THE ROLE OF CBI VIS-À-VIS THE PREVENTION OF CORRUPTION ACT, 1988

Sudhanshu Kumar Shashi

Director, Judicial Academy, Jharkhand

Contents

I. HISTORY-

- CBI-Central Bureau of Investigation traces its origin to Special Police Establishment (SPE) which was set up in 1941 by the Government of India. The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Department of India during World War II, and SPE was under the War Department.
- Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt. The Delhi Special Police Establishment Act (DSPE Act) was, therefore, brought into force in 1946. This Act transferred the superintendence of the SPE to the Home Department and its functions were enlarged to cover all departments of the Govt. of India.
- Initially, the offences that were notified by the Central Government related only to corruption by Central Govt. servants. Subsequently, PSU employees were added in this too. In 1961, after nationalisation, Public Sector Banks and their employees also came within the ambit of the CBI.
- Other wings that CBI has other than anti corruption - Special Crimes Wing, Economic Offences Wing, Banks Securities & Frauds Cell, to investigate conventional offences.

II. JURISDICTION OF CBI –

- Under DSPE, the jurisdiction of CBI stretches to UTs, but can also be stretched to states under Sec 5 of DSPE act.
- CBI merely gets operative jurisdiction by way of “General Consent” notifications issued by various State Governments and subsequently further notified by DoP&T, Government of India under section 6 and 5 of DSPE Act respectively. (The general consent is given by the States to CBI only for investigation of offences related to loss of revenue to Government of India and

corrupt acts committed by public servants of Government of India or Central Government PSUs. State Government public servants in general do not come under the jurisdiction of CBI).

- CBI can also take up the investigations when State Governments transfer specific cases by issuing specific case wise notification to transfer the already registered case from State Police Organization to CBI with the consent of Government of India.
- Hon'ble High Courts and Hon'ble Supreme Court (Constitutional Courts) can also direct CBI to take up investigation afresh or by way of transferring cases from the State Police organizations.

III. WHY CBI?

1. The professional manner in which CBI conducts investigation: CBI has set of Standard Operating Procedures (SoPs) in every aspect of investigation. Investigation in all the cases is reviewed by the supervisory officers at least once a month in the form of progress reports. If the investigation is found lacking in any aspect, the Supervisory Officers will issue pointers.
2. The multi-layered supervision over the investigation of cases: Minimum layers of supervision is 2, whereas the maximum layers of supervision is 9, depends on the nature and profile of the case.
3. All the instructions as per the CBI Manual are in writing and well documented. No scope for oral/verbal instructions. Because their views and comments are reduced into writing which becomes a permanent case record and can be subject to scrutiny even after years, officers have to be free, fair and responsible.
4. investigation wing and prosecution wing work in tandem. the Investigating officer and Law Officer work as a team and Investigating officer has a luxury of interacting with the Law officer at every stage to clarify his doubts and to strengthen the evidence.

5. CBI is manned by IPS officers who come on deputation for tenure of 5 to 7 years from the rank of SP to Director. Even the investigating officers are taken on deputation from various police and other specialized agencies on a 50:50 basis. After tenure they return to their parent organization and hence are secure while doing their job, as well as free from facing consequences of taking tough decisions.
6. IPS officers are from different state/cadre, so influence of local authorities and politicians is at minimum.
7. During deputation, neither is the officer working under local political bosses, nor is he going to be serving under them directly later. Hence, he is secure, independent, and fair.
8. If any officer of state police is involved in investigation, he is always mindful of the lateral lateral interactions between the Departments in the State and interactions with political executive as they are likely to serve in different positions after completing the investigator's role and there is always a chance of serving with or under the senior officers against whom they have launched criminal investigation. But this is not the case with the CBI officers.
9. Officers are from different regions of the country; no interest in local politics.
10. Since CBI is a Central Government Agency having jurisdiction throughout India, coordination with other organizations like Interpol, Enforcement Directorate, Income Tax, SFIO, SEBI etc for conducting investigation, is easier when compared to other State Government agencies.
11. CBI lays great emphasis on usage of science and technology, during investigation. The agency is well equipped with Technical and Forensic Support Units (TAFSU), which have the latest technical gadgets.
12. Every Officer, who joins CBI on deputation requires to undergo basic training of minimum 6 weeks, at the training Academy, Ghaziabad, UP. During the training, they will be imparted the requisite skills required for an Investigator of CBI. Unless and until an officer undergoes basic training, he will not be entrusted with any investigation.

