

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

CRIMINAL APPEAL NO. 134 OF 2012

Anil S/o. Bhagwan Meshram,
Age 48 years, Occ.: Service,
R/o. B-1, Telephone Exchange
Building, Gadchiroli, Presently
At Ward No.3, Station Ward,
Chandur Rly., Distt. Amravati.

.... **APPELLANT.**

// VERSUS //

State of Maharashtra,
Through Deputy Superintendent
of Police, Central Bureau of
Investigation/ Special Police
Establishment Camp, Nagpur.

.... **RESPONDENT.**

Shri R.P.Joshi, Advocate for Appellant.
Ms Mugdha Chandurkar, Advocate for Respondent/C.B.I.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 25, 2022.

ORAL JUDGMENT :

1. This appeal takes exception to the judgment and order dated 22/03/2012 passed by the Special Judge, Gadchiroli in Special (ACB)

Case No.5 of 1996, convicting the Appellant/Accused for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the “Act of 1988”) and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rupees One Thousand, in default to undergo simple imprisonment for two months for the offence punishable under Section 7 of the Act of 1988 and rigorous imprisonment for three years and to pay a fine of Rupees Two Thousand in default, to undergo further simple imprisonment for three months for the offence punishable under Sections 13(1)(d) and 13(2) of the Act of 1988.

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

Complainant Yadeorao was intending to have a telephone connection of B.S.N.L. at his residence. He filled the form and also deposited Rs.1200/- as asked by the concerned officer. However, after waiting for long period he met the accused, thereupon, he demanded Rs.2,000/- for early installation. However, when the complainant was not interested in the telephone connection and sought withdrawal of the deposited money, the accused reduced the amount and asked him to pay Rs.1500/- for early installation.

3. Again on 01/06/1996, when the complainant met the accused, he asked him whether he brought Rs.1,500/-. However, as the complainant was not intending to give bribe, he approached the Anti-Corruption Bureau, Gadchiroli on 04/06/1996.

4. As the accused was a Central Government servant, ACB Officer, Gadchiroli took the complainant to C.B.I. Office, Nagpur, where the complaint was lodged.

5. On next day, i.e. on 05/06/1996 complainant was called to A.C.B. Office, Gadchiroli and thereafter all the necessary formalities and procedure for trap were followed.

6. Thereafter, the complainant and the panch No.1 had gone to the office of the accused and on inquiry by the accused regarding amount, the complainant gave him the tainted currency notes of Rs.1500/- which were accepted by him. Thereafter, a predetermined signal was given by the complainant and the raiding party caught hold the accused. Both the hands of the complainant and accused, were examined in the sodium carbonate liquid and the colour of the liquid was

changed. After completing required procedure, post-trap panchnama was prepared and the investigation was thereafter handed over to C.B.I., Nagpur.

7. After completion of the investigation the papers were sent for sanction and on receiving the sanction to prosecute the accused/appellant, the charge-sheet came to be filed.

8. Thereafter, charge was framed and read-over to the accused. The accused pleaded not guilty and claimed to be tried.

9. In order to bring home the guilt against the accused, the prosecution has examined five witnesses. The defence of the accused was of total denial. The statement of accused under Section 313 of Cr.P.C. came to be recorded. The accused had also given his written say below Exh.88 in his defence.

10. The learned trial Court, after marshalling the oral as well as documentary evidence, passed the impugned judgment and order dated 22/03/2012 and thereby convicted the appellant/ accused for the offence punishable under Sections 7, 13(1)(d) and 13(2) of the Act of 1988, the

same is under challenge in this appeal.

11. I have heard learned counsel for the appellant and learned counsel for the C.B.I.

12. Shri R.P. Joshi, learned counsel for the appellant submits that the learned Special Court erred in convicting the appellant in absence of any cogent and reliable evidence on the point of demand and acceptance of alleged illegal gratification.

13. He submits that, mere possession and recovery of currency notes from the accused without proof of demand will not bring home the guilt against the appellant, for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act of 1988. To fortify his submission he has placed reliance on the judgments of the Hon'ble Supreme Court of India in the cases of *State of Punjab ..vs.. Madan Mohan Lal Verma*, reported in **2013(14) SCC 153** and *B. Jairaj ..vs.. State of A.P.*, reported in **(2014) 13 SCC 55**.

