



Judgment

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

CRIMINAL APPEAL NO.178 OF 2015

Sopan s/o Kadu Choudhari,
aged about 49 years, occupation service,
r/o Middle Class Housing Society,
Opposite Telephone Exchange,
Navi Mumbai. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
through Anti Corruption Bureau,
Gadchiroli. **Respondent.**

=====
Shri S.V.Sirpurkar, Counsel for the Appellant.
Shri I.J.Damle, Additional Public Prosecutor for the State.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 03/08/2023
PRONOUNCED ON : 06/09/2023

JUDGMENT

1. The appellant (accused) has challenged judgment and order of conviction and sentence dated 15.5.2015 passed by learned Special Judge, Gadchiroli (learned Judge of the trial court) in Special Case No.2/2013.

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2. By the said judgment and order of conviction impugned, learned Judge of the trial court convicted the accused for offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (the said Act) and sentenced him to suffer rigorous imprisonment for one year and to pay fine Rs.10,000/-, in default, to suffer simple imprisonment for six months.

3. Brief facts of the prosecution case emerges from police papers and recorded evidence are as under:

One Shobha Raju Gundawar, was complainant. She was retail kerosene dealer at Bori, taluka Aheri, district Gadchiroli. The accused was serving as Police Inspector and was attached to Aheri Police Station. On 5.2.2011, the accused visited her house and verified stock of kerosene and found 401 liters kerosene in excess. She approached the accused and, as per allegation, the accused demanded Rs.20,000/- for non-registering the offence and to file a favourable reply in her anticipatory bail application. It is further alleged that on 2.3.2011, when she was released on

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bail, the accused contacted her and demanded Rs.20,000/- from her. She agreed to pay Rs.10,000/- within 4-5 days and remaining Rs.10,000/- later on. On 6.3.2011, at about 1:30 pm, as per allegation, one Linga Durge came to her house and the accused demanded the same amount by calling on the mobile phone of said Linga. She was asked to pay the amount by 9.3.2011. As she was not willing to pay the amount, she approached the Anti Corruption Bureau, Gadchiroli and lodged report on 8.3.2011.

4. After receipt of the report, officers of the Anti Corruption Bureau called two panchas. In the presences of the panchas, the complainant was asked to narrate the incident which was verified by the panchas from First Information Report. After following due procedure, it was decided to conduct a raid and the panchas and complainant were called in the office on 9.3.2011 before proceeding to conduct raid. The demand was verified by asking the complainant to call the accused. The complainant produced tainted amount, before the officers of the Anti Corruption

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Bureau, ten currency notes denomination of Rs.1000/-. A demonstration, as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted amount and kept in the purse of the complainant. Some instructions were given to pancha No.1 Charitra Eknath Uikey to stay with the complainant and pancha No.2 was asked to stay along with the raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, a pre-trap panchanama was drawn.

5. After the pre-trap panchanama, the complainant along with the panchas and raiding party members went to the office of the accused. The complainant along with pancha No.1 visited the office of the accused and the accused demanded the amount and the complainant handed over the same to him. The accused was caught after the complainant gave signal to the raiding party members. Pancha No.1 disclosed as to demand and acceptance. The amount was recovered from drawer of table of the accused. Accordingly,

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

6. During trial, the prosecution examined in all 6 witnesses viz. Shobha Raju Gundawar (PW1) vide Exhibit-31, the complainant; Charitra Eknath Uike (PW2) vide Exhibit-36, the shadow pancha; Sanju Shankar Dayal (PW3) vide Exhibit-8 on sanction; Chandrakant Kisan Bhor (PW4) vide Exhibit-51, Nodal Officer; Vikas Maroti Mali (PW5) vide Exhibit-52, Nodal Officer, and Sheikh Sabbir Ahamad Ab.Gaffar (PW6) vide Exhibit-62, the Investigating Officer.

7. The accused has also adduced evidence by examining defence witnesses viz. Linga Durge (DW1) vide Exhibit-85 and Sarang Vasantrao Ghotkar (DW2) vide Exhibit-88.

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8. Besides, the oral evidence, the prosecution further relied upon the complaint Exhibit-32; verification panchanama Exhibit-37; pre-trap panchanama Exhibit-39; seizure memos Exhibits-40 to 43; post-trap panchanama Exhibit-46; sanction order Exhibit-49; letter to the Deputy Chief Executive Officer to call two employees to act as panchas; FIR Exhibit-66 lodged by Investigating Officer PW6 Sheikh Sabbir Ahamad Ab.Gaffar; letter to Chemical Analyzer Exhibit-69, and Chemical Analyzer's Report Exhibit-78.

