



Judgment

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

CRIMINAL APPEAL NO.247 OF 2005

Wasudeo s/o Nathuji Ukey,
aged 56 years, occupation ASI (suspended)
r/o Belati (Bujruk),
Police Station Tiroda,
tahsil Litoda, district Gondia. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
through Police Station Officer,
Police Station : Andhalgaon,
tahsil Mohadi, district Bhandara. **Respondent.**

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Shri Anil Mardikar, Senior Counsel with Shri D.Singh, Adv.
for the Appellant.

Shri M.J.Khan, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 01/08/2023

PRONOUNCED ON : 05/10/2023

JUDGMENT

1. The appellant (accused) has challenged judgment and order of conviction and sentence dated 23.3.2005 passed by learned Special Judge, under the Prevention of Corruption Act, 1988, (learned Judge of the trial court), Nagpur in Special Criminal Case No.8/1998.

2. By the said judgment and order of conviction impugned, learned Judge of the trial court convicted the

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accused for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced him to suffer simple imprisonment for six months and to pay fine Rs.300/-, in default, to suffer simple imprisonment for fifteen days.

The accused is further convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced him to suffer simple imprisonment for one year and to pay fine Rs.300/-, in default, to suffer simple imprisonment for fifteen days.

Learned judge of the trial court directed that all the sentences shall run concurrently.

3. Facts of the prosecution case in brief, emerge from recorded evidence adduced, are as under:

The accused at the material time was working as Assistant Sub Inspector at Police Station Andhalgaon, taluka Mohadi, district Bhandara Police Station. Complainant Ramesh Bhonde, resident of village

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Dongargaon, taluka Mohadi, district Bhandara, is cobbler by profession.

4. As per the complainant, he owned two she-buffaloes and one of them died on 23.2.1998. He informed the said fact to bank and insurance company as he had purchased the she-buffaloes by obtaining loan. Accordingly, a veterinary doctor visited his house and inspected dead she-buffalo and directed him to dispose of the dead she-buffalo. As the complainant is cobbler by profession, peeled of skin and disposed of the said animal. On 24.2.1998, Sarpanch, Police Patil, and residents of village Dongargaon reported the incident against the complainant at Police Station Andhalgaon on an allegation that the complainant has thrown useless part of the dead animal near grampanchayat due to which entire village got polluted. After receipt of the complaint, the accused, who was Investigating Officer, visited village Dongargaon for enquiry and the complainant was called in grampanchayat office wherein his statement was recorded. The accused had called the complainant at the

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police station on next day i.e. 26.2.1998. Accordingly, the complainant visited the police station and it was informed him that action would be taken against him by putting him behind the bars and, therefore, he requested the accused not to take action against him. It is alleged that for not taking action against him, the accused demanded Rs.1000/- from him. The complainant requested to reduce the amount and the accused agreed to accept Rs.500/-. The complainant was called along with the money and, therefore, he approached the office of the Anti Corruption Bureau on 2.3.1998 as he was not willing to pay the amount and lodged the report.

5. After receipt of the report, the officers of the Anti Corruption Bureau called two panchas. The panchas put their signatures on the complaint. After following due procedure, it was decided to conduct a raid and the panchas and the complainant were called on 3.3.1998. The complainant produced 5 currency notes of Rs.100/- denomination and numbers of the currencies were noted. A demonstration as to use and characteristics of

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phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted amount and kept in shirt pocket of the complainant. The instructions were given to pancha No.1 Pradeep Madhukar Kose to stay with the complainant and pancha No.2 to stay along with the raiding party members. It was informed to the complainant that he has to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn.

6. After the pre-trap panchanama, the complainant along with panchas and raiding party members went at the house of the accused. The complainant along with pancha No.1 visited the house. The accused took them along with him in a garden and at some distance from his house he demanded the amount. The complainant handed over the same. The accused was caught after the complainant has given signal to the raiding party members. Pancha No.1 disclosed as to the demand and the acceptance. The hands of the accused were examined and the tainted amount was recovered from the shirt pocket of the accused. Accordingly, post-

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trap panchanama was drawn. The officers of the Anti Corruption Bureau lodged the report about the said incident and seized relevant documents. A sanction was obtained to prosecute the accused. After completion of the investigation, chargesheet was filed against the accused.