14. Shri R.P. Joshi, learned counsel for the appellant submits that the prosecution has not examined the Sanctioning Authority and

thereby no evidence as regards what documents and material he had considered and examined before granting sanction, has not been brought on record. He, therefore, submits that in absence of such evidence, the sanction granted to prosecute the appellant, vitiates.

15. Shri Joshi, learned counsel for the appellant has drawn attention of this court to the oral testimony of the P.W. 1 and P.W. 2 to point out the discrepancies and contradictions on the point of acceptance and demand. It is submitted that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witness becomes unreliable. In support of his submission, he has placed reliance on the judgment of *Surajmal ..vs.. The State (Delhi Administration)*, reported in **AIR 1979 (SC) 1408**.

16. The learned counsel for the appellant has argued that the query alleged to have made by the accused, whether the money was brought by the P.W. 1, does not itself constitute the demand. It is submitted that to prove demand some more cogent evidence is required. For this purpose, he has placed reliance on the judgment of Hon'ble the Supreme Court of India, *Mukhtiar Singh ..vs.. State of Punjab*, reported in **(2017) 8 SCC 136**.

17. He submits that, the prosecution has not produced on record the requisition letter as regards referring the seized articles for chemical examination. He further submits that, similarly no evidence as to how the muddemal property was dealt with by the prosecution from 05/06/1996 till 13/09/1996 i.e. for more than three months, has brought on record. He, therefore, submits that in absence of such evidence it cannot be said that the seized articles were not tampered with. For this purpose, he has placed reliance on the judgment of this Court in the case of *The State of Maharashtra ..vs.. Prabhu Barku Gade*, reported in **1994 SCC OnLine Bom 542**.

18. Per contra, Ms Mugdha Chandurkar, learned counsel for the C.B.I. supports the impugned judgment and order and further submits that, the prosecution has succeeded in bringing the guilt at home against the accused. She therefore, submits that no legal infirmity or illegality is committed by the learned trial Court in convicting the appellant under Sections 7 and 13(1)(d) read with 13(2) of the Act of 1988.

19. It is submitted that the learned Special Judge on marshaling the evidence in detail and after recording the reasons, has convicted the appellant. Accordingly, she submits that there is no perversity in the findings recorded by the learned trial Court.

20. She submits that, as the signature of Sanctioning Authority, has been proved by P.W.4, a Stenographer in the Department of Telecom and as from the sanction order it can be seen that the Sanctioning Authority has stated all the relevant facts in the sanction order, it is sufficient to show that he had applied his mind before granting sanction. She therefore, submits that, the sanction order is valid.

21. She further submits that, by examining P.W. 5, the evidence as regards sending of seized samples to C.A. for examination is brought on record and therefore, sufficient evidence is there to show that proper care was taken by the prosecution while sending seized articles for chemical examination.

22. Ms Chandurkar submits that, the time gap between the trap and recording of oral evidence, is about 15 years and therefore, there is every possibility that some minor contradictions would be there. She

submits that, the contradictions as pointed out by the learned counsel for the appellant, are not fatal and hence, need to be ignored.

23. In the backdrop of rival contentions of the parties, I have perused the record and the impugned judgment and order.

24. 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.”

25. 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 (supra)*, 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 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.”

26. In the case of *B. Jairaj ..vs.. State of Andhra Pradesh* 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.

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 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.”

27. Thus from the above referred judgments, it is clear that demand of illegal gratification is *sine qua 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.

28. As held in the case of *Mukhtiar Singh Vs. State of Punjab* (*supra*), 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.

29. In the teeth of above referred well settled law I proceed to examine whether the demand and acceptance is established and proved by the prosecution. For this purpose, the oral testimonies of P.W.1 and P.W. 2 are relevant.

30. The Hon'ble Supreme Court of India in the case of *Surajmal ..vs.. The State (Delhi Administration)* (supra) has held thus :

“It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in absence of special circumstances no conviction can be based on the evidence of such witnesses.”

