
CIRCUMSTANTIAL EVIDENCE IN BRIBERY CASES: THE CASE OF NEERAJ DUTT V STATE (GOVT. OF DELHI NCT) 2022

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RESEARCH QUESTION(S)

1. Whether the Prevention of Corruption Act, 1988, allows the public officer to be convicted on circumstantial evidence.
2. Whether Sections 7 and 13(1)(d) of the Act, when read with Section 13, have allowed the use of circumstantial evidence to demonstrate the demand and acceptance of unlawful gratification.

RESEARCH OBJECTIVE(S)

1. To grasp and implement the Prevention of Corruption Act, 1988 under the aforementioned case.
2. To analyze Neeraj Dutt v. State (Govt. of Delhi) 2022 in considerable detail.
3. To ascertain whether the Prevention of Corruption Act of 1988 permits the use of circumstantial evidence in a prosecution of a public official.

INTRODUCTION

The Supreme Court Constitution bench, which was made up of *Justices Abdul Nazeer, B.R. Gavai, A.S. Bopanna, V. Ramasubramanian, and B.V. Nagarathna*, held in *Neeraj Dutta v. State (Gov. of N.C.T. of Delhi)*¹ that **“it is acceptable to infer a public servant's guilt from other evidence presented by the prosecution under the Prevention of Corruption Act, 1988”**.

When the complainant's primary evidence is unavailable, what kind of evidence, if any, must

¹ Neeraj Dutta v. State (Gov. of N.C.T. of Delhi), (2019) 14 SCC 311.

be provided to support a public official's conviction for violating 13(1)(d)² and Section 7³ read with Section 13(2)⁴ of the Act? This question was raised when the case was referred to a constitutional bench.

JUDICIAL PRONOUNCEMENT(S)

In the judgments of *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh & Anr* and *B. Jayaraj v. State of Andhra Pradesh*⁵, the division bench had voiced some doubts over the validity of the Supreme Court's legal reasoning.

A three-judge Supreme Court panel concluded in *P. Satyanarayana Murthy* that it was unlawful to rely on inferential conclusions to establish a conviction under sections 7⁶ and 13(1)(d)(i)⁷ and (ii) in the absence of main evidence. In this case, the complainant passed away before the prosecution could interrogate him. A second three-judge panel, however, determined that the conviction in the instance of *B. Jayaraj* could not stand since the complainant denied submitting a complaint and was viewed as hostile.

Before the Act was changed in 2018, it was necessary to demonstrate that a public official sought and received illegal gratification in order to prove an offence. According to the Act's sections 13(1)(d)(i) and (ii) and section 7⁸, these were the circumstances. The division bench observed the inconsistency between *M. Narsinga Rao v. State of Andhra Pradesh (2001)*⁹, which was also determined by a three-judge bench, and the preceding two instances' consideration of the evidence standards for establishing the offence under sections 7 and 13(1)(d) read with section 13(2)¹⁰.

“It was questioned whether, in the instance of M. Narasinga Rao, whether the prosecution witnesses had become hostile, a legal presumption might be based on a

² Section 13(1)(d), The Prevention of Corruption Laws, Act no. 49 of 1988.

³ Section 7, The Prevention of Corruption Laws, Act no. 49 of 1988.

⁴ Section 13(2), The Prevention of Corruption Laws, Act no. 49 of 1988.

⁵ *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh*, (2015) 10 SCC 152 and *B. Jayaraj v. State of Andhra Pradesh*, (2014) 13 SCC 55.

⁶ *Ibid* at 3.

⁷ *Ibid* at 2

⁸ *Ibid*.

⁹ *M. Narsinga Rao v. State of A.P.*, (2001) 1 SCC 691,

¹⁰ *Ibid* at 4

factual premise".¹¹

Considering that it was not challenged if it could be shown that there was a demand for, payment for, or acceptance of gratification and that the essential facts had been proven, the court remarked that the presumption for payment or acceptance of illegal gratification was pertinent.

According to Section 20 of the Act¹², the legal presumption was to be based on the alleged pleasure that was acknowledged as a "motive or consequence" for performing or abstaining from performing any act. Further evidence therefore reinforced the necessity for illicit gratification in this instance.

COMPARATIVE STUDY/ANALYTICAL STUDY

The decisions of the three-judge panel in B. Jayaraj, P. Satyanarayana Murthy, and M. Narasinga Rao do not contradict with one another, according to the Supreme Court. It was made explicit that in the absence of direct or primary, oral or written testimony from the complainant, further evidence provided by the prosecution may be used to infer a public servant's guilt in line with sections 7 and 13(1)(d) read with section 13(2) of the Act.¹³

“In order to establish the public servant's demand for and acceptance of illegal gratification, it is important to keep in mind that, in accordance with section 7¹⁴ of the Act, acceptance occurs when the bribe giver offers to pay without the public servant making any demands in return, and the latter simply accepts the offer and receives the illegal gratification”.