13. The CBI officers generally have the luxury of investigating the cases at their own pace without directly coming under the media scrutiny in majority of the cases because they are under less scrutiny, where state police is always under pressure and scrutiny by public and media.
14. CBI spends a major portion of its budget on investigation. Investigators in CBI are entitled for 20% of their Basic Pay as Special Allowance. Their gadgets, vehicles, trips, training, forensic kits, mobile kits are all paid attention to.
15. CBI weighs the performance of the officers impartially
16. CBI has a total strength of 7224 comprising executive, legal, technical and ministerial officers. The strength of the IOs (Inspector to ASP) is 1416.
17. CBI is a specialized agency which focuses only on investigation of crime and is not burdened with other responsibilities like law and order, bandobust, VIP security, election duty, etc.
18. Investigating less number of cases - On an average 1200 cases per annum as against a thousand cases investigated by a single major Police Station in the country. The average number of cases investigated by a CBI investigating officer is three cases per annum as against the dozens of cases investigated by an IO of local police.
19. CBI has its own fleet of Court staff consisting of Public Prosecutors and Pairvi Officers supported by Court Naibs, unlike State Police. These officers are acquainted with the investigators from the stage of registration of FIR. Hence, pairvi and prosecution of CBI is very effective.
20. CBI has its own Special Courts presided over by well experienced judges of the rank of District Judge. The court proceedings are submitted by the Prosecutors in the form of Court Diaries to the Supervisory Officers on daily basis and necessary guidance is given by the Supervisory Officers to the Public Prosecutors. If any lacuna is found in the prosecution cases, the supervisory officers intervene by suggesting remedial measures.
21. Unlike State Police, CBI has an exclusive Pairvi Section, which is responsible for service of summons and execution of warrants.

22. The internal vigilance in CBI is very strong. The activities of the officers are monitored continuously to ascertain as to whether any corrupt deeds/misdeeds are being committed by them. Thus, internal corruption within CBI is almost NIL, as a result of which the confidence of public on CBI is very high.
23. Success rate of CBI (conviction rate) is around 65%, which is very high compared to other State Government Agencies.
24. Though the rate of conviction of CBI is reasonably high, the acquittal rate of 35% is still major concern for CBI. CBI has a mechanism to scrutinize the judgments of courts to ascertain as to whether the evidence has been properly weighed by the Presiding Officers. If the evidence is not properly appreciated, appeals are filed against the judgments of acquittal. Though every case is unique and has its own reason for acquittal, the general grounds of acquittals in CBI are:

    1.Hostility of crucial witnesses,

    2.Non availability of documents in old cases,

    3.Settlement of dues by the borrowers to the financial institutes,

    4. Disproportionate Assets cases in which the accused could bring additional sources during trial and convince the courts that the assets possessed by them are acquired through legal sources.

    5. The mistakes committed by the Sanctioning authorities while according to sanction for prosecution.

IV. DEFINITION OF PUBLIC SERVANT –

- The Prevention of Corruption Act, 1947 punished the wrongdoers (public servants) for the acts committed by them in violation of the provisions of the Act. But it did not define the term ―public servant explicitly. It was dependent upon the definition of the term as is given in the Indian Penal Code. The term ―public servant was defined for the first time within an anti-corruption legislation under the Prevention of Corruption Act, 1988.

- Indeed, even before the existence of the Prevention of Corruption Act, 1988 it was held in ***G.A. Monterio v. State of Ajmer*** **(AIR 1957 SC 13)** that genuine test to find out if a person is a public servant is whether he is in pay or remuneration of Government and whether he is endowed with the execution of a public duty and in case if both these preconditions are fulfilled then the nature of office does not make a difference.

  Section 2(c): Public Servant

  any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

  (ii) any person in the service or pay of a local authority;

  (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956;

  (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

  (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

  (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

  (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an officer by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956;

x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government or local or other public authority.

Explanation 1. — Persons falling under any of the above sub-clauses are public servants, whether appointed by the government or not.