31. In the light of above referred observation of the Hon'ble Supreme Court of India, after going through the oral testimony of P.W.1

and P.W. 2 it can be seen that there are discrepancies in it about the place where the amount was paid and the place where the accused was caught hold and the tainted amount was recovered from him. The discrepancies are as follows:

32. The complainant (P.W.1) in his oral testimony has deposed that on the date of the trap during verification of demand he met the accused, who made inquiry as to whether the P.W.1 has brought money. Whereas, in cross-examination, he states that in the morning when he and panch No.1 (P.W.2) met the accused, the accused did not demand any amount and he did not give any amount to him.

33. Thus, as regards verification of demand two different and contradictory versions have come in the oral testimony of P.W. 1.

34. In this backdrop, if the oral testimony of P.W. 2 is seen about the verification of demand, he has deposed that he went along with the complainant – P.W. 1 to Telephone Office and there the complainant and accused discussed about the telephone connection. There accused demanded the amount to the complainant for connecting the telephone. The complainant told him that he is not having money and asked for some time to give the amount. Thus, this is the third version.

35. To sum up, P.W. 1 in his examination-in-chief has stated that in his first visit the accused made inquiry as to whether the P.W. 1 brought money. In the cross he states that no demand of any amount was made to him by accused, in the morning. Whereas, P.W. 2 states that Anil Meshram-accused demanded amount to the complainant for connecting the telephone (and not that the accused made inquiry whether the P.W. 1 brought the amount, as deposed by the P.W.1, in his examination-in-chief).

36. Similarly, as regards second visit after verification of demand, in the chief, P.W. 1 states that, he and panch No.1 had gone in the chamber (which is at the first floor) of accused-Meshram. At that time the accused made inquiry as to whether the money is brought. He replied that he has brought the money. In response, Shri Meshram informed him to give the amount early. Thereafter P.W. 1 removed the tainted amount by his right hand and kept in left side pocket of his shirt. P.W. 1 further states that, he came outside and gave predetermined signal to the Trap Party. Immediately the members of the Trap Party came there and caught hold the accused.

37. Whereas, completely contrary to this, P.W.2 states that, when he reached Telephone Office with P.W. 1, accused-Anil Meshram was coming downwards by staircase in front of main gate. By seeing them he said, “come”. Thereafter he took them towards one room near his cabin. Some machinaries were kept in the said room. The complainant (P.W.1) sat on a bench and P.W. 2 sat on a stool. Accused-Anil Meshram sat on chair in front of them. Accused-Anil Meshram asked P.W. 1, whether he brought amount. The P.W. 1 asked him whether his work is completed or not, thereupon, the accused told the complainant that his documents have been sent to Division office and demanded the amount by saying, “give immediately”. Thereafter, the complainant took out the amount from his right *bangali* shirt pocket and gave it to the accused by right hand. The accused accepted the amount by right hand. He kept the amount in his blue T-Shirt pocket.

38. Thus, it can be seen that, as per the oral testimony of P.W. 1 the amount was demanded and accepted by the accused in his chamber. Although, as per the oral testimony of P.W. 2 the amount was demanded and accepted by the accused in a machine room near the cabin of the accused.

39. Furthermore, as per the deposition of P.W. 2 after the amount was accepted by the accused, the accused offered cold drinks and told the complainant and panch No.1 to come on the ground floor. Thereafter, they came down and at the main gate, the complainant gave predetermined signal and on the gate two constables caught hold both the wrists of the accused-Anil Meshram.

40. According to me, above referred contradictions are fatal, as there are contradiction about place of acceptance of bribe amount and place where the trap party caught hold the accused with tainted money. In the circumstances, in absence of sufficient and cogent evidence as regards the demand, the words “Whether the amount is brought” attributed to the accused, is not decisively or conclusively proved that the demand was for illegal gratification.

41. Moving to validity of sanction, in this case, the sanction was accorded by Telephone District Manager Sushil Mishra vide sanction order dated 12/12/1996. The prosecution has not examined this witness and no justification has been offered for not examining the said officer on the point of validity of sanction.

42. In the case of *Mansukhlal* (supra) the Hon'ble Supreme Court of India while dealing with the guiding principles for the sanctioning Authority, has observed thus :

“16. In Basdeo Agarwalla v. Emperor, it was pointed out that sanction under the Act is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. This Court in State through Anti-Corruption Bureau, Govt. of Maharashtra, vs. Krishanchand Khushalchand Jagtiani while considering the provisions of Section 6 of the Act held that one of the guiding principles for sanctioning authority would be the public interest and, therefore, the protection available under Section 6 cannot be said to be absolute.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecutions. (See: Mohd. Iqbal Ahmed vs. State of A.P.). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also: Jaswant Singh vs. The State of Punjab and State of Bihar vs. P.P. Sharma).”