7. During the trial, the prosecution has examined in all six witnesses, viz. Ramesh Bhonde (PW1) vide Exhibit-18, the complainant; Prashant Burde (PW2) vide Exhibit-20, the sanctioning authority; Ashok Kadao (PW3) vide Exhibit-22, the police constable; Pradip Madhukar Kose (PW4) vide Exhibit-23; Mohammad Matinkhan s/o Ismail Khan Pathan (PW5) vide Exhibit-32, and Rajendra Mahaveer Pali (PW6), the investigating officer.

8. Besides the oral evidence, the prosecution further relied upon complaint (Exhibit-19), sanction (Exhibit-21), pre-trap panchanama (Exhibit-24), post-trap panchanama (Exhibit-25), map Exhibit-27, seizure memos (Exhibits-28 to 31), First Information Report (Exhibit-33),

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letter to the Executive Engineer for calling two employees to act as panchas (Exhibit-37), letter to the District Health Officer (Exhibit-38), list of articles found during personal search of the complainant (Exhibit-39), seizure memos (Exhibits-41 and 42), complaint (Exhibit-43) filed by Investigating officer PW6 Rajendra Pali, seizure memo as to the personal search of the accused (Exhibit-44), letter to Chemical Analyzer (Exhibit-45), invoice challan (Exhibit-46), Chemical Analyzer's Reports (Exhibit-47), letter to the Deputy Superintendent of Police (Exhibit-48), extract of register having entries issuing tickets (Exhibit-49), letter to Police Officer of Andhalgaon Police Station (Exhibit-50).

9. After considering the evidence adduced during the trial, learned Judge of the trial court held the accused guilty and convicted and sentenced him as the aforesaid.

10. Heard learned Senior Counsel Shri Anil S.Mardikar for the accused, learned Additional Public Prosecutor Shri M.J.Khan for the State. I have been taken

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through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

11. Learned senior counsel for the accused submitted that the judgment and order of conviction impugned is not in accordance with law. There was no valid sanction and the prosecution also failed to prove the demand and acceptance of the bribe. He further submitted that as a matter of fact, even the sanction to prosecute the accused, as contemplated under Section 19 of the said Act was bad in law and, therefore, the conviction of the accused stood vitiated on that ground itself. He further submitted that the demand and acceptance is not proved at all as there is inconsistency in versions of complainant PW1 Ramesh Bhonde and pancha witness PW4 Pradip Madhukar Kose. The defence of the accused is that there was a charity show of welfare fund for the police employees and ticket of the same was purchased by the complainant and the amount was paid towards the said ticket. The prior demand is not proved by the independent evidence though the complainant was

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accompanied by the independent evidence namely Shivnath Sonkusare and Shalik Walde. In absence of the demand, acceptance becomes irrelevant. Thus, for all the above reasons, the case of the prosecution fails and the accused be acquitted.

12. In support of his contentions, learned Senior Counsel for the accused placed reliance on following decisions:

1.Mukhtiar Singh (since deceased) through his LR vs. State of Punjab¹;

2.Sunil Hirasingh Rathod vs. State of Maharashtra²;

3.Uttam s/o Ramaji Shere vs. State of Maharashtra³, and

4.Rabindra Kumar Dey vs. State of Orissa⁴.

13. *Per contra*, learned Additional Public Prosecutor for the State submitted that not only complainant PW1 Ramesh Bhonde but shadow pancha PW4 Pradip Kose proves that there was demand and in pursuance of the

1 2017(7) SCALE 702

2 2021 SCC OnLine Bom 2364

3 2018 ALL MR (Cri) 2393

4 AIR 1977 SC 170

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said demand the amount was accepted. Thus, the prosecution has proved the demand and the acceptance. He further submitted the defence of the accused, that the amount was accepted against the ticket of charity show, is not substantiated by any evidence and the same is liable to be discarded. The acceptance is also proved by the evidence of the Chemical Analyzer. The sanction order is valid and, therefore, no interference is called for in the judgment and order passed by learned Judge of the trial court.

14. In order to prove the sanction order, the prosecution placed reliance on the evidence of sanctioning authority PW2 Prashant Burde. His evidence is only to the extent that in the year 1998 he was Superintendent of Police at Bhandara. He had accorded the sanction to prosecute the accused for the offence punishable under the said Act. At the relevant time, the accused was serving as Assistant Sub Inspector. The sanction order is at Exhibit-21.

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During cross examination of the above said witness, he admitted that a charity show was organized for collection of welfare fund for the police department. He further admitted that whenever charity programmes are organized for the collection of the welfare funds, tickets are handed over to police station officers for sale to the public. However, he denied that no charity show was organized during his tenure. He shown his unawareness that any orchestra was organized on 6.3.1998 for collection of welfare fund.