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. I have heard learned counsel Shri S.V.Sirpurkar for the accused and learned Additional Public Prosecutor Shri I.J.Damle for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

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11. Learned counsel for the accused submitted that the judgment and order of conviction impugned is not in accordance with law. There was no valid sanction. The prosecution failed to prove the demand and acceptance of the bribe. As a matter of fact, even 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 complainant PW1 Shobha has admitted that the amount was handed over in an envelope. Admittedly, the amount is not recovered from the person of the accused. The Chemical Analyzer's Report shows that the accused has accepted the amount since as per evidence, appearance of solution of phenolphthalein powder was found on his fingers. This entire evidence is contradictory. As far as verification panchanama is concerned, it reveals that it was complainant PW1 Shobha who informed that she has brought the money. The said communication nowhere shows that the accused has demanded the money. Thus, prior demand is not proved by the prosecution. The prosecution failed in absence of the

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demand. In absence of the demand, acceptance becomes irrelevant and for all above these reasons, the case of the prosecution fails and the accused is to be released.

12. In support of his contentions, learned counsel for the accused placed reliance on decisions in case of **C.M.Girish Babu vs. CBI, Cochin, High Court of Kerala¹** and **Panalal Damodar Rathi vs. State of Maharashtra²**.

13. *Per contra*, learned Additional Public Prosecutor for the State, submitted that not only complainant PW1 Shobha but also shadow pancha PW2 Charitra Uike proves that there was a demand and in pursuance of the said demand, the amount was accepted. The amount was recovered from drawer of table of the accused. The sanction order is valid. Thus, the prosecution has proved the demand as well as the acceptance and the valid sanction and, therefore, no interference is called for in the judgment and order passed by learned Judge of the trial court.

¹ (2009)3 SCC 779

² (1979)4 SCC 526

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14. Since question of validity of the sanction has been raised as a primary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

15. In order to prove the sanction order, the prosecution placed reliance on the evidence of PW3 Sanju Dayal, who is examined on the sanction.

The sum and substance of the evidence of the said witness is that on 1.8.2011, he was serving as Director General of Police. He received letter for prior sanction for prosecution of the accused serving as Police Inspector of Aheri Police Station. He received all requisite documents and perused it. He also saw legal opinion and after perusal of all documents, he found that there was sufficient *prima facie* evidence and accorded the sanction, Exhibit-49. His evidence further shows that he was competent to appoint and remove the accused. His cross examination shows that

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he sent all documents for legal opinion to Shri Lalwani, who is his officer bearer. He received a legal written opinion. He prepared a rough draft of the sanction order, which may be available in his office.

16. On the basis of the above evidence of PW3 Sanju Dayal, the prosecution claimed that the prosecution has proved the sanction order.

17. Perusal of the sanction order reveals that in first para of the sanction order, the designation and description as to the offence committed by the accused are mentioned. In second para, the alleged incident is mentioned. In sub paras Nos.ii and iii, description of the offence is mentioned and in para No.3 it is mentioned that the sanctioning authority fully examined the papers of investigation, applied his mind, and accorded the sanction.

18. Thus, the entire sanction order nowhere discloses that which papers he had received and considered while according the sanction.

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19. Whether the sanction is valid or not and when the sanction can be called as valid, the same is settled by the various decisions of the Honourable Apex Court as well as this court.

20. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**³ 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.

21. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**⁴ has held that

³ 1979 AIR 677

⁴ 2014 Cri.L.J.930

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sanction lifts the bar for prosecution and, 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 exercised strictly

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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.

22. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**⁵ has 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 under the Act by refusing to accord sanction for his prosecution or not. For the

⁵ (2007)11 SCC 273

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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.

23. The view in the case of **State of Karnataka vs. Ameerjan** cited *surpa* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**⁶.

24. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**⁷ 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 consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

⁶ 2021 SCC OnLine Bom 237

⁷ 2016 ALL MR (Cri) 3697

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25. In view of the settled principles of law, it is crystal clear that sanctioning authority has to apply his/her own independent mind for generation of its satisfaction for sanction. The mind of sanctioning authority should not be under pressure and he/she has to apply his/her 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, 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.

