Section 7 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 & Criminal Procedure Code PC S. 464

- Omission to frame a proper charge is not fatal unless it leads to a failure of justice.
- The accused understood the case against him; no prejudice was caused to his right to defend.
- The charge was defective, but the omission was not fatal in this specific case.

Criminal Procedure Code, 1974, S. 464

- Charges must be framed meticulously by Trial Courts.
- Errors or omissions in framing charges could lead to acquittal or long delays in trial.
- Public prosecutors also have the duty to ensure appropriate charges are framed.

Section 7 and Section 20 of Prevention of Corruption Act, 1988

- For Section 7 to apply, the prosecution must prove a demand for ‘gratification’ beyond a reasonable doubt.
- Presumption under Section 20 can be invoked if demand and acceptance of gratification are proven.
- Offences under Section 7 and Section 13(2) read with Section 13(1)(d) were not established in this case due to lack of evidence for demand for gratification.

2023 CrLT 0054, 2023 PLRonline 0116.

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2023 CrLT 0054

SUPREME COURT OF INDIA

Present : Justice Abhay S. Oka , Justice Rajesh Bindal

SOUNDARAJAN – Appellant,

Versus

STATE REPRESENTED BY THE INSPECTOR OF POLICE VIGILANCE ANTICORRUPTION DINDIGUL – Respondent.

Criminal Appeal No. 1592 of 2022

(i) Prevention of Corruption Act, 1988 (49 of 1988), Section 7 and Section 13(2) read with Section 13(1)(d) – Crimnal Procedure Code S. 464 – Effect of the failure to frame a proper charge – Not fatal – Special Court omitted to frame a specific charge on demand allegedly made – Under Section 464 CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a

failure of justice has in fact been occasioned thereby – *Held,* it is apparent that the appellant had clearly understood the prosecution case about the first alleged and the subsequent alleged demand and acceptance – There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective – However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned – Therefore, in this case, the omission to frame charge and / or error in framing charge is not fatal. [Para 15]

(ii) Criminal Procedure Code, 1974 (II of 1974), S. 464 – Framing of a Proper Charge – Charge has been framed very casually – Trial Courts ought to be very meticulous when it comes to the framing of charges – In a given case, any such error or omission may lead to acquittal and / or a long delay in trial due to an order of remand which can be passed under subsection (2) of Section 464 of CrPC – Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge. [Para 16]

(iii) Prevention of Corruption Act, 1988 (49 of 1988), Section 7 and Section 20 – To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt – The word used in Section 7, as it existed before 26th July 2018, is 'gratification' – There has to be a demand for gratification – It is not a simple demand for money, but it has to be a demand for gratification – If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act – This presumption can be rebutted by the accused – Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved- *Held,* There is no circumstantial evidence of demand for gratification, in the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. [Para 11, 12]

Judgment

Abhay S. Oka, J. – *(17.04.2023)* –

Facts

1. The appellant was convicted for the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). The appellant was sentenced to undergo imprisonment for one year and to pay a fine of Rs. 2,000/-. High Court, by the impugned judgment, has confirmed the conviction and sentence of the appellant.

2. The appellant was holding the post of Sub-Registrar at Kannivadi, Dindigul District, Tamil

Nadu. The complainant M. Sundaramoorthy (PW2), had purchased land measuring 16.05 cents. Accordingly, on 12th July 2004, sale deed was presented before the appellant who was the Sub-Registrar in the concerned office.

The complainant and his vendors were present. According to the case made out by the complainant in his complaint, apart from getting the sale deed typed on a stamp paper of Rs.880/-, he paid a sum of Rs.190/-towards the registration charges of the sale deed.

A receipt for the said amount was issued by the appellant. On 16th July 2004, when the complainant visited the appellant's office, he was informed to bring FMB Sketch from the concerned Government office. According to the complainant, on 31st July 2004, the said sketch was produced by him.

After the sketch was produced, the appellant informed him that he would have to make a site visit. Accordingly, the complainant arranged for transport for the appellant to enable him to make a site visit. After noticing trees on the land, the appellant instructed the complainant to get a TOPO Sketch from the concerned office to show that the land subject matter of sale was cultivable.

Thereafter, the complainant obtained requisite documents and handed over the same to the appellant on 6th August 2004 at 11.30 am. According to the complainant, at that time, the appellant demanded gratification of Rs.500/-for handing over the registered sale deed. As the complainant was not willing to give gratification, on 11th August 2004, he filed a complaint with the Inspector of Police of the Anti Corruption Unit.

3. Based on the complaint, a trap was laid on 12th August 2004, which was unsuccessful. According to the prosecution case, the trap was again laid on 13th August 2004. It was successful, and in the presence of the shadow witness Michael (PW3), the appellant was caught red-handed while accepting the bribe.

4. The prosecution examined 12 witnesses. PW1 N. Dhanam Jeyan was examined to prove the sanction order. As stated earlier, PW2 M. Sundaramoorthy is the complainant and PW3 Michael is the shadow witness. No other witness is relevant for proving the alleged demand made by the appellant.

