IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 213 OF 2002

1) Tryambak Zaduji Salve,
aged 57 years,
occupation Police Head Constable,
B.No. 1059, P.S. Sindkhed Raja,
Dist. Buldhana.

(Since dead through LR wife:
Smt Sahubai Trimbak Salve,
Aged about – years, Occupation :--
R/o Khair Khed, Tah, Sindkhed Raja,
Dist. Buldhana.

2) Jagan Shamrao Kuhire, aged 46 years,
Occupation : Agri. Labour,
R/o Sindkhed Raja, Tq. Sindkhed Raja,
Dist. Buldhana.

…. **APPELLANTS.**

// **VERSUS //**

State of Maharashtra,
Through the A.C.B., Buldhana,
Tq. & Dist. Buldhana.

…. **RESPONDENT.**

Shri Y.B. Mandpe, Advocate for Appellants.
Mr. A.M. Kadukar, Advocate for Respondent/State.

CORAM : ANIL S. KILOR, J.
DATE : 16.09.2022

JUDGMENT :

1. This appeal takes exception to the judgment and order dated 15.03.2002 passed by the Judge, Special Court, Buldhana in Special (ACB) Case No.02 of 2001, convicting the Appellant No.1/Accused No.1 for the offence punishable under Sections 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act of 1988") and sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of Rupees One Thousand, in default to undergo simple imprisonment for a period of three months, the appellant No.1 is further convicted 13(1)(d) punishable under Section 13(2) of the Act of 1988 and sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of Rupees One Thousand, in default to undergo further simple imprisonment for a period of three months.

2. The Appellant No.2/Accused No.2 was convicted for the offence punishable under Section 12 of the Act of 1988 and sentenced to suffer rigorous imprisonment for a period of six months and to pay a fine of Rupees One Thousand, in default to undergo simple imprisonment for a period of three months.

3. The prosecution story, in brief, is as under:

The complainant Ugale lodged a complaint that he is having one acre land at village Palaskhed Chakka. There was fodder heap in his field which gutted in fire. The father and brother of the complainant had threatened him before 8 days that they will burn his fodder heap. So he suspected them. The complaint was given for enquiry to the accused No.1 Shri Salve, Police Head Constable. Next day, Shri Salve visited complainant's village and called his father and brother to the police station. After 2 days, he again visited the spot and asked the complainant to come to the police station next day. Accordingly, complainant went there. His father and brother were also called there. The accused No.1 had convinced them to settle the matter interse and accordingly they arrived at settlement.

4. Thereafter, the complainant asked his father and brother to give him the land and damages as per the settlement but they refused. Accordingly, again the complainant met the accused Salve and told him that his father and brother were resiling from the settlement. Accused Salve said that he will call his father and enquire with him. Thereafter again on a Bazar day, complainant met accused Salve. Then he said that if complainant wishes that, action should be taken against his father and brother, he will have to give him Rs.500/-. But as the complainant had

no money, he did not meet the accused thereafter.

5. Thereafter, again on 08.07.2000 when the complainant had been to Sindkhed Raja at about 4 to 5 p.m. accused Salve met him on the bus stand and said him that if he (complainant) wants that action should be taken against his brother and father, he will have to give him Rs.500/-. The complainant expressed his inability, saying that he is a poor man. Those were sowing season. He had no money and, therefore, accused should reduce his demand. Then by reducing his demand, the accused said to complainant that at least he will have to give Rs.300/- and without that he will not take any action against his father and brother.

6. Thereafter on 10.07.2000 coming to the A.C.B. office at Buldhana, complainant lodged the complaint that accused No.1 salve was demanding him bribe of Rs.300/- for taking action against his father and brother and accused Salve called him on 10.07.2000 at Sindkhed Raja with the amount.

7. After carrying out the pre-trap preparation, a raid was conducted and tainted amount was recovered from the accused No.2/appellant No.2 and after completing the post trap procedure, the complaint was lodged with the Police Station Sindkhed Raja. Thereupon, Crime No.3020 of 2000 was registered.

8. On completion of the investigation, papers were sent to D.C.P., Nagpur for grant of sanction to prosecute the accused persons. Whereupon, the D.C.P., Nagpur forwarded the papers to the Superintendent of Police, Buldhana, who gave sanction on 10.07.2000 to prosecute the accused persons and thereafter, charge sheet was filed.

