IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.925 OF 2004

Adakmol Devanand Shravan .. Appellant
Versus
State of Maharashtra .. Respondent

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Mr.Rajiv Chavan, Sr.Advocate with Mr.Piyush Toshniwal, Ms.Priyanka Chavan and Mr.Vivek Arote I/b Mr.Aashish Satpute for the appellant.

Mr.Ajay Patil, APP for the respondent State.

CORAM: SMT.BHARATI H. DANGRE, J

RESERED ON : 20th MARCH 2018

PRONOUNCED ON : 3rd AUGUST 2018

JUDGMENT :

1 By the present Appeal, the appellant assails the judgment delivered by the Special Judge, Anti Corruption, Thane in Special Case No.14 of 1999 (State of Maharashtra vs. Adakmol Devanand Shravan) delivered on 12th July 2004, by which he is convicted for the offences punishable under Section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 (for short "P.C. Act, 1988"). The said

judgment is assailed on the ground that the learned Judge has failed to appreciate the evidence on record and in absence of the prosecution establishing the demand of money and acceptance of the same from the accused, has convicted him for the offences with which he is charged.

2 In order to appreciate the grounds raised in the appeal, it would be necessary to refer to the case of the prosecution in brief :

The complainant Shri Dinesh Makad, who runs a transport business at Mumbai, lodged a complaint with the Anti Corruption Bureau at Thane on 8th May 1998. In the said complaint, he alleged that he runs the transport business at Mumbai and one of his trailer bearing Registration No. MCU-2608 was transporting imported woods from Wadala Dockyard, Mumbai to Vasai on 3rd May 1998, after obtaining the necessary transit pass. According to the complainant, the said trailer was cleared at Thane Octroi Check Post and when it halted at Ranjimoli Forest Check Post on Bhiwandi bypass and the driver proceeded to the Forest Check post to obtain the necessary endorsement, the tanker which was proceeding in the same direction, dashed his trailer from behind, resultantly, toppling it. All the wooden logs which were loaded in the truck fell down and were scattered in the ditch. The driver of the trailer informed the complainant about the accident and the complainant proceeded to the spot to arrange for the crane and removal of trailer and wooden logs out of the ditch. It was not possible to transport the wooden logs further in the same trailer since it was completely damaged and therefore, he made arrangements for another trailer for transportation of the logs so as to complete its journey. According to the complainant, the exercise of pulling up the logs and the trailer which had fallen in the ditch, consumed time till 4.00 p.m and since a new vehicle was required to be put to use for transportation of the logs, the complainant approached the Forest office, Bhiwandi within whose jurisdiction the accident had occurred. In the said office, the accused was working as a Forester. It is the case of the complainant that he submitted an application for issuance of transit pass and the Range Forest Officer (RFO) recommended the issuance of transit pass on completion of the formalities of drawing panchnama and on recording the statement of the driver. It is the specific case of the complainant that when he approached the accused with an endorsement from the RFO and requested for issuance of transit pass, the accused avoided to grant the same to him on the ground that it was an odd time and it would not be possible for him to visit the location so as to draw the panchnama and record the statement of the driver. However, on the insistence of the complainant to issue the transit pass urgently, the accused demanded an amount of Rs.1500/-. However, the complainant negotiated with the accused and the amount was settled at Rs.1,000/- and it was agreed that the said amount would include the fees of Rs.50/- towards issuance of transit pass. The accused instructed the complainant to report to him on 8th May 1998 with the agreed amount, since the next day was the holiday.

With this complaint, the complainant approached the Anti Corruption Bureau and requested an action against the accused, a Forester working at Bhiwandi who had demanded an illegal gratification of Rs.950/- for issuance of a transit pass which was required by the complainant to transport his goods to the destination.

3 On such a complaint being lodged, the formalities were completed by the Anti Corruption Bureau at Thane and the complainant was asked to attend the office of the ACB on the next day in the morning. Two panchas were arranged and the complainant along with the panchas attended the office of the ACB Thane, and the procedure to be followed when he would visit the office of the accused person to pay the amount as per his demand, was explained to him. The panch witness Shri Dusane was instructed to accompany the complainant under the pretext of being his Manager and he was instructed to act as a shadow witness. The currency notes were smeared with *Anthracin powder* and the demonstration was given to the complainant as well as the panch witness. The pre-trap panchnama was drawn incorporating the details and thereafter, the raiding party with the complainant and the panch witnesses proceeded to Bhiwandi where the office of the accused was located. When the complainant and the shadow witness entered the office, the raiding party took their positions and it is the case of the prosecution that on entering the office, the accused inquired whether the complainant has brought the amount which he