Explanation 2. — Wherever the words "public servant" occurs, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

- In ***C.B.I. v. Ramesh Gelli*, (2016) 3 SCC 788**, the managing director and chair of a private banking company were held to be ―public servants for the purposes of prosecution under the Prevention of Corruption Act 1988. The question of law that came up for consideration before the Supreme Court was whether the chair, directors and officers of GTB were public servants for the purposes of their prosecution with regard to offences punishable under the Prevention of Corruption Act.
- The CBI contended that the two accused individuals were 'public servants' under the definition contained in Section 2(c) of the Prevention of Corruption Act, as well as by virtue of Section 46A of the Banking Act, which provides that full-time chairs, managing directors and directors of a banking company are considered public servants. Notably, Section 46A was inserted into the Banking Regulation Act 1949 by Act 95/56, with effect from January 14 1957, and referred to Sections 161 to 165A of Chapter IX of the Penal Code before the Prevention of Corruption Act repealed these provisions.
- the Supreme Court held that for the purpose of construing the term 'public servant' under the Prevention of Corruption Act, the same must be purposively and harmoniously read with Section 46A of Banking Act. The court emphasised that the legislature's failure to substitute the words "for the purpose of Prevention of Corruption Act, 1988" with "Chapter IX of Indian Penal Code" while amending Section 46 of the Banking Act was unintended and cannot be construed in order to make Section 46 inapplicable to the Prevention of Corruption Act.
- The Supreme Court observed that the Statement of Object and Reasons for the Prevention of Corruption Act demonstrates that the legislature intended to

strengthen the anti-corruption law by widening its coverage and broadening the definition of 'public servant' under the act.

V. WHETHER M.L.A OR M.P. CAN BE A PUBLIC SERVANT –

- The question whether an M.L.A. or M.P. can be held a public servant as per the domain of Section 2 (c) (viii) was challenged in Courts before establishment of the Prevention of Corruption Act, 1988 and it was held in dominant instances that he is not a public servant inside of the domain of Section 21 of I.P.C. Presently, after the making the Prevention of Corruption Act, 1988 circumstances have changed definitely and interpretation has become obsolete as the new definition covers M.L.A. and M.P.'s as well.
- In another case, ***Habibulla Khan v. State of Orissa*** **(1993 (Cr. L.J. 3604)**it was held that, however a M.L.A would come within the meaning of term ―public servant' yet he is not the sort of ―public servant for whose prosecution previous sanction is required. This anomaly was further settled by a 5-judge Bench of the Hon'ble apex court in ***P.V. Narasimha Rao v. State (C.B.I.)*****1998 Cr. L.J. 2930** which held that a Member of Parliament holds an office and by virtue of such office he is required or accredited to perform duties and such duties are in the nature of public duties. As a result, an MP would therefore fall within the ambit of sub-clause (viii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 even though there is no authority who can grant sanction for his prosecution under section 19(1) of the Act. It was also held that sanction is not necessary for the court to take cognizance of the offences and the prosecuting agency shall take permission of the Chairman of the Rajya Sabha or Speaker of the Lok Sabha as the case may be before filing the charge sheet.

VI. LEGISLATIVE DEVELOPMENT OF THE PC ACT, 1988–

- Initially, within the Indian Justice System, the Indian Penal Code dealt with the offenses of bribery and corruption in cases of Public Servant. The opportunities for corruption thrown up by the post World War II era signified the need for a special legislation. So, during the 1945s, it came into notice that the then-existing law was not adequate to meet the exigencies and a need was felt to introduce special legislation to eradicate bribery and corruption, it was thus that the Prevention of Corruption Act, 1947 was enacted for the first time.
- The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There were provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abets them by way of criminal misconduct. There were also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Act sought to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.
- The 1947 Act was later amended at two instances by the Criminal Law Amendment Act, 1952 and by the Anti-Corruption Laws (Amendment) Act, 1964 based on the recommendations of the Santhanam Committee. However, by the time the Santhanam Committee was appointed in September, 1962, corruption had increased to an extent where people started losing faith in the integrity of public administration itself, not excluding even its decision-making political apparatus.
- The Second Plan, which proceeded on the line indicated in the Industrial Policy resolution of 1956, saw corruption growing into an organised force. By 1960, the number of cases investigated by the Delhi Police Establishment increased almost twofold in about 10 years. In these circumstances, the Cabinet Secretariat prepared its paper on Measures for strengthening of Administration in 1961. But,

by the time these papers were prepared with the assistance of the Planning Commission and the Organisation and Methods Division, the problem of corruption had come to assume serious proportions, already engaging the attention of the Press Parliament and the public. From April, 1956 to 31'December, 1962, complaints and vigilance cases of corruption had registered nearly a fivefold increase.