9. Both the accused pleaded not guilty and accordingly, the trial was conducted.

10. The learned trial Court, after recording the evidence and on marshaling the oral as well as documentary evidence convicted the accused No.1 for the offence punishable under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Act of 1988. Whereas, accused No.2 was convicted for the offence punishable under Section 12 of the Act of 1988 by the judgment and order dated 15.03.2000 impugned in the present appeal.

11. I have heard the learned counsel for the appellants and the learned APP.

12. Shri Mandpe, learned counsel for the appellants, submits that the learned trial Court has committed error in convicting the appellant No.1 for the offence punishable under Section 7 and 13(1)(d) read with

Section 13(2) of the Act of 1988 as the demand and acceptance of bribe has not been proved. It is submitted that the demand is a sine qua non to attract the offence punishable under Sections 7 and 13(1)(d) of the Act of 1988. He therefore, submits that the impugned judgment and order, is illegal and bad in law.

13. He submits that there are serious omissions and contradictions which have been ignored by the learned trial Court.

14. On the other hand, the learned APP strongly opposes the appeal and submits that the learned trial Court has rightly convicted the accused and there is no legal infirmity or illegality committed by the learned trial Court.

15. It is further submitted that the prosecution has established and proved the demand and acceptance of the bribe amount by the accused by bringing on record the oral as well as the documentary evidence.

16. I have perused the record and the proceeding and impugned judgment and order.

17. At this juncture, looking to the controversy involved in this case, I am of the opinion that it would be relevant to refer the Section 7 and 13 of the Act of 1988, which read thus:

7. ***Public servant taking gratification other than legal remuneration in respect of an official act*** *– Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.*

13. ***Criminal misconduct by a public servant*** *– (1) A public servant is said to commit the offence of criminal misconduct, -*

(a)…

(b)…

(c)…

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e)…..

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

18. The Hon'ble Supreme Court of India while dealing with the law on 'demand of illegal gratification', in the case of *State of Punjab v/s Madan Mohan Lal Verma*[1]*,* has held thus:

> *"11. The law on the issue is well settled that 'demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, 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 is an interested and*

1 2013 (14) SCC 153

> *partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person."*

19. In the case of *B. Jairaj ..vs.. State of Andhra Pradesh*[1] while considering the issue whether mere possession and recovery of the currency notes from the accused is sufficient to hold that there was a demand of bribe, the Hon'ble Supreme Court of India has held thus:

> "8. … *We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. 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.*
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> 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

1 (2014) 13 SCC 55

> 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."

20. Thus from the above referred judgments, it is clear that demand of illegal gratification is *sine quo non* for constituting an offence under the Act of 1988. It is further clear that mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable. Proof of acceptance of illegal gratification can follow, only if, there is proof of demand.

21. As held in the case of *Mukhtiar Singh V/s State of Punjab*[3], by the Hon'ble Supreme Court of India that, the prosecution in order to prove the charge under the provisions of Sections 7 and 13 of the Act, has to establish by proper proof, the demand and acceptance of illegal gratification and till that it is accomplished, the accused should be considered to be innocent and mere possession and recovery of the currency notes from the accused without proof of demand would not establish an offence under Section 7 as well as Section 13 (1)(d) read with Section 13(2) of the Act, evidence on record has to be scrutinized to find out whether foundational facts are established on demand.

3 (2017) 8 SCC 136

22. In the teeth of the above referred well settled principle of law, I revert to the case of the prosecution on the point of demand and acceptance. In this regard, evidence of PW1-complainant and shadow witness panch No.1 is relevant.

23. PW1 in his oral testimony has deposed that there was partition in the family and land Gut No.39 of Palaskhed Chakka Shivar came to his share. He applied for taking entry of cultivation in his name. Thereupon, the Talathi inspected the spot and made an enquiry to the neighbours, who said that PW1 was cultivating the land. He further states that there was fodder heap in the field which his father and brother claimed it to be their.The said fodder heap gutted in fire. Thereupon he lodged the report against his father and brother. The said matter was settled btween them and his father and the brother accepted to give one and half acre land and share in the residential house.

24. He further submits that the father and the brother of the complainant, after signing the compromise, asked the PW1 to take damages from the police, as he had approached to the police and one half acre land from the Civil Court. Thereupon, he went to the police station and on making a request to the accused to make case against the father and brother, he demanded Rs.500/- and as he did not want to give a

bribe amount, he lodged the complaint to the ACB.