The prosecution first must show the desire for unlawful gratification and the acceptance of that demand as a matter of fact, the court emphasised, in order to prove the accused's guilt. The court holds that direct evidence, such as oral or written testimony, can be used to demonstrate this fact. The Constitution court also declared that circumstantial evidence, including the

¹¹B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55, and P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh, (2015) 10 SCC 152 contradicted a prior three-judge bench decision in M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691.

¹² Section 20, The Prevention of Corruption Law, Act no. 49 of 1988.

¹³ Ibid at 2

¹⁴ Ibid at 3.

demonstration of the demand and acceptance of unlawful gratification, may be used to demonstrate the fact in question in the lack of direct oral and documentary evidence.

CRITICAL ANALYSIS

The legal assumption outlined in Section 20

Prior to being changed in 2018 to deal with a presumption if the public servant takes any unfair benefit, Section 20¹⁵ dealt with a presumption if the employee received gratification other than authorized remuneration. The Constitution bench emphasised that there would not be a legal presumption in this situation in the absence of strong proof. Prior to the 2018 amendments to the Act, it was essential to show that a public official sought and received illicit gratification in order to establish an offence. This was the scenario as defined by sections 7 and 13(1)(d)(i) and (ii) of the Act. The bench emphasised that the mere receipt of any claimed illicit gratification money would not be sufficient to prove the accusations under sections 7, 13(1)(d)(i), and 14 of the law.

The term “presumption” appears in the phrase, hence in order to establish an offence under section 13(1)(d), it is required to show a desire for unlawful gratification (i). In this instance, the court distinguished between the concepts of "acceptance" and "obtainment," the latter of which denotes obtaining something in return for demand or effort. The receiver should take the initiative in this scenario. Additionally, it noted that the accused must consent to or be ready to take any payment during the duration of the trial in order to establish a presumption of guilt under section 20 of the legislation. The word doesn't specify how to make the aforementioned condition true.

The criteria that must be considered to demonstrate the desire for and acceptance of illicit gratification.

Remember that acceptance occurs when the bribe giver makes a contribution without the public servant making any requests in return, as stated in section 7 of the Act. To demonstrate that the public worker sought and accepted illicit gratification, this is required. The public servant is not required to submit a prior request in this case. *An instance of obtainment* occurs when a public official makes a demand, the bribe source complies, delivers the desired result, and the

¹⁵ Ibid at 12.

public official accepts it. the official who made the initial demand for illicit enjoyment during the acquisition scenario. Before the Act was changed in 2018, this was a violation of sections 13(1)(d)(i) and (ii) of the Act. Just accepting or receiving an unlawful gratification without taking any further action would not be regarded as a crime in such circumstances under sections 7 or 13 (1)(d), I and (ii), respectively, of the pre-2018 Act.

CONCLUSION AND SUGGESTIONS

It would be useful if the Supreme Court gave the prosecution permission to utilise more evidence, such as circumstantial evidence. The prosecution may now take into account utilising factors to bolster its arguments, such as the accused officer's prior behaviour, the nature of their actions, and the recovery of money that is still undetermined. Having the flexibility to rely on extra or circumstantial evidence would also be advantageous to the prosecution because they are frequently at a disadvantage when the complainant or bribe-giver is absent. Both written and spoken proof might be utilised to back up the claimed facts.

The mechanism by which the court is persuaded of the truth or absence of the subject under investigation is through the presentation of evidence, which is defined as the actual statements of witnesses or documents offered rather than the facts that must be demonstrated by oral and documented evidence.

Of course, the term “evidence” does not only refer to oral and written evidence; it also refers to tangible objects, witness behaviour, facts about which judicial notice could be taken, admissions of parties, local inspections made, and responses provided by the accused to queries posed by the Magistrate or Judge pursuant to Section 313 of the Criminal Procedure Code (CrPC).¹⁶

“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 either proved by direct evidence, or in the nature of oral evidence/documentary evidence.” Further, The bench read as from the judgement *“the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved*

¹⁶ Section 313, The Code of Criminal Procedure, 1973, Act no. 2 of 1974.

by circumstantial evidence in the absence of direct, oral, or documentary evidence”¹⁷.

Nonetheless, a word of warning should be added when employing this kind of circumstantial evidence. Even if corrupt money was taken from a public person and recovered, the claims of corruption would not be supported by this. The set of legal precedents must thus grow in order to serve as a guide for trial courts in identifying precisely the kinds of facts that may be taken into account to prove the crime of corruption.

¹⁷ Neeraj Datta v. State, 2022 SCC OnLine SC 1724.

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