- Evidently over years, the desired results of the previous legislation could not be achieved. In order to consolidate and amend, the law relating to the prevention of corruption and for matters connected therewith, the Prevention of Corruption Act, 1988 was enacted. The Act introduced drastic and far-reaching amendments with a view to broaden its base and come over certain legal loopholes which were considered advantageous to the accused facing corruption charges.
- The Prevention of Corruption Act, 1988 was intended to make the existing anticorruption laws more effective by increasing their scope and strengthening their provisions. It incorporated and consolidated the provisions of the Prevention of Corruption Act, 1947, the Criminal Law (Amendment) Act, 1952 into one comprehensive statute with certain modifications as are necessary to guarantee more effective and speedy methods to combat corruption amidst public servants. Provisions of sections 161 to 165-A IPC have also been incorporated into this single Act. Enhanced penalties have been provided.

VII. SPECIAL COURTS –

- The question arises, where do CBI Special courts derive their powers from? CBI is governed by DSPE Act, but the idea of special courts is not mentioned in the same. The Prevention of Corruption Act, 1947 was enacted for more effective prevention of bribery and corruption. Years rolled by and experience gathered showed that unless a special forum for the trial of such offences as enumerated in the 1947 Act is created, the object underlying the 1947 Act would remain a

distant dream. This led to the enactment of the Criminal Law Amendment Act, 1952.

- It is now necessary to take notice of salient provisions of the Criminal Law Amendment Act, 1952. The Act was enacted as its long title shows to amend the Penal Code, 1860 and the Code of Criminal Procedure, 1898 and to provide for a speedier trial of certain offences. For this reason, the provision regarding establishment of special judges was made under Sec 6 of the Amendment Act, 1952.

  Section 6 reads as - . (1) The State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely:

  (a) an offence punishable under Section 161, Section 162, Section 163, Section 164, Section 165 or Section 165-A of the Penal Code, 1860 or Section 5 of the Prevention of Corruption Act, 1947.

  (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

  (2) A person shall not be qualified for appointment as Special Judge under this Act unless he is, or has been, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898."

- Given that there existed already four different kinds of criminal courts under the High Court, namely,(i) Courts of Session, (ii) Judicial Magistrate of the First Class / Metropolitan Magistrate, (iii) Judicial Magistrate of the Second Class and (iv) Executive Magistrate;it was necessary to prescribethe powers, procedure, status and all ancillary provisions of the newly made Special Courts.
- While setting up a Court of a Special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification

prescribed was that the person to be appointed as Special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge, all of three are above the level of a Magistrate.

- When the 1952 Act was enacted what was in operation was the Code of Criminal Procedure, 1898. It did not envisage any Court of a Special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. Therefore, it conferred power (taking cognizance of offences), prescribed procedure (trial of warrant cases by a Magistrate), indicated authority to tender pardon (Section 338) and then after declaring its status as comparable to a Court of Session proceeded to prescribe that all provisions of the Code of Criminal Procedure will apply in so far as they are not inconsistent with the provisions of the 1952 Act. When taking cognizance, a Court of Special Judge enjoyed the powers under Section 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session

VIII. DIFFERENCE BETWEEN SANCTION UNDER SECTION 19, PC ACT AND SECTION 197, CRPC

- Sanction is not required under Section 19 of the P.C. Act, if the public servant is no longer in service at the time the Court takes cognizance of the offence, but is required under Section 197 Cr.P.C. Even where the public servant is no longer in service at the time the Court takes cognizance of the offence. Under Section 19 of the P.C. Act, sanction for prosecution is required for an offence punishable under Sections 7, 10, 11, 13, 15 of the Act, while under Section 197(1) Cr.P.C. sanction is required for an offence committed while acting or purporting to act in the discharge of his official duty, and not otherwise.
- Sanction contemplated under Section 197 CrPC concerns a public servant who "is accused of any offence alleged to have been committed by him while acting

or purporting to act in the discharge of his official duty" whereas, the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties.

- The offences under IPC and offences under the PC Act, 1988 are different and distinct. What is important to consider is whether the offences for one reason or the other punishable under IPC are also required to be approved in relation to the offences punishable under the PC Act, 1988.
- The Supreme Court in ***Kalicharan Mahapatra v. State of Orissa*****, 1998 CriLJ 4003**, has noted as follows

  "13. ...The sanction contemplated in Section 197 of the Code concerns a public servant who 'is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

- In the light of this judgement, the SC further in the case of ***Lalu Prasad v. State of Bihar through CBI (AHD) Patna*****, 2007 (1) SCC 49**, has observed as following:

  "10. It may be noted that Section 197 of the Code and Section 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the Code, the substratum and basic features of the case have to be considered to find out whether the alleged act has any

nexus with the discharge of duties. Position is not so in case of Section 19 of the Act."