15. On the basis of the above evidence of sanctioning authority PW2 Prashant Burde, the prosecution claimed that the prosecution has proved the sanction order. As per the prosecution, sanctioning authority PW2 Prashant Burde is the appointing and removing authority to the cadre of Assistant Sub Inspector. However, no notification or circular was placed on record.

16. Perusal of the sanction order reveals that in first paragraph, name and designation of the accused are

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mentioned and also it is mentioned that he is public servant within the meaning of Section 2(c) of the said Act. In second paragraph, recital of the First Information Report as to the description of the complainant and the incident are mentioned. In paragraph Nos.3, 4, and 5, details of the incident of demand of amount is mentioned. In paragraph No.7 it is mentioned that upon carefully reading papers of investigation into Crime No.9/1998 of Andhalgaon Police Station and after careful evaluating the evidence on record, as he was satisfied that there is adequate evidence to prosecute the accused, he accorded the sanction.

17. Thus, the entire sanction order nowhere discloses that sanctioning authority PW2 Prashant Burde has perused the said documents, applied his mind and, thereafter, accorded the sanction.

18. Whether the sanction is valid or not and when the sanction can be called as valid, the same is settled by

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the various decisions of the Honourable Apex Court as well as this court.

19. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**⁵ has held that what the Court has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. 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 and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

20. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**⁶ has held that sanction lifts the bar for prosecution and,

⁵ 1979 AIR 677

⁶ 2014 Cri.L.J.930

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therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be

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exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

21. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**⁷, held that it is true 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

⁷ (2007)11 SCC 273

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under the Act by refusing to accord sanction for his prosecution or not. 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.

22. The view in the case of **State of Karnataka vs. Ameerjan** cited *supra* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**⁸.

23. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**⁹ observed that absence of description of documents referred by sanctioning authority and only considering the grievances made by Complainant would show lack of application of mind by competent authority while according sanction. The documents other than complaint were taken into

⁸ 2021 SCC OnLine Bom 237

⁹ 2016 ALL MR (Cri) 3697

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consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

24. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his own independent mind for generation of its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his own independent mind on the basis of the evidence which came before it. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

25. Thus, the application of mind on the part of the sanctioning authority is imperative. The orders granting

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sanction must demonstrate that he/she should have applied his/her mind while according sanction.

26. After going through the evidence of sanctioning authority PW2 Prashant Burde, though he stated that he has applied his mind and perused the investigation papers in the sanction order, in his substantial evidence before the court he had not whispered that it was he who applied his mind by perusing the investigating papers. His evidence is only to the extent that he accorded the sanction to launch prosecution against the accused. Though the sanction order discloses that he carefully read the papers of investigation and satisfied himself, there is no reference which papers he had received and he had applied his mind. There is no reference which documents are considered by him and on what basis he came to conclusion that the sanction is to be accorded to launch prosecution against the accused. There is no finding by learned Judge of the trial court as to the validity of the sanction.

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27. Besides the issue of the sanction, the prosecution alleged that the accused, who was serving as Assistant Sub Inspector, demanded gratification amount and accepted the same. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Ramesh Bhonde examined vide Exhibit-18 and PW4 Pradip Madhukar Kose, who acted as shadow pancha vide Exhibit-23.

The evidence of complainant PW1 Ramesh Bhonde shows that he is cobbler by profession and owns she-buffaloes. The residents of his village Dongargaon made the complaint to Andhalgaon Police Station that he slaughtered the she-buffaloes and thrown waste material in the open space which created unhygienic condition. On the basis of the said complaint, Andhalgaon Police Station registered the crime against him. He was called at the police station and informed that he could be sentenced minimum for three years and, therefore, he requested to resolve the issue and on that the accused demanded Rs.2000/-. It is further testified by him that after

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negotiation of the amount, the accused was ready to accept Rs.500/-, however, as he was not willing to give bribe to the accused, he approached the office of the Anti Corruption Bureau and lodged the report. His further evidence discloses about the procedure carried out by the office of the Anti Corruption Bureau prior to conducting the raid. Insofar as the subsequent demand is concerned, his evidence is that he along with pancha No.1 visited the house of the accused. Accused took them at some distance from his house by walk and on his enquiry about the work he demanded the money. As per instructions by the officers of the Anti Corruption Bureau are concerned, he handed over the amount after the demand. He gave signal to the officers of the Anti Corruption Bureau and the accused was caught with the tainted amount. He further deposed that fingers of the accused were examined in the phenolphthalin solution and colour was changed. The hands of the complainant were also examined and it also turned into red colour.