had instructed him to bring, to which a positive reply was given. It is the specific case of the prosecution that the accused asked the complainant to be seated on the sofa and at that time, he was accompanied by the shadow witness and he was informed by the accused that he will prepare the pass and then he would proceed for the panchnama. The accused, accordingly prepared the transit pass and obtained the signature of the complainant on the counter part and handed over the pass to the complainant and then made a demand of Rs.1,000/- inclusive of the fees of Rs.50/-. The complainant then took out the currency notes and held the same before the accused, but the accused asked him to put the said notes on the table. It is the case of the prosecution that the notes were put on the table and the accused picked up the amount, opened the drawer of the table and put the same inside the drawer and closed it. The raiding party then intercepted and carried out the trap procedure. *Anthracin* powder was traced on the palm of the right hand of the accused along with the fingers and also on the table. The currency notes were traced out in the drawer. The serial numbers of the marked currency were tallied and a detailed post-trap panchnama was drawn in presence of the panch witnesses. The report containing the facts with the covering letter came to be forwarded to Shanti Nagar Police Station, Bhiwandi to register an offence and thereupon, C.R.No. 3052 of 1998 was registered against the accused person. The statement of the panch witnesses as well as other witnesses, including the complainant, came to be recorded. On completion of the investigation, the papers were forwarded to the office of Director General, ACB, Mumbai, for obtaining sanction and on receipt of the sanction from the Conservator of Forest, Thane Circle, Thane, who was empowered to grant the sanction, the case was registered against the accused. The charge was framed against the accused and thereafter, on pleading not guilty and denying the charge levelled against him, the accused was tried for the offences punishable under sections 7, 13(1)(2) read with Section 13(2) of the Prevention of Corruption Act, 1988.

4. In order to establish the charges levelled, the prosecution examined four witnesses – the complainant as PW no.1, the sanctioning authority as PW no.2, the shadow

witness Mr.Dusane as PW no.3 and Shri Juikar the Investigating Officer as PW No.4. On examination of the said witnesses, and on hearing the learned Public Prosecutor, and the learned counsel for the accused, the learned Special Judge at Thane, arrived at a conclusion that the demand and acceptance of bribe has been duly proved by the prosecution. The learned Special Court also arrived at a conclusion that there was a valid sanction and after recording the testimony of the witnesses, the Special Judge on applying the compulsory presumption under Section 20 of the Prevention of Corruption Act, recorded a conclusion that the accused had received illegal gratification for discharge of his duties and there was no rebuttal of the said presumption on the part of the accused. The learned Judge concluded that the circumstance of issuance of transit pass without recording of panchnama and statement of the driver, indicated that the accused was a consenting party to accept the bribe. On strength of the evidence of the complainant, panch witnesses and the circumstances that the bribe amount was recovered from the drawer of the table of the accused and that the *Anthracin* powder was also traced on his hands, the Special

Judge concluded that the said circumstances are sufficient to hold that the accused had demanded and accepted bribe and has thereby obtained pecuniary advantage by illegal and corrupt means. In the result, the accused was found guilty of the charges levelled and was held liable for conviction.

On hearing the accused on quantum of sentence, the Special Judge imposed the sentence of RI of one year for conviction under Section 7 of the Prevention of Corruption Act, 1988 and also directed to pay fine of Rs.500/-, in default to suffer RI for three months. The Special Judge also sentenced the accused for the offence punishable under section 13(1)(d) read with section 13(2) and sentenced him to suffer RI for two years and to pay fine of Rs.500/-, in default to suffer RI for three months. The substantive sentences were directed to run concurrently.

It is this judgment of conviction and imposition of sentence which is assailed in the present appeal.

5. The judgment passed by the Special Judge is assailed on the ground that the learned Judge has failed to appreciate that the demand and acceptance was not proved

by the prosecution and the story put up by the prosecution is unnatural, improbable and unacceptable. It is also assailed on the ground that the testimony of PW 2 and that of the complainant is tainted with material contradictions and the prosecution has failed to prove the factum of demand and acceptance which is a necessary ingredient for the offences with which the accused was charged. It is therefore, prayed that the judgment is liable to be set aside.

In support of the appeal, I have heard learned Senior counsel Shri Rajiv Chavan, who would submit that the appellant has been falsely implicated and he would vehemently submit that the prosecution has failed to prove the demand of money on 8th May 1998 for issuance of transit pass. Learned counsel Shri Chavan would submit that the evidence of the complainant is of an interested witness and therefore, reliance cannot be placed solely on the testimony of the complainant, and it needs independent corroboration. He would further submit that the case of the prosecution as unfolded in the testimony of PW 1, on material aspects contradicts with the case as set out by PW No.3 – shadow witness. Shri Chavan would specifically submit that as per