- While discussing about the object behind Section 6 of Prevention of Corruption Act, 1947 which is equivalent to Section 19 of PC Act, 1988 the SC in the case of ***Shivendra Kumar v. State of Maharashtra*****, (2001) 9 SCC 303** has noted as following:

  "11. ...The object of Section 6 or for that matter Section 197 of the Criminal Procedure Code, which is a parimateria provision, is that there should be no unnecessary harassment of a public servant; the idea is to save the public servant from the harassment which may be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him. The protection is not intended to be an absolute and unqualified immunity against criminal prosecution. In a case where it is seen that a sanction order has been passed by an authority who is competent under the law to represent the State Government, the burden is heavy on the party who challenges the authority of such order to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the sanction order in question."

- In the recent case of ***A Sreenivasa Reddy v. Rakesh Sharma and Ors.,*** **(2023) 8 SCC 711,** the SC has further held that:

  "60. ...it can be said that there can be no thumb rule that in a prosecution before the Court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only prerequisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as

the case progresses) as to whether there is a necessity of sanction under Section 197 CrPC.

61. There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 CrPC, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 CrPC depends on the factual aspects. The test in the latter case is of the "nexus" between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 CrPC on such reasoning. The "safe and sure test", is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts."

IX. WHETHER A COMPLAINT CAN BE FILED BY A CITIZEN FOR PROSECUTING A PUBLIC SERVANT FOR AN OFFENCE UNDER THE PREVENTION OF CORRUPTION ACT, 1988? IF YES, WHAT WOULD BE THE STAGE FOR GRANT OF SANCTION?

- The above question is answered by Section 19 of the Act. After the 2018 Amendment to the Act, relevant provisos were added i.e. –

19. Previous sanction necessary for prosecution.

(1)No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] [Substituted 'sections 7, 10, 11, 13 and 15' by Act No. 16 of 2018, dated 26.7.2018.] *alleged to have been committed by a public servant, except with the previous sanction,*

(a)in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] *in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*

(b)in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] *in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;*

(c)in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement

authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i)such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii)the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation. - For the purposes of sub-section (1), the expression "public servant" includes such person-

(a)who has ceased to hold the office during which the offence is alleged to have been committed; or

(b)who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2)Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a)no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b)no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c)no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4)In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. For the purposes of this section,

(a)error includes competency of the authority to grant sanction;

(b)a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

X. WHETHER SANCTION IS REQUIRED WHEN PUBLIC SERVANT IS NO LONGER HOLDING THE POST DURING WHICH ALLEGED OFFENCE WAS COMMITTED -

- The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority, but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity.
- In a situation where the sanction is sought for prosecution in case a public servant is no longer holding the same post/office during the time of which the alleged offence was committed, there is no need to obtain a sanction.

- In a situation where the sanction is sought for prosecution in case a public servant is no longer holding the same post/office during the time of which the alleged offence was committed but is now holding a different office as a public servant, there is no need to obtain a sanction.
- The above has been stated in *A.R. Antulay v. R. S. Nayak* (1984) and then reiterated in ***Parkash Singh Badal v. State of Punjab (2007)*** and ***Subramaniam Swamy v. Manmohan Singh*** **(2012).**
- Relevant portion from ***R.S. Nayak v. A.R. Antulay*****, (1984) 2 SCC 183** –

> *24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used (sic misused) nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used (sic misused) or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned Counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take*

cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter. (See Davis & Sons Ltd. v. Atkins [1977 Imperial Court Report 662] .)

> *25.....We would however, like to make it abundantly clear that if the two decisions purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove*

him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay down the correct law and cannot be accepted as making a correct interpretation of Section 6.

25. Therefore, upon a true construction of Section 6, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him.

XI. WHETHER THE STATE POLICE OR SPECIAL AGENCY OF THE STATE LIKE ANTI-CORRUPTION BUREAU HAS POWER AND JURISDICTION TO REGISTER THE CRIME AND INVESTIGATE INTO THE OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988 AGAINST THE EMPLOYEES UNDER THE CENTRAL GOVERNMENT?

