

Adjudication of corruption cases

Program No; 1386

Session III

10/02/2024

Justice G.Jayachandran.

Corporate bribery

Sections 9 and 10

- Corporate bribery is a type of corruption that involves offering, paying, or promising something of value to an employee of a company without their knowledge or consent. The goal is to influence the employee's actions in favor of the seller's goods.
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- ***Commercial Bribery*** means offering, paying, promising or giving, directly or indirectly, anything of value to another company's agent, representative, intermediary or employee, without that company's knowledge and consent, with the intent to influence the recipient's action in relation to his company's business.

1988 Act (pre amendment)

- (iii) Trading in Influence: (secs. 8 & 9 of the Act)
Sections 8 and 9 punish middlemen or touts who accepts or obtains or agrees to accept or attempt to obtain, gratification as a motive or reward for inducing by corrupt or illegal means, or by exercise of personal influence, any public servant, to do or forbear to do any official act respectively. These offences are punishable with a minimum imprisonment of six months, extendable up to five years, along with a fine.

2018 (post amendment)

- Section 12: punishment for abetment of any offences punishable under this act is not less than 3 years but may extend to 7 years.

Trading in influence

Section 7 A

- Trading in influence, also known as influence peddling, is the practice of offering or soliciting an undue advantage to a public official or other person. The goal is to exert improper influence to obtain an advantage for the original instigator or another person.

Illustration for trading in influence

- Using government contacts to get public contracts
- Getting a job at a company because of a personal relationship with someone influential
- Getting a permit or license from an authority in exchange for a favor
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- **Influence peddling** is the practice of using one's influence in government or connections with authorities to obtain favours or preferential treatment for another, usually in [return for payment](#). It is also called **traffic of influence** or **trading in influence**. Influence peddling *per se* is not necessarily illegal, as the [Organisation for Economic Co-operation and Development](#) (OECD) has often used the modified term "undue influence peddling" to refer to illegal acts of lobbying.^[1] However, influence peddling is typically associated with corruption and may therefore delegitimise democratic politics with the general public.

Disproportionate assets

- Data required and formula to arrive at the percentage.

Data required for DP

- Check period.
- Income during the check period
- Expenditure during the check period
- Likely Savings
- Asset acquired during the check period.
- Difference between the asset acquired and the saving is taken as disproportion to the know source of income.

Formula to derive the percentage of DP

- Assets at the beginning of the check period: A
- Assets at the end of the check period: B
- Assets acquired during the check period: C [B-A]
- Income during the check period: D
- Expenditure during the check period: E
- Savings during the check period: F (D-E)
- Disproportionate Assets: G [C-F]
- DA percentage [$G / F \times 100$] = %

‘possession of disproportionate assets to the known source of income’.

- Section 13(1)(e) = 13(1)(b) Expln: 1.
- The expression —known sources of income used in that section referred to such sources of income as became known to the prosecution as a result of the investigation and could not mean those that were within the special knowledge of the accused, and it was no part of the duty of the prosecution to lead evidence in that regard. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters especially within the knowledge of the accused within the meaning of Section 106 of the Evidence Act.

- offence of having disproportionate assets was for the first time incorporated into the law by introduction of Section (5) (e) of the PCAAct, 1947. It did not exist there originally but was introduced later by the Criminal Law Amendment Act, 1964 (40 of 1964) on the premise of the suggestions of the Santhanam Committee formed by the Central Government.

- Prior to 1964, it was not a substantive offence. the act of possessing disproportionate resources by a public servant was just a rule of evidence characterized under Section 5 (3) of the Prevention of Corruption Act, 1947 with just an option for proving the offence of criminal misconduct alternatively.

Hon'ble Supreme Court in Sajjan Singh v. State of Punjab and Hemant Kumar Mohanti v. State of Orissa.

The term 'known source of income' has been explained as "income received from any lawful source and such receipt has been intimated in accordance with the provision of the law, rules or orders for the time being applicable to a public servant."

State of TN –vs- Soundirarasu : 2023(6)

768:

- the term “known sources of income” would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the CrPC. At the stage of Section 239 of the CrPC, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless

- For a source of income to be qualified as a “known source of income” under Section 13 (1) (e) of the Prevention of Corruption Act, 1988, following twin conditions have to be fulfilled:
 - a) Income has to be drawn out from a lawful source of income, and
 - b) There should be an intimation of the receipt of such income from a lawful source, in accordance with the provision of the law, rules or orders applicable upon such public servant, for the time being in force.