43. While dealing with the similar issue about the sanction this Court in the case of *Ramesh Khandu Salve* (supra), has observed thus :

6. In *State of Karnataka v. Ameerjan*, 2007(4) R.C.R. (Criminal) 375 : 2007(5) Recent Apex Judgments (R.A.J.) 202 : (2007) 11 SCC 273, while dealing with the grant of sanction, it has been held thus:-

"9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire 82 (2007)11 SCC 273 records containing the materials collected against the accused should be placed before the sanctioning authority. In the

event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

7. The Apex court in State of Maharashtra Vs. Mahesh Jain (2013) 8 SCC 119: 2014 ALL SCR 177 has held that grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigation. Grant of sanction is an administrative function and the sanctioning authority is required to prima facie, reach the satisfaction that relevant facts would constitute the offence. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

8. The Apex court in Mahesh Jain (2014 ALL SCR 177) (supra) has referred to Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh (1979) 4 SCC 172: 1979 ALL MR ONLINE 44 (S.C.) where the Apex court held "it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void, ab initio.

9. The Apex Court in Nanjappa Vs. State of Karnataka (2015) 14 Supreme Court Cases 186: (2015) ALL MR (Cri) 3318 (S.C.) held that Section 19 of P. C. Act which provides that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15, alleged to have been committed by a public servant, without the sanction was couched in mandatory terms and acts as complete bar to prosecution without previous sanction. In the absence of valid sanction the court is not competent to take the cognizance of the case and the trial itself will be void-ab-initio. Therefore, the trial based on invalid sanction is null and void and there is no bar on prosecution after obtaining fresh sanction, can pray for re-trial. If the sanction itself is

invalid, the Trial Court cannot come to the conclusion of acquitting or convicting accused, as it was not competent to take cognizance of the alleged offence. With an invalid sanction, the trial itself will be nonest in the eyes of law. In that case the Trial Court must discharge accused and parties may be relegated to a position where prosecution can be initiated after obtaining sanction afresh from the competent authority.

10. The Apex Court in Dinesh Kumar Vs. Airport Authority of India (2012) 1 SCC 532 : 2012 ALL MR (Cri) 321 (S.C.) held that validity of sanction depends on materials placed before the sanctioning authority and consideration thereof implies application of mind by the sanctioning authority. As there is a distinction between absence of sanction and invalidity of sanction, the challenge to sanction as regards invalidity due to non application of mind, has to be raised during the trial.

11. The validity of sanction depends on the application of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation. It necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction, where prosecution has to be sanctioned or not.”

44. From the above referred observations of the Hon’ble Supreme Court of India and the Co-ordinate Bench of this Court, it is evident that grant of sanction is a sacrosanct act and is intended to provide a safeguard to a public servant against frivolous and vexatious litigation. The validity of the sanction would depend upon the material and all the relevant facts placed before the Sanctioning Authority.

45. It is further clear that, the material and evidence have been considered by the Sanctioning Authority which implies application of mind, *ex-facie* must reflect from the sanction order. The discretion to grant or not to grant sanction, based absolutely in the Sanctioning Authority.

46. Thus, where any case instituted without a proper sanction must fail because this being the manifest defect in the prosecution, the entire proceedings are rendered *void ab initio*.

47. In the teeth of the above referred well settled principles of law, I revert back to the evidence led by the prosecution to establish the validity of the sanction order.

48. The prosecution has examined P.W. 4, who was working as a Stenographer in the office of Telecom at Chandrapur. His oral testimony establishes only that the signature on the sanction order is of Shri Sushil Mishra. However, though the signature of Sushil Mishra is proved, it cannot be said that the contents of this document, are proved.

49. Thus, nothing has been brought on record by the prosecution to show that what papers or documents were placed before the Sanctioning Authority before granting sanction. Further, there is nothing to show that the Sanctioning Authority has considered the relevant papers and documents and applied his mind before granting sanction.