PW no.1, on the date of the trap, when the complainant and the shadow witness entered the office of the appellant, the appellant asked the complainant whether he had brought the amount. Shri Chavan would submit that this is not a clear proof of 'demand' and he would further submit that as per the version of the complainant, the accused person specifically reiterated by saying that amount of Rs.50/- is to be paid towards fees and Rs.950/- for himself and he asked whether an amount of Rs.1,000/- has been brought, to which the complainant replied in the affirmative. As per the version of PW no.1, on demand, the marked currency notes were kept on the table and the accused then picked up the currency notes, verified it by touching them and then put it in the upper drawer of the table with his left hand and closed the drawer by right hand. According to Shri Chavan, it is before this event, the accused had prepared a pass on which he had put the name of the driver, his driving licence number and obtained the signature of the complainant on the duplicate copy. Thus, according to this witness, the pass was prepared first and handed over to the complainant and thereafter, on demand of the bribe amount, the complainant handed over the currency notes to the accused which he kept in his drawer. However, according to Shri Chavan, the PW no.3 who was the part of the trap team, gives a totally different version. According to the said witness, complainant was asked whether he has brought the amount as instructed, to which the complainant replied in the affirmative. However, there was no specific mention of the amount of Rs.1,000/- according to this witness. According to the PW no.3, the accused had asked the complainant to put the amount on the table and had instructed that thereafter they will proceed for panchnama at the location and therefore, he asked the complainant whether he has brought any vehicle. As per this witness, the amount was put on table by the complainant, which in turn, was kept in the upper drawer of the table by the accused and it is after acceptance of this amount, he prepared the pass and obtained signature of the complainant on the counter part of the pass and then handed over the pass to the complainant. Further, this witness had also deposed that the accused told the complainant that he will draw panchnama as per the say of the complainant. Thus, according to the learned Senior counsel, there is material discrepancy in the deposition of the complainant who is an interested witness and the said testimony is not corroborated by PW 3. Shri Chavan would also further submit that mere keeping the notes on the table do not prove the demand and he would submit that the bald allegation in respect of the demand and acceptance of illegal gratification if it is uncorroborated, would not lead to an inference that the prosecution has established a case under Section 7 and 13(2) of the Prevention of Corruption Act. The learned senior counsel would also submit that the accused person is a forester and the authority to issue transit pass was vested in the Range Forest Officer and according to the complainant, on 6th May 1998, itself, when he had visited the office of the accused and requested for issuance of a fresh forest permission, he was informed that it would require the signature of his superior and also that panchnama would have tobe drawn and since next day was a holiday, it will take about two days time to complete the formality. Shri chavan would submit that on 6th May 1998, the RFO was approached and he had made an endorsement on the application preferred by the complainant through one clerk Shankar Patil and Shri Chavan would submit that the documents seized from the drawer of the appellant includes the said application with an endorsement of the RFO. He would thus submit that the appellant was not a competent person to issue a transit pass and nothing remained within his domain, once the RFO had already issued a direction to issue transit pass after conducting a panchnama and recording the statement of the driver and this is what the accused intended to do on 8th May 2008.

The learned senior counsel Shri Chavan would also submit that it is the case of the complainant that the initial demand was made in presence of the driver on 6th May 2008, but the driver has not been examined as a witness and mere bald statement by the complainant cannot partake exclusive proof of demand and he would submit that the benefit of doubt should go to the accused. Shri Chavan would thus submit that the case of the prosecution is based on improbabilities and there is no proof adduced by the prosecution to demonstrate that the accused had willingly accepted the amount specifically when in a statement under Section 313 of the Cr.P.C he had categorically denied that he had made such a demand. In the statement recorded under Section 313 of the Cr.P.C, he had categorically stated that in terms of the instructions issued by RFO, he had prepared the transit pass and he handed over the same to the complainant and it was at this moment, that the complainant forcibly placed two notes each of 500 denomination on the table and at that time, the accused stood up and caught hold of the collar of the shirt of the complainant by his left hand and pointed out to the notes lying on his table with the right hand and asked the complainant to remove the said notes. At that time, the complainant forcibly put the said notes into the right hand palm of the accused, and thereafter, the notes fell on the floor and it is at this moment, the accused released the complainant and he bent down, picked up the notes and put the same in the drawer of the accused. Shri Chavan would submit that the accused had rebutted the presumption by offering a specific explanation as regards the recovery of the said notes from the drawer of his office and in such circumstances, he would submit that the burden is then shifted on the prosecution to prove its case beyond reasonable doubt, which the prosecution has failed to prove.

6. Learned counsel Shri Chavan would also place reliance on the judgment of the Hon'ble Apex Court in case of ***State of Punjab Vs. Madan Verma*** to support his submission that mere recovery of tainted money is not enough to prove a charge under Section 7 of the P.C. Act and he would submit that before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant who is an interested and partisan witness, who is concerned with the success of the trap and therefore, his evidence must be tested in the same way as that of interested witness and in a proper case, the Court may also call upon an independent corroboration before convicting the accused person.