26. After going through the evidence of sanctioning authority PW3 Sanju Dayal, his evidence shows that though he stated that he has applied his mind and perused the investigation papers, the sanction order nowhere discloses that it was he who applied his mind by perusing the investigation papers. The wordings used in the sanction

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order are that, "he (the sanctioning authority) examined the papers of the investigation having applied his mind". His evidence further shows that he obtained a legal opinion of one Shri Lalwani. The said legal opinion was not placed before the court. Thus, it is apparent that it was one Shri Lalwani who examined the investigation papers and on the basis of the legal opinion, the said sanction was issued. If the said opinion had been produced, sufficient light, perhaps, would have been thrown on the exercise undertaken for according the sanction. Admittedly, grant of sanction is a serious exercise of power by competent authority. It has to be apprised of all relevant materials and on such materials, the authority has to take a conscious decision as to whether facts would show commission of offence under the relevant provisions. No doubt, elaborate discussion is not required, however the decision making on relevant materials should be reflected in the order.

27. After going through the evidence of sanctioning authority PW3 Sanju Dayal, admittedly, the sanction order

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nowhere reflects on which documents the sanctioning authority came to conclusion that the sanction is to be accorded. There is no finding by the learned Judge of the trial court as to validity of the sanction. In fact, learned Judge of the trial court has not framed a point as to validity of the sanction which was required.

28. Besides the issue of the sanction, the prosecution claimed that the accused demanded the gratification amount and accepted the same. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Shobha, examined vide Exhibit-31 and shadow pancha PW2 Charitra Uike, examined vide Exhibit-36.

29. The evidence of complainant PW1 Shobha discloses that on 5.2.2011, the accused visited her shop at village Bori and found that there is an excess stock of 401 liters of kerosene and registered the crime against her. As per allegations, in order to avoid her arrest, he demanded Rs.20,000/- from her. Thereafter, she filed an application for

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anticipatory bail. The accused demanded amount Rs.20,000/- to file favourable reply. The said anticipatory bail application was rejected. However, directions were given to appear before the trial court on 7.3.2011. She appeared before the trial court and the trial court granted her anticipatory bail. During the pendency of the anticipatory bail application, this court had granted her protection subject to condition that she shall attend police station for investigation purpose. She further alleged that on 7.3.2011 itself, one Linga Durge came to her house and put forth the demand made by the accused. Said Linga Durge had also called the accused and the accused demanded money from her. Thereafter, she approached the office of Anti Corruption Bureau and lodged the report. During her evidence, she narrated about the entire procedure laid down by officers of the Anti Corruption Bureau. She further deposed that when she approached the office of the accused with pancha No.1, the accused demanded the amount and accepted the same. Her evidence further discloses that prior to proceeding to the office of the accused, officers of the Anti Corruption Bureau

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asked her to call on mobile phone of the accused. She asked the accused about the payment and he called her in the evening.

During the cross examination, it revealed that *interim* bail was granted to her by the High Court on 23.2.2011 and she was asked to approach the trial court on 7.3.2011. She admitted during her cross examination that since 6.3.2011, she has not attended Aheri Police Station. She further admitted that she never attended Aheri Police Station with Linga Durge. She further admitted that on 7.3.2011, there was no mobile conversation between her and Linga Durge and the accused. From her cross examination, it further reveals that one crime was registered against her as she was found in possession excess stock of kerosene. Naib Tahsildar has collected all documents from her. She further admitted that she has put the money in drawer of table of the accused. She stated in a specific sentence that "it is true that at that time, after putting the money in drawer of table of the accused, Me, my son, panchas, and the accused

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came outside the chamber.” Thus, as per the defence, the amount was kept in drawer in the absence of the accused.

As regards the allegations, that Linga Durge approached her at her house and made a telephonic call to the accused and the accused demanded the amount, is not sustainable as she has specifically admitted that there was no communication between her and Linga Durge and the accused on 7.3.2011.

30. To corroborate the version of complainant PW1 Shobha, the prosecution examined shadow pancha PW2 Charitra Uikey. His evidence discloses that he along with another pancha approached the office of the Anti Corruption Bureau. The officer of the Anti Corruption Bureau informed that one complaint is received against a public servant in respect of bribe. The said complaint was handed over to him to read. The complainant has narrated the facts and stated that the accused has demanded the amount. Thereafter, Investigating Officer PW6 Sheikh Sabbir Ahamad Ab.Gaffar asked the complainant to communicate to the accused on

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mobile by switching the mobile on speaker. The complainant had made mobile call to the accused and said that she is ready to deliver the amount. However, the accused told to bring the money on that day itself in the evening. Accordingly, verification panchanama was drawn. Thereafter, pre-trap panchanama was drawn by showing them demonstration of phenolphthalein powder and sodium carbonate. He was also instructed to remain with the complainant and also informed that the amount should not be delivered forcibly. He went along with the complainant in the office of the accused. There was a discussion. The complainant showed her readiness to pay the amount and the accused accepted the same. The complainant had picked the envelope from right hand finger and handed over the same to accused. The complainant gave a signal and the accused was caught and the amount was recovered from drawer of table of the accused.

