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

CRIMINAL APPEAL NO.367 OF 2017
AND
CRIMINAL APPEAL NO.384 OF 2017

CRIMINAL APPEAL NO.367 OF 2017

Shrikant s/o Vishnu Rathod,
aged about 34 years, occupation service,
r/o Barbhai, post : Saoli, Sadoba,
tahsil : Arni, district Yavatmal. ….. **Appellant.**

:: **V E R S U S** ::

The State of Maharashtra,
through Police Station Officer,
(Police Station Ramnager), Anti
Corruption Branch, Chandrapur,
tahsil and district Chandrapur. ….. **Respondent**.

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Shri R.M.Daga, Counsel for the Appellant.
Shri I.J.Damle, Additional Public Prosecutor for the Respondent/State.

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CRIMINAL APPEAL NO.384 OF 2017

Vijaysingh s/o Krushnasingh Thakur,
a/a 59 years, occupation retired,
r/o Gopal Nagar, Chandrapur,
tahsil and district Chandrapur. ….. **Appellant.**

:: **V E R S U S** ::

State of Maharashtra, through
Anti Corruption Bureau Chandrapur,
taluka and district Chandrapur. ….. **Respondent**.

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Shri S.V.Sirpurkar, Counsel for the Appellant.
Shri I.J.Damle, Additional Public Prosecutor for the Respondent/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 02/08/2023
PRONOUNCED ON : 06/10/2023

COMMON JUDGMENT

1. These two appeals are heard together and disposed of by this common judgment since these appeals arise out of the same judgment and order of conviction and sentence dated 31.7.2017 passed by learned Additional Sessions Judge-4 and Special Judge, Chandrapur in Special ACB Case No.2/2009.

2. By the said judgment and order of conviction, appellant Shrikant s/o Vishnu Rathod is convicted for offence punishable under Section 12 read with Sections 7 and 13 of the Prevention of Corruption Act, 1988 (of the said Act) and sentenced him to suffer rigorous imprisonment for six months and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for two months.

Appellant Vijaysingh s/o Krushnasingh Thakur is convicted for offence punishable under Section 7 of the said Act and sentenced him to suffer rigorous imprisonment for two years and six months and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for two months.

Appellant Vijaysingh s/o Krushnasingh Thakur is also convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced him to suffer rigorous imprisonment for three years and to pay fine Rs.7500/-, in default, to undergo rigorous imprisonment for three months.

3. Criminal Appeal No.367/2017 is filed by Shrikant s/o Vishnu Rathod, accused No.2. Whereas, Criminal Appeal No.384/2017 is filed by Vijaysingh s/o Krushnasingh Thakur, accused No.1.

4. In this judgment, the appellants (the accused persons) will be referred to by their original positions in charge.

5. The brief facts leading to the above appeals are as follows:

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At the material time, accused No.1 was working as Assistant Sub Inspector and accused No.2 was working as Police Constable at Ramnagar Police Station, Chandrapur.

6. In the year 2007, Satish Suresh Jaiswal (informant) was owner of vehicle Mini Door bearing No.MH-34-D/2178. He was holding a driving licence. On 25.11.2007, his vehicle was challan by accused No.1 as he was carrying excessive passengers and was asked to pay fine. It is alleged that accused No.1 also obtained his licence and for returning the licence demanded Rs.500/-. As he was not willing to pay the amount of gratification, he approached the office of the Anti Corruption Bureau, Chandrapur (the bureau) and lodged report on 29.11.2007.

7. After receipt of the report, officers of the bureau called two panchas. In presence of the panchas, procedure as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The informant

produced tainted five currency notes denomination of Rs.100/-. The said solution was applied on the tainted notes and the tainted notes were kept in shirt pocket of the informant. Some instructions were given to pancha No.1 Uttam Benduji Nikode to stay with the informant and pancha No.2 was asked to stay along with raiding party members. The informant was further instructed to hand over the amount only on demand.

8. After a pre-trap panchanama, the informant along with pancha No.1 Uttam Nikode went to Bus Stand Police Chowki, Chandrapur. Two police persons approached them on a motorcycle. Out of them, accused No.1 was pillion rider. The informant asked him about the licence and accused No.1 asked him whether he brought the amount and, thereafter, accused No.1 told him to go to the police chowki and hand over it to accused No.2. Accordingly, accused No.1 left the place and the informant went to the police chowki. Accused No.2 also asked him whether he brought the money and he told that he brought the amount. Accused No.2 asked the copy of the

challan and the amount. He handed over the copy of the challan and the amount. Accused No.2 accepted the amount by his right hand and kept in a trouser pocket and, thereafter, he gave a signal and accused No.2 was caught. The hands of accused No.2 were examined and the tainted amount was recovered from him. Accordingly, post-trap panchanama was drawn. The officers of the bureau lodged report about the said incident, seized relevant documents, and sanction was obtained to prosecute the accused persons. After completion of investigation, chargesheet was filed against the accused persons.