The learned senior counsel would also place reliance on the judgment of the Hon'ble Apex Court in case of ***Mukhtiyar Singh vs. State of Punjab*** (2017) 8 SCC 136. He would submit that the Hon'ble Apex Court in the said judgment had clearly concluded that in order to prove charge under Section 7 and 13 of the Prevention of Corruption Act, 1988 prosecution has to establish by proper proof, the demand and acceptance of illegal gratification and till that is accomplished, the accused should be considered as innocent. Shri Chavan would submit the proof of demand of illegal gratification has been held to be the gravamen of offence under Section 7 and 13(1)(d)(i) and (ii) of the 1988 Act and in absence thereof, unmistakably, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, *de hors* proof of demand, *ipso facto* would not be sufficient to bring home the guilt under the aforesaid two sections. The failure of prosecution to prove demand for illegal gratification would be fatal and mere recovery of the amount from person accused of offence under Section 7 or 13 would not entail his conviction.

Learned senior counsel also places reliance on a judgment delivered by the learned Single Judge of this Court in case of ***Sanjay I. Bhanushali Vs. State of Maharashtra*** 2016 All M.R. 3153 to support his submission that the words 'accepted' or 'obtained' occurring in section 20 contemplate a deliberate and voluntary act on the part of the accused and if the accused is tricked into taking an amount, then it would not be treated as an acceptance so as to attract presumption laid down in section 20 of the Act.

The learned Senior counsel would thus submit that taking into account the settled legal position and applying the same to the facts involved in the present case, the prosecution has failed to prove the ingredients of the offences with which the accused is charged and in this backdrop, the finding recorded by the trial court cannot be sustained and he prays for setting aside of the said judgment and for allowing the present appeal.

7. The learned Assistant Public Prosecutor Shri.Ajay Patil supports the judgment of the special court and would submit that in view of the demand and acceptance of the amount as illegal gratification being proved by the prosecution by bringing evidence on record, the ingredients of Section 20 for raising the presumption have been satisfied and the accused was afforded an opportunity to rebut the said presumption. According to the learned APP Mr... , though a feeble attempt have been made by the accused to rebut it, by rendering an explanation in a statement recorded under Section 313, in view of the specific and positive evidence of

the wtiensses regarding demand and acceptance of bribe by the accused, the prosecution's case cannot be rejected by accepting the plea of the accused which is highly improbable. He would submit that once the factum of recovery has been proved by the prosecution along with the demand and acceptance of the amount as illegal gratification, the conviction recorded becomes unimpeachable. He would rely on the following judgments of the Hon'ble Apex Court:-

1) State of Maharashtra V/s. Dnyaeshwar Laxmanrao Wankhade (2009) 15-SCC-200.

2) Chitanya Prakash V/s. CBI (2015) 7-SCC-720

3) K.S. Panduranga V/s. State of Karnataka (2013)-3-SCC-721 to submit that the appeal deserves a dismissal in light of the specific and positive evidence brought on record by the prosecution to prove demand and acceptance of bribe.

8. The Prevention of Corruption Act, 1988 repeals the Prevention of Corruption Act, 1947 (Old Act) and the Criminal Law (Amendment Act 1952). The provisions contained in the present Act are analogous and correspond to the provisions of the repealed enactments. Section 7 of the

P.C. Act of 1988 defines and provides for punishment to a public servant taking gratification other than legal remuneration in respect of an official Act. The said section corresponds to Section 161 of the IPC. The said section penalizes the acceptance of any gratification whatever, other than legal remuneration as a motive or reward or forbearing to do any official act, in exercise of its official function, favour or disfavour to any person, or for rendering or attempting to render any service or dis-service to any person, by a person who is or expecting to be a public servant and who accepts or obtains or agrees to accept or attempts to obtain from any person such a gratification.

The term “gratification” though not defined, is explained as being not restricted to pecuniary gratification or gratification estimated in money. Section 13(1)(d) defines 'criminal misconduct' by public servant and to obtain for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant or by holding the office as a public servant. The said section corresponds to section 5(1)(d) of the Old Act. Section 13(2) provides punishment for committing criminal misconduct by a public servant. The most important section in the said Enactment is Section 20, which creates a presumption where public servant accepts gratification other than legal remuneration. The said section corresponds to section 4 of the Old Act. The said section provides that where in any trial for an offence punishable under Section 7 or 11 or clause (a) or clause (b) of section (1) of section 13, it is proved that the accused has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other purpose any gratification, it shall be presumed unless the contrary is proved that he has accepted or obtained, or agreed to accept or attempted to obtain that gratification or the valuable thing as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. It is thus clear that the presumption available under Section 20 of the Act of 1988, is not attracted to offences punishable under section 13(1)(d) and 13(2) of the New Act and by now it is settled by catena of judgments.