His cross examination shows that the right hand's fingers of the accused were dipped in the solution of sodium

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carbonate and the colour of the solution became purple. The said solution was sealed by affixing the seal of their signatures. It further shows that the accused was asked to dip his left hand fingers, but there was no change in the colour of solution. The evidence further shows that the amount was recovered from drawer of the accused which was handed over in an envelope. He further admitted that the phenolphthalein powder was not pasted to that envelope. Thus, if the entire cross examination is considered, it shows that prior to conducting the raid, the demand was verified by making a telephonic call to the accused. The communication is recorded in the verification panchanama which shows that it was the complainant who has shown her willingness to hand over the amount. The said communication communication is reproduced below for reference :

Shri Choudhary :- Hello

Complainant :- Hello, is Choudhary Sir speaking?

Shri Choudhary :- Yes.

Complainant :- Sir, Mrs.Gundawar speaking here.

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Shri Choudhary :- Speak up.

Complainant :- Sir, where are you?

Shri Choudhary :- I am outside.

Complainant :- I coming tomorrow morning with the money.

Shri Choudhary :- Come by evening if possible.

Complainant :- Sir, as I am not feeling well, I have come to the hospital. I can not come today. I will come tomorrow. Are you going anywhere?

Shri Choudhary :- O.K. I will be present at Police Station tomorrow morning. I will not go anywhere. You come and call me while coming.

Complainant :- O.K. Sir.

Thus, the said communication nowhere shows that the accused has made any demand in presence of the panchas during the verification of the demand.

The evidence of the pancha and the complainant further shows that after meeting the accused, it was the complainant who has informed that

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she has brought the amount and handed over the same. Shadow pancha PW2 Charitra Uikey, further admitted that the amount was handed over in an envelope on which no solution was pasted. His evidence further shows that after the accused was caught, his right hand fingers were dipped in a solution and the colour of the solution changed. If this entire evidence is considered, the same evidence is not inspiring confidence. Admittedly, neither the complainant nor the pancha stated about the demand by the accused during the verification of the demand. Moreover, the evidence shows that the amount was handed over in an envelope on which solution was not pasted . Admittedly, it is nobody's case that the accused has handled tainted notes.

31. In view of the above circumstances, no question arises as to appearance of the said solution on the fingers of the accused.

32. To prove the communication between the complainant and the accused on 6.3.2011, Nodal Officers

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PW4 Chandrakant Bhor and PW5 Vikas Mali (PW5) were examined.

As per the evidence of Nodal Officer PW4 Chandrakant Bhor, there was a call from mobile No.7620122713 to mobile No.8055692650. The mobile phone No.8055692650 recovered was in the name of Linga Durge.

As per the evidence of Nodal Officer PW5 Vikas Maruti Mali, on 6.3.2011 one call was made from 8055692650 to 9403237005. The Mobile No.9403237005 is registered in the name of the accused. Though this evidence is considered, it nowhere proves that the communication through this call was between the accused and the complainant as no tower location is on record to show that from which place the said call was made. The mobile No.7620122713 is in the name of the complainant. Admittedly, the complainant and said Linga Durge are from the same village. On the basis of the said call, an

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inference cannot be drawn that the said call was to demand the money.

The defence counsel invited my attention towards the evidence of DW1 Linga Durge who testified that on 6.3.2011 there was a call between him and the accused in respect of preparation of uniform and formation of Gram Suraksha Dal. He further stated that he was Up-Sarpanch and President of Tanta Mukti Samiti. Even, the evidence of Linga Durge and Nodal officers is concerned, it only shows that there was communication between said Linga Durge and the accused. There was communication between said Linga Durge and the complainant. However, it nowhere shows that the said call was made from the house of the complainant by using the mobile phone of Linga Durge and the accused had demanded the amount in absence of tower location report.

33. Learned counsel for the accused submitted that the evidence of complainant PW1 Shobha nowhere shows

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that there was a demand on 6.3.2011. As per her evidence, when she approached the court for grant of bail, on that day, there was a demand by the accused by a telephonic call. There is no evidence as to the telephonic call between her and the accused either on 6.3.2011 or 7.3.2011.