25. Thus, the above referred oral evidence is as regards the first demand by accused to the complainant PW 1.

26. Moving further, PW1 in his further oral testimony states that he and PW2 shadow witness went to the house of the accused. The accused was taking meal and he asked PW1 and PW2 to came again after some time. After 10 to 15 minutes PW1 and PW2 again went there. PW 1 further states that he entered into house of the accused with the PW2 and sat on the cot. PW1 asked the accused/Salve about his work, that time one more person unknown to PW1 came in the house and sat on the cot along with PW1 and PW2. PW1 asked the accused about his work. He told PW 1 that he was in hurry, he had to go to Nagpur and after returning from Nagpur his work will be done. The accused asked PW1 "what happened as agreed upon between us", then PW1 held amount in his hand, the accused said to give it to Kuhire. Then, PW 1 learnt the name of that person wearing Dhoti was Kuhire. Then, Kuhire on the say of accused, accepted the amount from PW1. PW 1 handed over powdered notes to Kuhire by right hand. Kuhire accepted the notes from PW1 by right hand and put the notes in his side chest pocket of his shirt. Thereupon, pre-determined signal was given and Kuhire was

caught hold by the trap party.

27. I will now examine the oral testimony of the PW 2 on the point of demand and acceptance. The PW 2, shadow witness states that he and PW1 went to the house of the accused. Accused was taking meal. He asked PW1 to come after some time. After some time, PW2 and PW1 again went to his house. PW2 and PW 1 sat on the cot in the house. Then PW1 asked accused, what happened about his work. Accused said to PW1 that he is going to Nagpur. He will do his work later on and his work will be done. PW1 said to Salve that he had brought what was asked to him by the accused, at that time one unknown person came there. The complainant gave the amount to the accused then, accused said to PW1 to give it to the unknown person. Then the complainant gave that powdered notes by his right hand to that unknown person. The unknown person took the amount by his right hand and put it in his shirt pocket. Thereupon, PW1 gave predetermined signal.

28. From the above referred oral testimony of PW2, the shadow witness, it can be seen that he did not refer to the demand by the accused as deposed by the PW1 complainant in his oral testimony.

29. Now moving to the cross examination of PW2. He categorically stated that accused never asked the complainant, whether the amount is

brought or not. He further stated that he had also not said to give the amount if the amount is brought. He has further stated that he told ACB people that accused had neither inquired to the complainant, whether he brought the amount nor he demanded the complainant to give the amount. He further stated that he told ACB people that the complainant had said to the accused Salve that he had brought what was asked him to bring.

30. Thus, it is clear that PW 2 is not supporting the case of the prosecution about demand and acceptance as observed herein above. Whereas, it is not safe to record conviction only on the basis of oral evidence of PW1, as he is an interested and partisan witness concerned with the success of trap.

31. It is a settled law that mere acceptance of amount is not sufficient to hold that the amount is towards illegal gratification.

32. In the present case, the prosecution failed to bring clinching evidence on record to prove the demand and acceptance. The evidence of the complainant and panch witness is not cogent and cognate on the point of demand and acceptance.

33. There is no doubt as argued by the learned counsel for the

respondent that, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act of 1988, by bringing on record evidence, either direct or circumstantial to establish with reasonable probabilities, that the money was accepted by the accused other than as a motive or reward or as referred in Section 7 of the Act of 1988. However, before the accused is called upon to explain how the amount in question was found in his possession, it is mandatory for the prosecution to establish the foundational facts.

34. In the present case, as it can be seen that the prosecution has not established foundational facts, therefore, presumption under Section 20 of the Act of 1988 will not apply. In the circumstances, the contention of the learned counsel for the respondent that the accused failed to establish with reasonable probability that the money was accepted by him other than motive or reward as referred to Section 7 of the Act of 1988, cannot be accepted. Accordingly, I pass the following order:

i) The appeal is **allowed**.

ii) The judgment and order dated 15.03.2002 passed by the Special Judge, Buldhana in Special (ACB) Case No.2 of 2001, is hereby quashed and set aside.

iii) The appellant is acquitted of the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

iv) His Bail Bonds shall stand cancelled.

v) The fine amount, if any, shall be refunded back to the appellant.

vi) The Muddemal Property be dealt with as per order of the learned Special Judge.

The criminal appeal stands **disposed of** accordingly. The pending applications, if any, shall stand disposed of accordingly.

JUDGE

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