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28. During the cross examination of complainant PW1 Ramesh Bhonde, it came on record that the accused asked him to arrange amount Rs.500/- within a day or two. It further shows that he disclosed to the accused that he had brought the money and took out the currency notes and handed over the same to the accused. He further admitted that the accused disclosed the officers of the Anti Corruption Bureau that he accepted amount Rs.500/- towards the entry fees of the orchestra programme. Thus, the defence has brought on record that it was not the accused who demanded the amount, but it was the complainant who handed over the same amount to the accused. The defence of the accused is that he accepted amount Rs.500/- against the orchestra ticket which was arranged for the welfare of the police employees.

29. To corroborate the versions of complainant PW1 Ramesh Bhonde, the prosecution examined pancha witness PW4 Pradip Kose, who categorically narrated about the incident. His chief-examination shows that he along

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with other pancha was called in the office of the Anti Corruption Bureau. The demonstration was shown to them as to the use of phenolphthalein powder and the solution. Thereafter, they proceeded towards the house of the accused. He along with the complainant went at the house of the accused. The accused took them at some distance by walk and demanded the money on which the complainant handed over the same. Thereafter, the accused was caught and further procedure was carried out. The tainted notes were recovered from the accused.

During his cross examination, pancha witness PW4 Pradip Kose admitted that he is unable to recollect whether the complaint lodged by the complainant was shown to him. He specifically admitted that at the instance of the officers of the Anti Corruption Bureau he signed the complaint lodged by the complainant. The endorsement, appearing on the said complaint, was reduced into writing by him as per the say of the officers of the Anti Corruption Bureau. The complaint was not lodged in his presence. He further admitted that in the office of the Anti

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Corruption Bureau, they were asked to sign some papers and they have signed without reading the same. Regarding the demand by the accused, he admitted that the accused did not demand money when he met them in front of his house. He further admitted that it did not happen that the accused asked the complainant about him and the complainant disclosed him as his brother-in-law. His further admission shows that sketch of the place of the incident was not drawn in his presence. He along with the accused not entered into the garden. He further admitted that on the spot also some documents were reduced into writing and he signed those papers. The papers were not read over to him.

30. Having appreciated the evidence of complainant PW1 Ramesh Bhonde and pancha witness PW4 Pradip Kose, who are key witnesses to prove the prosecution case, the evidence of complainant PW1 Ramesh Bhonde nowhere shows that the panchas were called on the same day when he approached the office of the Anti Corruption Bureau. His evidence further nowhere shows either he

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narrated the grievance to the panchas or panchas read his complaint and put their signatures. It further discloses that the demand was not verified by the officers of the Anti Corruption Bureau prior to the raid. As per the evidence of the complainant, the demand was made when he was proceeding by walk on Andhalgaon Road and the accused assured him that no action will be taken against him. However, pancha witness PW4 Pradip Kose nowhere stated about the said communication. The evidence further discloses that at the time of the initial demand, the complainant was accompanied by one Shivnath Sonkusare and Shalik Walde who are not examined and even their statements are not recorded by the investigating Officer. The complainant further admitted that the accused explained the officers of the Anti Corruption Bureau that the amount was accepted towards the entry fees of the orchestra programme.

31. As observed earlier, pancha witness PW4 Pradip Kose has also not stated that complainant PW1 Ramesh Bhonde narrated the grievance or he read over the

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complaint. He specifically stated that at the instance of the officers of the Anti Corruption Bureau he signed on the complaint and made endorsement which was appearing on the complaint. He further specifically admits that he signed on the papers at the office of the Anti Corruption Bureau (while pre-trap panchanama) on the say of the officers without reading the same. As far as the demand is concerned, he specifically admitted that the accused has not demanded the money and also not stated about the conversation that the accused assured the complainant that no action would be taken against him. Not only this, he admits that he signed on the sketch map without seeing it and also signed on the documents prepared at the spot without reading the same.

32. Thus, there are various inconsistencies in the evidence of the prosecution witnesses. The admissions given by pancha witness PW4 Pradip Kose, that the accused has not demanded the amount and the complainant handed over the same, affect the prosecution case. It is pertinent to note that this witness admitted to

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the extent that he signed the panchanamas and the sketch map without reading and without seeing the same.