9. During trial, the prosecution examined in all three witnesses; viz. Satish Suresh Jaiswal (PW1) vide Exhibit-10, the informant; Uttam Benduji Nikode (PW2) vide Exhibit-19, the shadow pancha, and Shriram Madhavrao Todase (PW3) vide Exhibit-28, the investigating officer.

10. Besides the oral evidence, the prosecution further relied upon the complaint (Exhibit-11), personal search panchanama of the informant (Exhibit-12), seizure memo of articles of the informant (Exhibit-13), seizure memo of articles of the informant after the trap (Exhibit-15), Notice to the informant by the accused persons under the Motor Vehicles Act (Exhibit-16), pre-trap panchanama (Exhibit-20), seizure memo of articles of accused No.2 (Exhibit-21), seizure memo of articles of accused No.1 (Exhibit-22), seizure memo of pant of accused No.2 (Exhibit-23), list of articles found during personal search of accused No.1 (Exhibit-24), list of articles found in personal search of accused No.2 (Exhibit-25), post-trap panchanama (Exhibit-26), letter of the investigating officer to call panchas (Exhibit-29), Motor Vehicle Challan (Exhibit-31), sketch map (Exhibit-36), complaint lodged by investigating officer PW3 Shriram Todase (Exhibit-38), First Information Report (Exhibit-39), letter to Chemical Analyzer (Exhibit-40), invoice challan (Exhibit-41), report of carrier (Exhibit-42), Chemical Analyzer's Report

(Exhibit-43), sanction order (Exhibit-56), explanations by the accused persons (Exhibits-63 and 64).

11. After considering the evidence adduced during the trial, learned Judge of the trial court held the accused persons guilty and sentenced them as the aforesaid.

12. I have heard learned counsel Shri S.V.Sirpurkar for accused No.1; learned counsel Shri R.M.Daga for accused No.2, and learned Additional Public Prosecutor Shri I.J.Damle for the respondent/State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeals.

13. Learned counsel appearing for the accused persons submitted that the demand and acceptance are not proved as neither evidence of informant PW1 Satish Jaiswal nor evidence of shadow pancha PW2 Uttam Nikode shows that the accused persons have demanded the amount. The evidence of shadow pancha PW2 Uttam Nikode shows that only informant PW1 Satish Jaiswal went

inside and shadow pancha PW2 Uttam Nikode did not personally witness that accused No.2 demanded and accepted the amount. They have further submitted that the entire evidence shows that the action was taken against the accused persons and the amount was paid against the challan. There was no valid sanction as contemplated under Section 19 of the said Act, which was bad in law and, therefore, the conviction imposed on the accused persons stood vitiated on that ground itself. They have further submitted that the previous demand was not verified by investigating officer PW3 Shriram Todase and the demand, on the date of the incident, is not proved and, therefore, the accused persons are entitled to be acquitted as in absence of the demand, acceptance becomes irrelevant.

14. In support of their contentions, learned counsel appearing for the accused persons placed reliance on following decisions:

1.Panalal Damodar Rathi vs. State of Maharashtra[1];

2.Raghunath Jagannath Dongare vs. State of Maharashtra[2]**;**

3.Abdul Mannan Mohd.Yusuf vs. The State of Maharashtra[3]**, and**

4.Neeraj Dutta vs. State (Govt.of NCT of Delhi)[4].

15. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of informant PW1 Satish Jaiswal and shadow pancha PW2 Uttam Nikode proves that there was the demand and in pursuance of the said demand, the amount was accepted. Thus, the prosecution proved the demand as well as the acceptance. He further submitted that as far as the challan is concerned, admittedly, vehicle of PW1 Satish Jaiswal was challan, but the amount was demanded to return the licence. Thus, the prosecution has proved the charges. The Chemical Analyzer's Report also proves fact that accused No.2 accepted the amount and after acceptance,

1 (1979)4 SCC 526
2 2007 ALL MR (Cri) 1656
3 2019 ALL MR (Cri) 2531
4 2023 SCC OnLine SC 280

his hands and pant pockets were examined in the solution and colour of the solution was changed. The evidence on record sufficiently shows that there was the demand and the amount was accepted in pursuance of the said demand.

