of course and of choice, in line with judicial discretion, lean in favour of the Defence. We have borne in mind the cardinal principle that life and liberty are not matters to be trifled with, and a conviction can only be sustained in the absence of reasonable doubt. The presumption of innocence in favour of the accused and insistence on the Prosecution to prove its case beyond reasonable doubt are not empty formalities. Rather, their origin is traceable to Articles 21 and 14 of the Constitution of India. Of course, for certain offences, the law seeks to place a reverse onus on the accused to prove his/her innocence, but that does not impact adversely the innocent-till-proven-guilty rule for other criminal offences.'

(emphasis supplied)

37. In fine, even if it is accepted that the appellant and accused no.2 had a close relationship and the so-called action of transfer of the appellant by accused no.2 was cosmetic in nature, this would not obviate the requirement of proving the factum of demand being made by the appellant for himself and also on behalf of accused no.2 for approval of the amount to be paid to the policy-claimant. Moreover, if the appellant was demanding Rs. 40,000/- (Rupees Forty Thousand) from PW1 as bribe, the division being Rs.5,000/- (Rupees Five Thousand) for himself and Rs.35,000/- (Rupees Thirty-Five

Thousand) for accused no.2, it does not stand to reason as to why the appellant would not keep his share of Rs.5,000/- (Rupees Five Thousand) in Vijayawada itself and then send the remaining Rs.35,000/- (Rupees Thirty-Five Thousand) to accused no.2 or even keep the entire sum of Rs.35,000/- (Rupees Thirty-Five Thousand) meant for accused no.2 with himself. There may also be an indication that accused no.3 had taken out Rs.5,000/- (Rupees Five Thousand) from the Rs.40,000/- (Rupees Forty Thousand) given by PW1 and kept it in his pocket and passed on the remaining Rs.35,000/- (Rupees Thirty-Five Thousand) to accused no.2 meaning thereby, at best and presuming for argument's sake, it was a deal between PW2, accused no.2 and accused no.3. The mere fact that accused no.3 is the appellant's brother would not lead to a presumption in law that the money taken by him was meant for the appellant and that too, pursuant to demand being made by the appellant. It would also be important to take note of the fact that except for PW1-Complainant, no other witness/person was privy to the demand made to the complainant by the appellant. This does not satisfy the requirement that in trap cases where after a complaint is received, independent witnesses of the trap team are also required to confirm the demand made by the accused personally, which has not been done in the present case. Thus, the procedure of the trap case itself from the very inceptual stage suffers from serious legal lacuna, which cannot be now overcome. For, the purpose of this requirement is that before the trap is set into motion, there should be corroboration of the allegation made by the complainant of actual and real demand being made by the accused-public servant as a quid pro quo for extending a favour to the complainant. On to the next stage of actual laying of trap, there also the appellant was nowhere in the picture. The prosecution's effort of still trying to bring him under the ambit and scope of the corruption net clearly has not succeeded in the circumstances.

38. Having analysed the evidence threadbare and considered the entire evidential gamut, we find that the prosecution has not proved beyond reasonable doubt the demand of and acceptance of the bribe in the trap laid by PW12. This is, to be charitable to the investigative agency, at best a case of a botched-up trap with serious lapses committed by the investigative agency. The role of the SP and PW12 also calls for a detailed look, but in view of the fact that they are not before us, we refrain from further comment. At its worst, this case is an example of fabrication and attempted frame-up. Whatever

be the truth of the matter, the fact remains that in either scenario, benefit of doubt has to flow to the appellant. It would be unsafe to uphold the conviction of the appellant in any view of the matter. In view of our foregoing discussion, we set aside the Impugned Judgment and restore the Judgment and Order of the Trial Court.

39. Accordingly, the appeal is allowed. The appellant is acquitted of all charges relating to this case. The appellant is entitled to refund of the fine amount, if any deposited, in pursuance of the Impugned Judgment.

Result:- Appeal allowed. Impugned Judgment of High Court set aside. Judgment and Order of Trial Court acquitting appellant restored. Appellant acquitted of all charges. Appellant entitled to refund of fine amount, if any deposited.