The statutory presumption under Section 20 of the Prevention of Corruption Act could be raised against an accused when the currency notes are recovered from him and then it is for him to explain as to how the same came in his possession. In Tarlokchand Jain vs. State of Delhi, AIR 1977 SC 666, a case relating to section 5(1) and (2) of the Prevention of Corruption Act, and the scope of section 4(1) of the Prevention of Corruption Act, 1947 (now Section 20 of the Prevention of Corruption Act, 1988), arose before the Hon'ble Apex Court, weherein it was held in as under :

> *"The degree and character of the burden of proof which section 4(1) casts on an accused person, to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof, which under Section 101, of Evidence Act rests on the prosecution. While the mere plausibility of an explanation, given by the accused in his examination under Section 342 of Cr.P.C. may not be enough, the burden on him to negate the presumption maty stand discharged if the effect of the material brought, on the record, in its totality, renders the existence of the fact presumed,*

improbable. In other words, the accused may rebut the presumption, by showing a mere pre-ponderance of probability, in his favour; it is not necessary for him to establish his case beyond a reasonable doubt. The sole purpose of the presumption under Section 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences, under Section 5(1) and (2) of the Prevention of Corruption Act and section 161 of the Penal Code. The presumption, therefore, can be used in furtherance of the prosecution case and not in derogation of it. If the story set up by the prosecution inherently militates against or is in consistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy, it cannot be rejected out of hand as still born".

The plain reading of the principle of law as laid down and consistently followed reveals that the accused can rebut the presumption by leading evidence or from the evidence of the prosecution witnesses. It is not necessary for him to establish his case, to rebut the statutory presumption operating against him, beyond a reasonable doubt. The presumption under Section 20 of the Prevention of Corruption Act, 1988 is only available for an offence punishable under Section 7 when it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain any gratification, then it is presumed that the same is accepted as a motive or reward such as is mentioned in Section 7.

9. I have examined the case of the appellant and the prosecution in light of the aforesaid position of law. The accused has been charged with Section 7 and 13(1)(d) read with section 13(2) of the P.C. Act, 1988. On receipt of a complaint from the complainant, that the accused forester has demanded a bribe of Rs.950/- for issuing the transit pass in order to permit the complainant, to transport the goods by another trailer, since the truck in which the goods were being

plied, had met with an accident. Steps were taken to set up a trap and the FIR was recorded, on a complaint being made by the complainant. The steps to be taken at the time of trap came to be explained to trap party which included PW 3 and on 8th May 1998, a trap was laid in the office of the accused. It is the specific case of the prosecution that the accused was caught red handed and the notes of the described denomination recorded in the panchnama were recovered from the drawer of the table in the office of the Forestor, Bhiwandi i.e. the accused. According to the prosecution, the following events have been established by tendering credible evidence i.e.

(a) Seizure of currency notes totalling Rs.1,000/- recovered from the drawer of the accused.

(b) The currency notes tallied with the numbers noted in the earlier panchnama.

(c) Traces of *Anthracin powder* found on the notes as well as the ends of the drawer and also on the paper placed in the drawer.

(d) Seizure of documents including the application preferred by the complainant for receipt of alternative transit pass along with its enclosure addressed to the RFO along with the endorsement made by Shri Dighe, the RFO and also bearing the details entered into by the accused including the name of the driver, licence number, trailer, name of the appellant etc. Further recovery of the original transit pass issued in favour of the complainant along with the bilty issued by Sunil Shipping Agency, Mumbai in favour of M/s.Patel Woods Syndicate and also other relevant documents.

(e) Recovery of receipt book used by the Forest department for issuance of transit passes and the removal of pass no. 081524 dated 8th May 1998 issued in the handwriting of the accused in favour of the complainant bearing a stamp of deposit of Rs.50/- towards the pass fee.

(f) Recovery of the original transit pass vide no. 081524 in favour of the complainant issued by the accused person dated 8th May 1998 in respect of truck No. MMK 1899 – Bhiwandi to Vasai issued at 12.25.

10. The specific case of the prosecution is that the accused who was working as a forester with the Forest Department and as such a public servant, raised a demand of Rs.2,000/- on 6th May 1998 when the complainant