33. In the light of the above evidence, the evidence of investigating officer PW6 Rajendra Pali, who narrated that the complaint of the complainant was read by the panchas and the complainant narrated the grievance is not corroborated either by pancha witness PW4 Pradip Kose has also not stated that complainant PW1 Ramesh Bhonde. His further evidence shows that the complainant visited the police station by bicycle and, therefore, bicycle was given to the complainant and the pancha to proceed to the house of the accused is also not narrated either by the complainant or the pancha. The investigating officer has also not recorded statement of independent witnesses Shivnath Sonkusare and Shalik Walde who were present along with the complainant at the time of initial demand. The investigating officer has also not verified the demand before conducting the raid. He stated that he along with the other raiding party members hide himself at the place from which he and other members witnessed the incident

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that the complainant has handed over the amount to the accused. The rough sketch map is at Exhibit-27 wherein their place of standing is not shown. Though he has shown the place where the accused was standing, he also shown the distance from the place from where the complainant gave signal.

Thus, it is pertinent to note that though he deposed that he and other raiding party members were hiding themselves at such place from which the place where the complainant and the accused were communicating was visible, but the same place is not shown by him in the sketch map.

34. PW3 Ashok Kadao, is the police constable whose evidence is formal in nature on the point that he was present along with the accused when the accused visited village Dongargaon for investigating the complaint received against the accused.

35. PW5 Mohammad Matinkhan s/o Ismail Khan Pathan, is another police officer who received the report

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lodged by investigating officer PW6 Rajendra Pali. Thus, his evidence is also formal in nature.

36. The issue involving the offence under the said Act is, whether the demand and the acceptance are proved by the prosecution.

37. Learned Senior Counsel for the accused submitted that the amount was accepted against the orchestra ticket which was organized for the welfare fund of the police employees. The investigating officer collected extract of register which shows that some tickets were issued to the accused for sale and the accused deposited the said amount against the said sale. Thus the defence of the accused is substantiated by the documentary evidence.

38. Learned Senior Counsel for the accused further submitted that it is well settled that mere recovery of amount is not sufficient to infer that accused has accepted the said amount as bribe amount. The investigating officer is expected to conduct investigation impartially. He

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submitted that the accused immediately gave an explanation which is substantiated by the document. He submitted that the explanation of the accused was not placed on record by the investigating officer.

39. Learned Senior Counsel for the accused placed reliance on the decision of this court in the case of **Uttam s/o Ramaji Shere vs. State of Maharashtra** cited *supra* wherein it is considered an aspect and held that when written explanation was offered by appellant and it was made part and parcel of papers, it was the duty of investigating officer to place the same on record. It is further observed that right from beginning it was defence of appellant that he accepted amount which was given to him by complainant in a transaction of loan amount.

Learned Senior Counsel submitted that in the present case also since inception it was the defence of the accused that the amount was accepted towards the payment against the said orchestra ticket which was given

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to the complainant. The investigating officer has not carried out the investigation in that regard.

40. Considering the entire evidence on record and the settled position of law, the evidence of complainant PW1 Ramesh Bhonde is to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

41. In the case of **M.O.Shamsudhin vs. State of Kerala¹⁰**, it has been held that word "accomplice" is not defined in the Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in crime. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.

¹⁰ (1995)3 SCC 351

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42. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**¹¹ wherein it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

“According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.”

43. Thus, in catena of decisions, it is held that the complainant himself is in the nature of accomplice and his story *prima facie* suspects for which corroboration in material particulars is necessary.

44. In the present case, admittedly, there is a variance in the evidence of complainant PW1 Ramesh Bhonde and pancha witness PW4 Pradip Kose. Both these witnesses nowhere state that before acting as pancha, panchas either read the contents of the complaint or

11 1963 Mh.L.J. (SC) 273

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verified from the complainant regarding his grievance. The evidence of the complainant shows that at the time of initial demand he was accompanied by other two persons whose statements are neither recorded nor examined before the court. PW4 Pradip Kose specifically admitted that the accused has not demanded the amount.

45. Insofar as the earlier demand by the accused is concerned, it is deposed that one Shivnath Sonkusare and Shalik Walde were present. These two persons are not examined. The investigating officer has not recorded their statements.

46. In the case of **Tryambak Lilaji Binnar vs. State of Maharashtra**¹² this court held that the prosecution has chosen not only not to examine him but it appears that even his statement was not recorded during the course of investigation and no attempt was made by the Investigating Officer to get himself satisfied regarding the complainant's assertion of demand having come from the appellant for illegal gratification. While considering the

¹² 2002(3) Mh.L.J. 293

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evidence of prosecution it is necessary to bear in mind the importance of evidence of prior demand which if trustworthy makes the trap a legitimate to eradicate corruption otherwise it could be an illegitimate trap.