He further submitted that as far as the demand during the verification is concerned, the communication nowhere shows that it was the accused who demanded the amount. The demand during the post-trap panchanama is concerned, the evidence of the pancha as well as the complainant shows that it was the complainant who disclosed that she brought the amount. As per the evidence of the pancha, the amount was handed over in one envelope on which there was no solution. The evidence of the pancha further shows that the fingers of the accused were examined in a solution and colour of the solution changed. These all facts create a doubt about the prosecution case. For that purpose, he placed

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reliance on the decision of the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra** cited *supra* wherein it is held that there could be no doubt that evidence of complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of the complainant

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has been corroborated. The Honourable Apex Court held that it should corroborate to each other.

34. The Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**⁸ has held that the statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

35. While deciding the issue involving the offence under the said Act, a fact required to be considered is that the evidence of complainant PW1 Shobha will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

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36. In the case of **M.O.Shamsudhin vs. State of Kerala**⁹, 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 to 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.

37. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**¹⁰ 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

9 (1995)3 SCC 351

10 1963 Mh.L.J. (SC) 273

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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."

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

39. In present case, learned counsel for the accused rightly pointed out the contradictory evidence of complainant PW1 Shobha and shadow pancha PW2 Charitra Uike, which shows that it was the complainant who disclosed that she came with money. There is no whisper that the accused has demanded the amount. The recorded communication also shows that it was the complainant who disclosed that she brought the amount. The evidence, as to acceptance of the amount by the accused and appearance of solution on his fingers, in the light of the admission given by the pancha that no

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solution was pasted on the envelope, falsifies the case of the prosecution.

40. 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.

41. 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. 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

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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).....”

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.”

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42. 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, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt. The evidence of Investigating Officer PW6 Sheikh Sabbir Ahamad Ab.Gaffar is regarding the steps taken by him to conduct the raid and drawn various panchanamas. He also admitted that at the time of verification, the complainant herself initially stated that she was going to visit him along with money. The accused has not uttered words that the complainant should come with money.

43. Thus, after appreciating the evidence on record, it reveals that the evidence adduced by the prosecution nowhere proves the demand by the accused.

44. It is well settled that mere recovery of amount is not sufficient to prove charges.

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45. Learned counsel for the accused rightly relied upon the decision in the case of **C.M.Girish Babu vs. CBI, Cochin, High Court of Kerala** cited *supra* wherein also it is held that mere recovery of tainted money from accused, when substantive evidence is not reliable, is not sufficient to hold accused guilty. If evidence of prosecution is taken into consideration, in the light of admission given by complainant and pancha, it sufficiently shows that the prosecution failed to prove demand.

46. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**¹¹ 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 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,

¹¹ 2017 ALL MR (Cri) 3269

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the person interested in work may do something to tempt the public servant to bye-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.

47. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**¹² 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 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

¹² (1997)10 SCC 600

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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.

48. In the case of **State of Maharashtra vs. Rashid B.Mulani**¹³ 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 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

¹³ (2006)1 SCC 407

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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.

49. The evidence of complainant PW1 Shobha and shadow pancha PW2 Charitra Uike does not corroborate with each other when corroboration requires in view of the decision of the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra** cited *supra*. The earlier demand, as per the prosecution, is to be proved.

50. 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)**¹⁴ has held that presumption of fact with regard

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

51. In the instant case, as observed earlier, that prior demand by the accused is not proved by the

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prosecution, a doubt is created as to the demand of the amount as the evidence shows that there was no demand from the accused. However, complainant PW1 Shobha disclosed that she came with the amount.

The evidence regarding the acceptance is also doubtful in the light of the admission given by shadow pancha PW2 Charitra Uike, which shows that the amount was handed over in an envelope on which there was no solution pasted. Whereas, the solution was found appearing on the fingers of the accused.

Thus, the evidence, as to acceptance, is not trustworthy.

52. As it has been already observed that 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

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material facts of the case. The sanctioning authority to exercise powers strictly keeping in mind all relevant facts and material and accord the sanctions.

53. In the present case, sanction order Exhibit-49 does not specifically show that what material is considered when subjective satisfaction is recorded while according the sanction. A sanction order showing *prima facie* application of mind is a valid sanction.

54. Thus, on the ground of sanction also, the prosecution fails. The evidence, as to the demand, is not satisfactory and proof of demand is *sine qua non* to prove charges. As such, as 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 15.5.2015 passed by learned Special Judge,

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Gadchiroli in Special Case No.2/2013 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!