50. In the sanction order, the Sanctioning Authority has narrated the relevant facts. However, that does not mean that he has personally examined the record and on examination of such record the sanction was accorded.

51. There is a reason to say so because, from the sanction order it seems that a draft sanction order was sent to the Sanctioning Authority, keeping two blank spaces which were marked with underline for writing the name of the Sanctioning Authority, where the Sanctioning Officer got typed his name, which is further evident from use of different typewriter and ink. Had it so happened that the Sanctioning Authority himself drafted the sanction order, there would not have been any need to keep the blank space for the name to be typed later on.

52. In the said backdrop, the possibility that the Sanctioning Authority typed his name on the blank space kept by the Anti-Corruption Bureau in the draft order and signed it, without applying his mind, cannot be ruled out.

53. Thus, for the reasons recorded herein above, the sanction order vitiates. As the point of sanction goes to the root of jurisdiction and as the sanction in this case is not valid, the trial Court ought to have discharged the accused person, as any trial without valid sanction is non-est.

54. Moving further, in this case, the trap is dated 05/06/1996. Whereas, the muddemal was referred to the Central Forensic Science Laboratory, New Delhi with letter dated 13/09/1996 and it was received by the Laboratory on 16/09/1996.

55. This Court in the case of *The State of Maharashtra ..vs.. Prabhu Barku Gade* (supra) had occasion to deal with an issue as regards to have a link evidence to show that the muddemal was in a tamper proof condition. This Court has held thus :

“26. So far as the evidence of recovery of tikav, blood-stained clothes from the person of the appellant and blood-stained frock from Pramila are concerned, the aforesaid recoveries would not be of much avail to the prosecution for there is no evidence on record to show that from the time the aforesaid articles were recovered and till the time, they were sent to the Chemical Analyst, the gap being of more than 8 days, they were kept throughout in a sealed condition. It was obligatory on the part of the prosecution to lead link evidence to that effect. This was imperative because the possibility that the prosecution may have put human blood on the aforesaid articles during that interregnum, had to be eliminated before any reliance on the aforesaid recovery evidence could be placed. The question is not whether human blood was actually put on the recovered articles but as to whether it could have been put, observed a Division Bench of the Rajasthan High Court in the case reported in AIR 1955 Rajasthan page 82 (State v. Motia). The aforesaid decision was followed by a Division Bench of our own Court in the decision reported in 1994 (4) Bombay Cases Reporter page 85 (Deoraj Deju Suvarna appellant v. State of Maharashtra, respondent) Criminal Appeal Nos. 603, 608 and 624 of 1993 connected with Confirmation Case No. 3 of 1993 to which one of us (Sahai, J.) was a party.”

56. Keeping the above referred observation in mind, let's examine, whether proper care was taken in this case. In this case, the requisition letter issued to the Chemical Analyzer is also not brought on record by the prosecution.

57. Further, no evidence has been brought on record by the prosecution, to show that from 05/06/1996 to 13/09/1996 i.e. for more than three months, where the Muddemal was kept, whether it was kept in a manner that no one can tamper it.

58. Even there is no evidence led on the point that who has taken muddemal to the Laboratory. The oral testimony of P.W.5 only shows that he sent the seized sample to Chemical Analyzer for examination. However, there is no evidence to show that who carried the muddemal to the Central Forensic Science Laboratory or whether it was kept safely during the said period so that no one can tamper it.

59. This is more significant in this case, as in this case the trap was conducted by the State Anti-Corruption Bureau, Gadchiroli and investigation was made by the C.B.I.

60. Thus, in absence of any such evidence, it is not safe to rely upon the Chemical Analyzer Report dated 29/10/1996 (Exh.84). Accordingly, on this count also the appellant/accused needs to be acquitted.

61. There is no doubt as argued by the learned counsel for the respondent that, the burden rest 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, it is a settled law that, 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.

62. In the present case, as it can be seen that the prosecution has failed to establish foundational facts, presumption under Section 20 of the Act of 1988 will not come into play.

63. In the circumstances, I am of the considered view that the present appeal needs to be allowed for the reasons recorded herein above. Accordingly, I pass the following order:

- i) The appeal is allowed.

- ii) The judgment and order dated 22/03/2012 passed by the Special Judge, Gadchiroli in Special (ACB) Case No. 5 of 1996 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 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

RRaut..