- The Kerala High Court in the case of ***State of Kerala Represented by the State Public Prosecutor v. Navaneeth Krishnan***, 2023 SCC OnLine Ker 5730, has held that under **Section 17** of the PC Act, any Anti-Corruption Bureau of a State has the authority to investigate offences involving corruption that take place within the State, whether it iscommitted by a Central Government employee or a State Government employee. KAUSER EDAPPAGATH, J. held as follows:

"17. There is no special provision in the P.C. Act or DSPE Act excluding or preventing the State police or a Special Agency of the State from investigating cases relating to the corruption of the Central Government employees. None of the provisions of the P.C. Act or DSPE Act authorises

CBI or Central Vigilance Commission or any other Central Government Agency alone to investigate in matters relating to the Central Government employees. In the absence of a specific provision in the DSPE Act or PC Act divesting the power of the regular police authorities to investigate into the offences under any other competent law, it cannot be said that the power of the State police or a Special Agency of the State to register a crime and investigate into the offence allegedly committed by the Central Government employees in their State is taken away. For these reasons, I hold that the VACB, being a specially constituted body to investigate into the bribery, corruption and misconduct mainly under the P.C. Act is always clothed with the authority to investigate offences involving corruption that take place within the State, whether it is committed by a Central Government employee or a State Government employee."

- The Kerala High Court also relied on the decision of the Full Bench of the of Madhya Pradesh High Court in the case of ***Arvind Jain v. State of Madhya Pradesh***, 2018 KHC 4261, and on the decision of the Single Bench of the Andhra Pradesh High Courtin ***G.S.R. Somayaji (Dr.) v. State through CBI***, 2002 KHC 2104, and said that:

  "16… The Full Bench of the Madhya Pradesh High Court in **Arvind Jain** *(Supra) also took the view that the offence of bribery and corruption against the Central Government employees posted in the State of Madhya Pradesh can be investigated by regular police force orSpecial Police Establishment. The Single Bench of Andhra Pradesh High Court in* ***G.S.R. Somayaji*** *(supra) held that the trap laid down against Central Government employees and investigation done by the State agency cannot be questioned on the premises that it is illegal for want of jurisdiction. I perfectly agree with the dictum laid down in those decisions."*

XII. WHETHER, IN THE ABSENCE OF EVIDENCE OF THE COMPLAINANT/DIRECT OR PRIMARY EVIDENCE OF DEMAND OF ILLEGAL GRATIFICATION, IT IS PERMISSIBLE TO DRAW AN INFERENTIAL DEDUCTION OF CULPABILITY/GUILT OF A PUBLIC SERVANT UNDER SECTIONS 7 AND 13(1)(D) READ WITH SECTION 13(2) BASED ON OTHER EVIDENCE ADDUCED BY THE PROSECUTION?

- This issue was raised before the five-Judge Bench of Supreme Court in the case of ***Neeraj Dutta v. State (NCT of Delhi),*** (2023) 4 SCC 731 : 2022 SCC OnLine SC 1724**.** The Honourable Court answering in affirmation held that, if 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 and, thus, the trial does not abate in such cases, nor does it result in an order of acquittal of the accused public servant. The court thus held as following:

> *"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 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.

...

90. Accordingly, the question referred for consideration of this Constitution Bench is answered as under:

In the absence of evidence of the complainant (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution."

XIII. WHAT IS THE PRESUMPTION UNDER THE PREVENTION OF CORRUPTION ACT REGARDING PUBLIC SERVANT ACCEPTING ANY UNDUE ADVANTAGE?

Section 20: Presumption where public servant accepts any Undue Advantage

Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may he, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.

To further understand presumption under Section 20 the Supreme Court in the five-Judge Bench Judgement of ***Neeraj Dutta v. State (NCT of Delhi)***, (2023) 4 SCC

731 : 2022 SCC OnLine SC 1724 has laid out the ingredients to prove an offence under Section 7 and Section 13 (1) (d):

> ***"5.*** *The following are the ingredients of Section 7 of the Act:*
>
> *(i) the accused must be a public servant or expecting to be a public servant;*
>
> *(ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;*
>
> *(iii) for himself or for any other person;*
>
> *(iv) any gratification other than legal remuneration; and*
>
> *(v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.*
>
> ***6.*** *Section 13(1)(d) of the Act has the following ingredients which have to be proved before bringing home the guilt of a public servant, namely:*
>
> *(i) The accused must be a public servant.*
>
> *(ii) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.*
>
> *(iii) To make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.*
>
> *(iv) An agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).*

(v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.

(vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.