approached him for issuance of a transit pass, since the trailer which was plying imported wooden logs on behalf of Mishra Transport, met with an accident at Bhiwandi bypass. The goods were therefore required to be transported by another trailer, on the truck meeting with an accident, it turned down in a ditch and a panchnama was effected by Shanti Nagar Police Station about the said accident. The truck was thereafter lifted by means of a crane and the wooden logs were placed on the road. However, since the said trailer was damaged and was not in a position to transport the goods further, the wooden logs were transferred into another trailer MMK 1899. However, wooden logs being a forest produce required the permission from the Forest Department for its transportation and in respect of the earlier trailer, the pass was obtained from the office of the Forest Department on Bombay Vikhroli Highway on 4th May 1998, and now since another trailer was being put to use, it was imperative to obtain the transit pass in favour of the new trailer. The complainant, who was the owner of the transportation company, was summoned by the driver of the said trailer Shri Yadav and he approached the office of the RFO. The complainant thereafter scribed an application for obtaining such a transit pass and approached the RFO at his residence. At that time, the complainant was accompanied by the accused in the capacity of the forester and he informed the complainant that he would be issuing the transit pass after the endorsement is obtained from the RFO. The accused, however, demanded an amount of Rs.1500/- for issuing the said transit pass and carrying out the said work which included an amount of Rs.50/- as the necessary charges. The complainant, however, resisted the demand and offered an amount of Rs.500/- which was refused by the accused. However, ultimately, he settled for an amount of Rs.1,000/-. The accused asked the complainant to report to him on 8th May 1998 since the next day was a holiday on account of Moharrum. It is the specific case of the prosecution that a demand was raised by the accused for the first time on 6th May 1998 and the complainant was assured that his work would be done on payment of such amount. After the complaint was made by the complainant, in furtherance of which the FIR was lodged and the trap was laid on 8th May 1998, when the complainant approached the accused person in his office, he was accosted by the accused. At that time, PW 3 who was a part of the raiding team was also present. On entering the office of the accused, he reiterated his demand by specific enquiry from the complainant whether he has brought the amount, as directed, to which the complainant replied in the positive. The complainant in his complaint, as well as in his testimony before the Court, had specifically stated that the demand made by the accused on 6th May 1998 was re-asserted when the complainant approached the accused along with the panch witness i.e. PW no.3. The assertion of the said demand is reiterated by PW no.3 in his testimony before the Court. On getting an assurance that the complainant has brought the demanded amount, the accused prepared the transit pass and delivered the same to the complainant. Thereafter, it is the specific case of the prosecution that the amount as per demand was tendered to the accused and which was accepted by him and on receipt of the said amount, it was kept by him in the drawer of his table. This factum of acceptance is clearly stated by the complainant in his testimony and which is corroborated by PW No.3. The prosecution has thus proved its case that there was a specific demand of an amount of Rs.950/- from the accused and an acceptance of an amount of the said amount as a bribe amount for discharge of his duty of the accused, being a forester i.e. to provide a transit pass in view of the directions issued by his superior i.e. Range Forest Officer, after executing a panchnama and recording a statement of the driver and on cancellation of the earlier transit pass.

11. Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act and there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than for the motive or reward as stipulated under section 7 of the Act. When such explanation is offered, the Court is obliged to consider the explanation under Section 20 of the Act and consideration of the explanation has to be on the touch stone on pre-ponderance of probability and not as a proof beyond all reasonable doubt. In the present case,

the accused has offered some explanation as to how he came to be in possession of the currency notes of the described denomination and it has to be seen whether the said explanation offered is probable, when the prosecution has adduced evidence an raised a presumption, suggestive of the fact that the tainted money has been accepted by the accused as reward for exercise of his official act, in exercise of his official function and to render favour to the complainant.

12. The demand of gratification which is *sine qua non* to constitute an offence under the P.C. Act has been duly established by the prosecution. The evidence that has been brought on record by the prosecution meets the standard for sustaining conviction in a criminal court. In the present case, the prosecution has established a *prima facie* case of demand being raised and an acceptance of the said demand and thus, it has raised a presumption under Section 20. It is then open to the accused to rebut the said presumption which the accused has attempted through his statement under section 313 of the Cr.P.C. Even when a presumption is raised for an offence punishable under section 7 of the P.C Act which is

rebuttable, the said rebuttal does not mean that the accused has to prove it beyond reasonable doubt so as to establish the truth. The rebuttal can be by way of showing preponderance of probabilities in favour of the accused. The standard of proof which the accused requires for rebuttal is not the same as required for the prosecution which has to be discharged beyond reasonable doubt. The burden on accused to negate the presumption which stand discharged if the effect of material brought on record in its totality renders the existence of facts presumed improbable. Even the explanation offered by the accused in his statement under Section 313 of the Cr.P.C when such explanation could be held responsible is sufficient. Once this is done by the accused, then like any other criminal offence, the prosecution has to prove the charge beyond reasonable doubt and the accused should be considered innocent till it is established otherwise by proper proof of acceptance of the illegal gratification, the vital ingredients necessary to be established to procure a conviction for the offences under consideration.