47. In the case of **State of Punjab vs. Sohan Singh**¹³ also the Honourable Apex Court considered the aspect of non examination of independent witness and held that independent witness drawn by the raiding party not examined on the ground that he was won over.

48. It is well settled that mere possession and recovery of currency notes from accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i)(ii) of the said Act.

49. It is held by the Honourable Apex Court in paragraph Nos.13 and 14 in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab** cited *supra* as follows:

13 (2009)6 SCC 444

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"13. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:

"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 three years but which may extent to seven years and shall also be liable to 2 (2014) 5 SCC 103 3 (2016) 11 SCC 357 fine.

13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct, (2)....."

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14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In *A.Subair vs. State of Kerala*, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent."

50. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing and since proof of demand is *sine qua non* for convicting the accused in such cases, in the present case, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt.

51. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**¹⁴ this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the reason being that the complainant is also considered to be an interested

14 2017 ALL MR (Cri) 3269

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witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to by-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. Whereas, burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt.

52. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**¹⁵ held that the primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word "gratification" is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learner's

¹⁵ (1997)10 SCC 600

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Dictionary of Current English, the word "gratification" is shown to have the meaning "to give pleasure or satisfaction to". The word "gratification" is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient. If the money paid is not for personal satisfaction or pleasure of the recipient it is not gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

53. In the case of **State of Maharashtra vs. Rashid B.Mulani**¹⁶ it is held that a fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the

¹⁶ (2006)1 SCC 407

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supposition that it exists. Unless therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Something more, than raising a reasonable probability, is required for rebutting a presumption of law. Though, it is well-settled that the accused is not required to establish his explanation by the strict standard of 'proof beyond reasonable doubt', and the presumption under Section 4 of the Act would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable.

54. In the present case, upon careful consideration of the prosecution evidence, particularly the evidence of complainant PW1 Ramesh Bhonde and shadow pancha PW4 Pradip Kose, I find that the prosecution could not establish beyond reasonable doubt the prior demand that the gratification was demanded by the accused. The evidence of the complainant and the shadow pancha is not corroborative on material particulars which requires to corroborate in view of the decision of the Honourable Apex

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Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**¹⁷.

55. The earlier demand, as per the prosecution, was in the presence of independent witnesses who are not examined by the prosecution. The material evidence shows that there is absolutely no material to ascertain the fact that the accused has demanded the amount for not taking action as the complaint against the complainant was already under investigation.

56. It is well settled that while deciding the offence under said Act, complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of complainant should be corroborated in material particulars. The complainant cannot be placed on any better footings than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

¹⁷ (1979)4 SCC 526

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57. As far as the applicability of presumption is concerned, the constitution bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**¹⁸ has held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands. It is further held that insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has

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to be raised by the court as a legal presumption or a presumption in law.

58. In the instant case, as observed earlier, that prior demand by the accused is not proved by the prosecution, a doubt is created as to the demand of the amount as independent witnesses are not examined and there is no consistency in the evidence of complainant PW1 Ramesh Bhonde and and shadow pancha PW4 Pradip Kose.

59. it is well settled that granting of sanction is a solemn sacrosanct act which affords protection to the government servants against frivolous prosecutions, there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The sanctioning authority to exercise powers strictly keeping in mind all relevant facts and material and accord the sanctions.

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60. In the present case, the evidence of sanctioning authority PW2 Prashant Burde is a very cryptic in nature and discloses that what material was considered to satisfy while according the sanction.

61. Thus, the entire exercise carried out, as far as the sanction is concerned, is without application of mind. A sanction order showing *prima facie* application of mind is a valid sanction.

62. Thus, on the ground of sanction also, the prosecution in the present case fails. The evidence, as to the demand, is not satisfactory and proof of demand is *sine qua non* to prove the charge.

63. In view of the above, the appeal deserves to be allowed, I pass following order:

ORDER

(1) The criminal appeal is **allowed**.

(2) The judgment and order of conviction and sentence dated 23.3.2005 passed by learned Special Judge, under

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the Prevention of Corruption Act, Nagpur in Special Criminal Case No.8/1998 convicting and sentencing the accused is hereby quashed and set aside.

(3) The accused is acquitted of offences for which he was charged and sentenced.

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!