(vii) Since the legislature has used two different expressions, namely, "obtains" or "accepts", the difference between these two must be noted."

1. CM. Girish Babu v. CBI, (2009) 3 SCC 779:

Facts of the case:

- The appellant was tried for offences under Section 120-B IPC read with Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 by the Special Judge (SPE/CBI). The prosecution case was that while working as the Inspector of Central Excise, Air Cargo Complex, Trivandrum, Accused 1 demanded an amount of Rs 1500 as gratification from one Dayanandhan, PW 10 and Prakash Kumar, PW 2, who were Senior Assistant and Manager respectively of M/s Interfreight Services (P) Ltd., Trivandrum as a motive or reward for giving clearance for a wet grinder booked by one P.S. Shine to be sent to Dubai.
- The appellant was also working as Inspector of Central Excise, Air Cargo Complex, Trivandrum along with Accused 1. On 2-10-1999 at about 6 a.m. the appellant is stated to have actually demanded the amount of Rs 1500 from Dayanandhan, PW 10 as gratification for clearing the same wet grinder and accepted the bribe amount for himself and on behalf of Accused 1 and thereby committed offences under Section 7 read with Sections 13(1)(d) and 13(2) of the said Act.

The Apex Court has held as follows:

*"**21.**It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.*

***22.**It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt".*

4. ... It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt."

(emphasis supplied)

(See V.D. Jhingan v. State of U.P. [AIR 1966 SC 1762 : (1966) 3 SCR 736] at AIR p. 1764, para 4.)"

The court also relied on the decision of them in the case of ***Madhukar Bhaskarrao Joshi v. State of Maharashtra***, (2000) 8 SCC 571:

> *'12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.'*

2. N. Sunkanna v. State of Andhra Pradesh, (2016) 1 SCC 713:

Facts of the Case:

- This was an appeal against the judgment passed by the High Court of Andhra Pradesh affirming the conviction and sentence passed by the Additional Special Judge for SPE and ACB cases, City Civil Court, Hyderabad, whereby the appellant-accused has been found guilty of commission of offences under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
- The case of the prosecution is that the appellant-accused was, at the relevant point of time working as Deputy Tahsildar, Civil Supplies Mandal Revenue Officer, Kurnool in the State of Andhra Pradesh. The complainant PW 1, K. Sudhakar Reddy had a fair price shop at Narsimha Reddy Nagar Kurnool. It is

alleged by the complainant that the appellant-accused used to collect Rs 50 per month from each fair price shop dealer in Kurnool as monthly mamool and when he visited the shop of the complainant on 17-9-1993 he demanded Rs 300 towards the monthly mamools from April 1993 by threatening to seize the stocks and foist a case against him. As the complainant was not willing to pay the said amount, he had approached PW 7, Deputy Superintendent of Police, ACB, Kurnool and submitted Ext. P-1 complaint in writing on 18-9-1993 to him.

- PW 7 the Deputy Superintendent of Police registered a case and issued Ext. P-9 FIR. On 20-9-1993 he secured PW 2, N. Ravindranath Reddy, Senior Assistant in the Office of State Housing Corporation, Kurnool and LW 3 Abdul Jallel, to act as panch witnesses and explained the significance of chemical test to them. He got the currency notes treated with phenolphthalein powder and entrusted the same to the complainant. Ext. P-3 is the pre-trap proceedings. They reached the Mandal Revenue Office, Kurnool at 1.30 p.m. Thereafter, according to the prosecution the complainant relayed pre-arranged signal to them at 1.45 p.m. and they entered the office and the sodium carbonate solution test was conducted on the right hand fingers of the accused as well as the left shirt pocket. Both the tests proved to be positive and tainted currency notes were recovered from the possession of the accused. On completion of the investigation the sanction was obtained and a charge-sheet was filed against the appellant-accused. The charges were framed to which the accused pleaded not guilty. In the trial PWs 1 to 8 were examined and Exts. P-1 to P-9 and MOs 1 to 9 were marked on the side of the prosecution. The accused filed written statement and examined DWs 1 to 4 and marked Exts. D-1 to D-8 on his side. The plea of the accused was that target was fixed by the Department to collect contribution for the purchase of the National Savings Certificate and the amount that was given by the complainant was towards that only.