In the backdrop of this settled position of law, if we examine the present case, the prosecution has prima facie made out a case for raising a presumption by establishing that there was a demand raised by the accused on 6th May 1998 and again, re-asserted on 8th May 1998 and by establishing that there was acceptance of the amount as illegal gratification on 8th May 1998 and the recovery of the amount from the drawer of the accused raises a presumption that the said amount was accepted towards illegal gratification. The attempt has been made by the accused to rebut the said presumption by making a statement under section 313 and in an attempt to set up a case that in discharge of his normal course of duties as a forester, he had prepared a transit pass in favour of the complainant and issued the same to him and also required compliance of other formalities like the recording the statement of the driver and executing a panchnama. It is the case of the accused in rebuttal that on the pass being issued, the complainant dropped two notes of Rs.500/- denomination on his table and at that point, the accused held the complainant by his left hand and the complainant forcibly thrusted the notes in his right hand which fell on the floor and they were again picked up by the complainant and thrusted in the drawer belonging to the accused. The accused has thus, attempted to rebut the presumption raised by the prosecution and it will have to be seen whether the said rebuttal is probable. On examination of the statement under section 313 of the Cr.P.C, it can be seen that the accused had deposed that he was falsely implicated and he had never raised a demand, and therefore, there was no question of accepting the said amount. He has specifically stated that he was forced to prepare the transit pas and then execute the panchnama, and after delivery of the transit pass, the complainant had forcibly thrusted the money in his right hand and later on, planted it in his drawer and that is how he explained the presence of Anthracin on the notes as well as in his drawer. The said stand of the accused appears to be highly improbable looking to the circumstances of the case. It is highly improbable that the accused caught hold of the shirt collar of the complainant with his left hand and in that position, the complainant managed to thrust the notes in his right hand which fell on the ground where no traces of *Anthracin* were found. The said stand further seem to be improbable when the accused had stated that the notes were then forced in the drawer of the table and the complainant and the PW no.3 rushed out of the office and the accused followed them. This version is in complete contrast to the testimony of PW 1 and PW 3. The said version appears to be improbable as there was no reason why the complainant had falsely implicated the accused and thus, the accused has failed to rebut the presumption though the rebuttal is not expected to be proved beyond doubt. However, even the preponderance of probability cannot support the version of the accused.

Then, in such circumstances, the burden then again shifts on the prosecution to establish their case beyond reasonable doubt by applying the parameters which are applicable to a normal trial of any other offences and the prosecution must then establish its case beyond reasonable doubt. The prosecution has brought on record sufficient evidence to establish its case and by cogent and convincing evidence, has established the demand and acceptance of the bribe amount through the testimony of the witnesses and the surrounding circumstances brought on record.

13. The prosecution has brought on record the first demand through the evidence of PW no. 1 and the reiteration of the first demand and its acceptance through PW 1 and being corroborated by PW no.3. Closer scrutiny of the evidence of these witnesses would reveal that their testimony is unshattered except certain formal suggestions being given to the said witnesses to which there is a clear-cut denial. Two necessary ingredients of the offence with which the accused is charged i.e. demand and acceptance have been proved by the prosecution. Though it is argued by the learned senior counsel that there is contradiction in the testimony of PW Nos.1 and 3. On careful scrutiny of the evidence, it can be seen that the contradiction is not on the material aspect of the trap. As per PW no.1 i.e. the complainant, before acceptance of the amount, the transit pass was prepared by the accused, whereas in terms of the testimony of PW no.3, the amount was first accepted and thereafter, the transit pass was issued. This contradiction cannot be said to be material one so as to cast doubt on the case of the prosecution or to disbelieve the trustworthiness of the complainant. The case of the prosecution is fortified by the supporting evidence brought on

record i.e. recovery of the two notes (500 denomination) from the left drawer of the table of the accused along with traces of *Anthracin powder* and the traces of *Anthracin powder* also being found on the paper on which the notes were kept in the drawer. The case is further fortified by recovery of the application which the complainant had preferred along with the endorsement of the RFO from the drawer of the appellant and also the register of the transit pass with the leaflet bearing pass no.0281524 being issued in favour of the complainant and recovery of the original transit pass from the complainant after completion of the trap. The discrepancies in no way, affect the substratum of the prosecution case and do not at all affect the credibility of the prosecution witness in any manner. The prosecution has brought on record suficient evidence to establish the demand of the bribe amount by the accused in discharge of an official duty as a Forester to issue a transit pass in furtherance of the directions issued by the RFO and the prosecution has also established the acceptance of the amount so demanded. It has also proved by sufficient clinching evidence the factum of recovery of the amount from the drawer of the accused. The attempt to explain the existence of the said notes in the drawer, as already noted by me, appears to be a highly improbable and a concocted version. In view of the specific and positive evidence of the prosecution witnesses regarding demand and acceptance of bribe by the accused and which, in no case, appears to be improbable, the prosecution case cannot be rejected by accepting the accused's plea. The prosecution has thus established its case beyond reasonable doubt.

The attempt made by the learned senior counsel to point out the discrepancies in the case of the prosecution, fails to impress me and on the contrary, the attempt by the accused to rebut the presumption appears to be rather doubtful. Non-examination of an independent witness in the form of the driver, which according to the learned senior counsel, is a relevant fact, according to me, in no way, whittle down the case of the prosecution. The complainant may be an interested witness but it is not that on his sole testimony the Special Judge has convicted the accused. The testimony of the PW no.1 the complainant is corroborated by the testimony of PW no.3 who is a shadow witness and thus, when the prosecution has conclusively proved the demand

and acceptance of the amount, nothing remains to be proved to hold the accused guilty for the offences punishable under section 7, 13(1)(d) read with section 13(2) of the P.C. Act.