Any income received from a source which is not lawful cannot be considered for inclusion in the expression known sources of income for the purpose of Section 13 (1) (e) of the said Act, even if such an income was actually received by the concerned public servant.

Any income received even from a legal source, cannot in the same manner be considered to be included within the term —known sources of income for the above mentioned purpose, if such income has not been intimated to the concerned authority in accordance with the provision of any law, rules or orders for the time being in force applicable upon such concerned public servant.

- Krishnanand –vs- St of UP [(1977) 1 SCC 816] had held that 10% of the **disproportionate assets** need to be deducted in arriving at the finding that the appellant had **disproportionate assets**.

B.C. Chaturvedi vs Union Of India And Ors- 1996 AIR 484

- It would be right to hold that the **assets** found in the possession of the accused were not **disproportionate** to his known source of income raising the presumption under subsection (3) of [Section 5](#). It is to be remembered that the said principle was evolved by this Court to give benefit of doubt, due to inflationary trend in the appreciation of the value of the **assets**.

- The benefit thereof appears to be the maximum. The reason being that if the percentage begins to rise in each case, it gets extended till it reaches the level of incredulity to give the benefit of doubt. It would, therefore, be inappropriate, indeed undesirable, to extend the principle of deduction beyond 10% in calculating **disproportionate assets** of a delinquent officer.

Trap case

- Demand and acceptance / obtain or accept undue advantage as reward or motive.
- Proof of demand is a sine qua non for an offence to be established under section 7 and 13(1)(d) of the PC Act.
- Phenolphthalein – sodium carbonate test.
- Electronic transfer of money.

Neeraj Dutta –vs- State (NCT) 2023(4)SCC 731

- Even in the absence of direct evidence of the complainant, demand of illegal gratification may be proved through circumstantial evidence, direct evidence of other witnesses or documentary evidence.

Presumption.

- Section 20
- Prior to amendment section 7, 11, 13(1)(a) and (b) ie taking illegal gratification or obtaining valuable thing or habitually accepting gratification or habitually obtaining valuable thing amounting to misconduct-
- G.M.Girish Babu –vs- CBI (2009) 3 SCC 779
- B.Jayaraj –vs- State of AP (2014) 13 SCC 55

. Post 2018 amendment.

- For offences punishable under section 7 and 11 and also the Explan (1) to Section 13(1): “ A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office been in possession of pecuniary resource or property disproportionate to his known source of income which the public servant cannot satisfactorily account for.”

R.S.Nayak –vs- A.R. Antulay **1986 AIR** **2045**

- The court is called upon to consider whether a charge should be framed or not. The question to which the court has to address itself is whether the evidence led on behalf of the prosecution is such that if unrebutted it would justify the conviction of the accused and the Court has, therefore, to examine the evidence as it stands without rebuttal and come to a conclusion whether on the basis of such evidence the court would convict the accused and where the offence charged against the accused is **under** Section 161 or Section 165 or clause (a) or clause (b) of sub-section (1) of [Section 5](#) the Court must necessarily apply the **presumption under** [Section 4](#) while considering whether on the basis of the unrebutted evidence which is before it the court would convict the accused.

- We do not therefore see any substance in the contention raised on behalf of the first respondent and we must proceed to dispose of this appeal on the basis that even for the purpose of considering whether a charge should be framed or not the **presumption under** Section 4 must be taken into account.

M.Narasinga Rao –vs- State of Andhra Pradesh (AIR 2001 SC 318)

- The Apex Court has held that once the prosecution has established that the gratification is paid and the accused has accepted the same, the presumption under [sec.20](#) of the Prevention of Corruption Act can be raised.

- In this case, the de facto complainant and an independent witness turned hostile and did not support the prosecution. Even then the Apex Court has raised a presumption under [sec.20](#) of the Prevention of Corruption Act, 1988 and observed that the condition for drawing a legal presumption under [sec.20](#) is that during trial it should be proved that the accused has accepted or agreed to accept any gratification.