The Apex Court held as follows:

> *"**5.** It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1) (d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow.*
>
> ***6.** In the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."*

3. B. Jayaraj v. State of A.P., (2014) 13 SCC 55:

- The plea of the accused was that on the date of the trap, PW 2, the complainant had put the currency notes in his shirt pocket with a request to have the same deposited in the bank as fee for renewal of the licence of the complainant. It was at this point of time that the police party had come and seized the currency notes after taking the same from his pocket.
- PW 2, the complainant, did not support the prosecution case. He disowned making the complaint (Ext. P-11) and had stated in his deposition that the amount of Rs 250 was paid by him to the accused with a request that the same may be deposited with the bank as fee for the renewal of his licence. He was, therefore, declared hostile.
- However, PW 1 (panch witness) had testified that after being summoned by LW 9 K. Narsinga Rao, on 13-11-1995, the contents of Ext. P-11 (complaint) filed

by the complainant PW 2 were explained to him in the presence of the complainant who acknowledged the fact that the appellant-accused had demanded a sum of Rs 250 as illegal gratification for release of the PDS items.

- It is on the aforesaid basis that the liability of the appellant-accused for commission of the offences alleged was held to be proved, notwithstanding the fact that in his evidence the complainant PW 2 had not supported the prosecution case. In doing so, the learned trial court as well as the High Court also relied on the provisions of Section 20 of the Act to draw a legal presumption as regards the motive or reward for doing or forbearing to do any official act after finding acceptance of illegal gratification by the appellant-accused.The only other material available was the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself.

The Apex Court held as follows:

> *"**7.** Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.*
>
> ***8**. ...Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.*

9. *Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."*

4. P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152 :

"22. *... It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. 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. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.*

23. *The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or*

recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

5. Neeraj Dutta v. State (Govt. of N.C.T. of Delhi), 2023 SCC OnLine SC 280

- Following the five-Judge Bench of Supreme Court in the case of ***Neeraj Dutta v. State (NCT of Delhi)***, (2023) 4 SCC 731 : 2022 SCC OnLine SC 1724, the Supreme Court further in this case discussed on the matter of presumption under Section 20. While referring to para 9 of of the decision in the case of ***B. Jayaraj*** (as mentioned above), the Court held that:

  "14. *The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.*

  15. *In the case of* ***N. Vijayakumar****, another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses*

(i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:

> *"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."*
>
> *(emphasis added)*

16. *Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.*

17. *Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for*

doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be proved by other evidence such as circumstantial evidence."

XIV. CONCLUSION

In conclusion, the Prevention of Corruption Act, 1988, and the role of the Central Bureau of Investigation (CBI) in India are intertwined in the fight against corruption. The Act, with its comprehensive provisions, serves as a robust legislative framework to combat corrupt practices and hold individuals accountable. Simultaneously, the CBI, as the premier investigative agency, plays a crucial role in enforcing the Act and ensuring a fair and impartial investigation into corruption cases.

- The Prevention of Corruption Act empowers the CBI to investigate cases of corruption involving public servants, both at the central and state levels. The Act provides the CBI with the necessary legal tools and authority to conduct inquiries, search and seize evidence, and prosecute those involved in corrupt activities. It acts as a deterrent, sending a clear message that corruption will not be tolerated and that offenders will face severe consequences.
- The CBI's role in implementing the Prevention of Corruption Act is of paramount importance. The agency's specialized skills, expertise, and independence enable it to conduct thorough investigations, unearth hidden financial trails, and present evidence in a court of law. Its impartiality and autonomy from political interference are crucial in ensuring the credibility and effectiveness of corruption investigations.
- However, it is essential to acknowledge that the effectiveness of the CBI in tackling corruption depends on various factors, including adequate resources, professional development, and an environment that fosters integrity and accountability. Strengthening the CBI's institutional capacity, ensuring transparency in its operations, and promoting a culture of ethics are key areas that require attention.
- Moreover, the role of the CBI goes beyond its investigative responsibilities. It also has a preventive role, such as raising awareness about corruption, promoting ethical practices, and collaborating with other law enforcement agencies, government bodies, and civil society organizations. By fostering partnerships and sharing best practices, the CBI can contribute to a comprehensive approach in preventing and combating corruption.
- In conclusion, the Prevention of Corruption Act, 1988, and the role of the CBI in India are intertwined in the nation's collective fight against corruption. The Act provides the legal foundation, while the CBI contributes its investigative expertise and enforcement capabilities. However, it is crucial to continuously strengthen the CBI's institutional framework, ensure its independence, and promote a culture of integrity to maximize its effectiveness. By doing so, we can

strive towards a corruption-free society, where transparency, accountability, and ethical governance prevail.