14. The reliance placed on the learned senior counsel on the judgment in Mukhtiyar Singh Vs. State of Punjab (supra) is not of any succour to him. In the said judgment, the Hon'ble Apex Court in unequivocal terms has reiterated the principles laid down by it in a catena of judgments that in order to prove charge under section 7 and 13 of the P.C. Act, the prosecution has to establish by proper proof, the demand and acceptance of illegal gratification and that the proof of demand of illegal gratification is the gravamen of the said offences. The facts of the case would however reveal that the prosecution in that case had failed to establish the demand, though it was alleged by the complainant that the original accused in order to favour him in the investigation had demanded and received a bribe of Rs.3,000/- and in the process, at the fag end of the probe, again demanded further amount of Rs.2,000/- as illegal gratification to file a report of exoneration. It was the specific case where the complainant

alleged that he had satisfied the initial demand, but there was further demand made by the accused. On a trap being laid, and a shadow witness being nominated to accompany the complainant to witness the possible transaction, the accused inquired whether the money had been brought and the tainted currency notes in a card board placed on a table of the accused and thereafter, the trap team was signalled who took out the currency notes from the card board box and took the money in his possession. Further, in a statement recorded under Section 313 of the Cr.P.C, the accused denied the correctness of the incriminating evidence adduced by the prosecution and pleaded to be innocent. A defence witness was also examined to demonstrate that the prosecution case of demand and recovery through a trap drill was a myth. Based on the said evidence, the trial court held the charge against the accused to be proved which was upheld by the High Court.

In the backdrop of these facts, the Hon'ble Apex Court observed that the prosecution has failed to prove the material on record to show the demand of illegal gratification either of Rs.3,000/- which has been paid or of Rs.2,000/- as made on the day of trap. Their Lordships futher observed that not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather *omnibus,* vague and sweeping and even the person in whose presence, Rs.3,000/- at the first instance is alleged to have been paid has not been produced in investigation or in the trial, and therefore, a bald allegation of the complainant with regard to demand and payment of Rs.3,000/- as well as demand of Rs.2,000/- remained uncorroborated. Viewed in this perspective, the Apex Court further observed that the statement of the complainant and the shadow witness in isolation that the original accused had inquired as to whether money had been brought or not, cannot constitute demand as enjoined in law as an ingredient of offence levelled against the original accused and such a stray query *ipso facto* in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under section 7 or 13 of the Act.

Further reliance on the judgment of the Apex Court in the ***State of Punjab Vs. Madan Mohanlal Verma*** (supra) to the effect that mere recovery of tainted money is not enough is also of no assistance to the learned senior counsel. The legal position is not in dispute that in absence of any substantive evidence brought on record by the prosecution, mere recovery of tainted money would not be sufficient to convict the accused unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of money is not sufficient to fasten the guilt in absence of any evidence with regard to demand and acceptance of the amouint as illegal gratification. This position of law is no where in dispute. The law on this issue is well settled that the demand of illegal gratification is a cine qua non for constituting an offence under the Prevention of Corruption Act. The burden rest on the accused to discharge the statutory presumption raised under section 20 of the Act by bringing on record evidence, to establish a reasonable probability though he may not be required to prove it beyond reasonable doubt, that the money was accepted by him other than as a motive or reward as referred to in section 7. The Court is required to consider the explanation offered by the accused on the touchstone of preponderance of probability.

However, in the present case, when the prosecution has brought sufficient evidence on record to establish with details the first demand as well as reiteration of the said demand on a second occasion in presence of PW no.3, it was not a case of mere receipt of money specifically when the rebuttal by the accused appears to be doubtful. Mere demand itself would not be sufficient to establish an offence and acceptance of the said demand is very important when the accused has specifically come forward with a plea that the currency notes were forcibly placed in the drawer of his table as an act of revenge, specifically in the backdrop of a demand being raised on two earlier occasions and when no infirmity has been found in the version of PW nos.1 and 3, and there is no cross-examination to shatter its credibility.

15. The prosection has thus proved the charges against the accused by bringing on record reliable and cogent evidence. The credibility of the prosecution case is in no way shattered by the rebuttal offered by the accused. In light of the settled position of law, when the prosecution has established the factum of demand and acceptance of the bribe

amount and also lead evidence to establish the recovery of the said amount from the accused, the conviction recorded by the learned Special Judge calls for no inference being proportionate to the charge levelled and conclusively established by the prosecution.

For the reasons recorded above, the judgment passed by the Special Judge, (Anti Corruption, thane in Special Case No.14 of 1999 (State of Maharashtra vs. Adakmol Devanand Shravan) delivered on 12th July 2004, is upheld. The Appeal deserves a dismissal and is accordingly dismissed.

(BHARATI H. DANGRE, J)