The complainant (PW2) did not support the prosecution and was declared as hostile. The appellant examined two defence witnesses, S. Kathiresan and Kalaiselvi to bring on the record audit report of the office in which the appellant was working and a circular issued by the Inspector General of Registration, which required the Sub-Registrar to visit a land subject matter of sale deed for ascertaining its valuation.

Submissions

5. The learned senior counsel Mr. S.Nagamuthu, appearing for the appellant, submitted that there was no charge framed as regards the demands made on 6th August 2004 and 13th August 2004. Inviting our attention to the first charge framed by the Special Court, he urged that the charge is about the alleged demand made on 12th July 2004 when the sale

deed was registered.

He submitted that even according to the prosecution case, there was no demand made on 12th July 2004 at the time of the registration of the sale deed. He submitted that because of this material defect in the charge and omission to frame a proper charge regarding demand allegedly made on 6th August 2004 and 13th August 2004, grave prejudice has been caused to the appellant, who could not defend himself properly.

6. The learned senior counsel for the appellant submitted that, in any event, the complainant had not supported the prosecution, and the shadow witness (PW3) did not depose that in his presence there was any demand of the sum of Rs.500/- by the appellant for returning the sale deed to the complainant. He urged that the offence punishable under Section 7 was not made out without proof of demand. He urged that as no offence was made out under Section 7, even the offence under clause (d) of subsection (1) of Section 13 was not established.

7. Dr Joseph Aristotle, the learned counsel representing the State Government, submitted that in view of Section 464 of the Code of Criminal Procedure, 1973 (for short 'CrPC'), no defect or omission in the framing of charge is fatal to the prosecution case unless any prejudice caused due to the said omission or failure of justice is established by the accused. He submitted that, in this case, prejudice has not been shown.

8. He relied on this Court's decisions in the cases of *Mohan Singh v. State of Bihar,* (2011) 9 SCC 272 and *Union of India v. ExGNR Ajeet Singh,* (2013) 4 SCC 186. The learned counsel lastly relied upon a decision of the Constitution Bench in the case *of Neeraj Dutta v. State (Govt. of NCT of Delhi),* 2022 SCC online SC 1724 , 2022 INSC 1278 for submitting that a demand for gratification can be established even on the basis of circumstantial evidence.

Finding on Proof of Demand

9. We have considered the submissions. It is well settled that for establishing the commission of an offence punishable under Section 7 of the PC Act, proof of demand of gratification and acceptance of the gratification is a sine qua non. Moreover, the Constitution Bench in the case of Neeraj Dutta3 has reiterated that the presumption under Section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.

10. As stated earlier, complainant PW2 has not supported the prosecution. He has not said anything in his examination-in-chief about the demand made by the appellant. The public prosecutor cross-examined PW2. The witness stated that there was no demand of a bribe made by the appellant. According to him, he filed a complaint as the return of the sale deed was delayed.

Though PW2 accepted that he had filed the complaint, in the cross-examination, he was not confronted with the material portions of the complaint in which he had narrated how the alleged demand was made. The public prosecutor ought to have confronted the witness with his alleged prior statements in the complaint and proved that part of the complaint

through the concerned police officer who had reduced the complaint into writing. However, that was not done.

11. Now, we turn to the evidence of the shadow witness (PW3). In the examination-in-chief, he stated that the appellant asked the PW2 whether he had brought the amount. PW3 did not say that the appellant made a specific demand of gratification in his presence to PW2. To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The word used in Section 7, as it existed before 26th July 2018, is 'gratification'.

There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused.

12. There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved.

Effect of The Failure to Frame a Proper Charge

13. We must deal with another argument made by the learned senior counsel appearing for the appellant. That is about the failure to frame a proper charge for the offence punishable under Section 7. The relevant portion of the charge reads thus:

"You, working as the Sub Registrar at Kannivadi, Dindigul District from 27.10.2003 to 27.10.2003 and as such you are a public servant you registered the sale deed of 16.05 cents of land purchased by Sundaramoorthy on 12.07.2004 and demanded a sum of Rs.500/-from Sundaramoorthy as gratification other than legal remuneration for returning the registered document and also received Rs.500/-as bribe, hence you disclosed the offences punishable u/-s. 7 of Prevention of Corruption Act 1988 and triable by this Court."

14. Thus, the Special Court omitted to frame a specific charge on demand allegedly made by the appellant on 6th and 13th August 2004 and acceptance thereof on 13th August 2004.

15. Under Section 464 of CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW3 and other prosecution witnesses made by the Advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6th August 2004 and the subsequent alleged demand and acceptance on 13th August 2004.

There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal.

16. We find that, in this case, the charge has been framed very casually. The Trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/-or a long delay in trial due to an order of remand which can be passed under subsection (2) of Section 464 of CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.

17. The appeal is allowed. The impugned judgments are quashed and set aside, and the appellant is acquitted of the offences alleged against him. The bail bonds of the appellant stand cancelled.

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