16. The sanction order is admitted by the defence during the trial, which is at Exhibit-57. Though the sanction order is admitted, it is necessary to see whether the sanction was accorded in the light of Section 19 of the said Act and, therefore, it is necessary to discuss an aspect of sanction.

17. In order to prove the sanction, the prosecution placed reliance on the sanction order which was admitted by the defence. Perusal of the sanction order reveals that the sanctioning authority Superintendent of Police at Chandrapur accorded the sanction on 22.1.2009. In paragraph No.1 of the sanction order, designations of the accused Nos.1 and 2 are mentioned. In paragraph Nos.2, 3, and 4, details regarding allegations made are

mentioned and the accused persons were working as public servants. In paragraph No.5, it is stated that "whereas record of investigation into crime No.3287/2007 of Police Station, Ramnagar, district Chandrapur, after reading the details of the case and satisfied to prosecute the aforesaid both the accused in the competent jurisdiction". And, last paragraph deals with contention that he is competent authority to appoint and remove the accused persons.

18. Perusal of the sanction order reveals that it nowhere mentions that which documents are considered by the sanctioning authority and the sanctioning authority after applying his mind, accorded the sanction.

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**[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.

21. 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, 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

5 1979 AIR 677
6 2014 Cri.L.J.930

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 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**[7] 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 aforementioned purpose, indisputably, application of mind on the part of the

7 (2007)11 SCC 273

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 *supra* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**[8]**.**

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

8 2021 SCC OnLine Bom 237
9 2016 ALL MR (Cri) 3697

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 grant of sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his/her own independent mind on the basis of evidence which came before it. An order of sanction should not be construed in a pedantic manner. A 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 their prosecution or not.

26. Thus, an application of mind on the part of the sanctioning authority is imperative. The order granting sanction must demonstrate that he/she should have applied his/her own mind while according the sanction.

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27. In the present cases, after going through the sanction order, nowhere it reveals that the sanctioning authority has applied his mind by perusing the investigating papers. The wordings used in the sanction order show that he read the papers and accorded the sanction. The sanction order nowhere refers which documents he has referred and on the basis of which he has come to the conclusion that there is a *prima facie* material against the accused persons and, therefore, they are to be prosecuted.

28. Admittedly, grant of sanction is a serious exercise of power by the competent authority. It has to be apprised of all the 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 provisions. No doubt, elaborate discussion is not required. However, decision making on relevant materials should be reflected in order.

29. Besides the issue of the sanction, the prosecution claimed that accused No1 had demanded gratification amount and accused No.2 had accepted the same. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of informant PW1 Satish Jaiswal examined vide Exhibit-10 and the shadow pancha PW2 Uttam Nikode examined vide Exhibit-19.

30. The evidence of informant PW1 Satish Jaiswal reflects that he is owner of owner of vehicle Mini Door bearing No.MH-34-D/2178. The said vehicle was challaned by accused No.1, accused No.1 was working as Assistant Sub Inspector on 25.11.2007 at the relevant time. Accused No.1 told him that he has to pay the fine and, therefore, he requested that he will pay the fine later. Accused No.1 told him that he has to pay challan upto Rs.1000/-, but he told that he is able to pay only Rs.500/- and accused No.1 kept the licence of the informant with him. Thereafter, he handed over Rs.500/- and left the place. Initially, the informant has not supported the

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prosecution case. During cross examination by learned APP, he stated that he agreed to pay Rs.500/- at Bus Stand Police Chowki, Chandrapur. As he was not willing to pay the amount, he approached the office of the bureau. His further evidence shows that in the office of the bureau, his complaint was verified by panchas and, thereafter, he produced gratification amount. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown to them. The solution was applied on the tainted notes and the notes were kept in the shirt pocket. Thereafter, he and shadow pancha PW2 Uttam Nikode were sent to the Bus Stand Police Chowki, Chandrapur. Two police persons came on motorcycle and out of them pillion rider was accused No.1. He asked about his licence to accused No.1 and accused No.1 asked him whether he had brought the amount. On that, he disclosed that he had brought Rs.500/-. Thereafter, accused No.1 told him to go to the police chowki. Accordingly, he went there where he met accused No.2. Accused No.2 has also asked him whether he had brought the amount. Thereafter, he handed over the amount to accused No.2 and the copy of the challan. Accused No.2 accepted the amount, and thereafter, accused No.2 was caught.

31. During cross examination, informant PW1 Satish Jaiswal admitted that after challan, he has to pay the amount either in police station or the court. On 25.11.2007, he was not having money and, therefore, he told that he would pay on 29.11.2007 and, therefore, he had been to the police chowki on that day and paid the amount towards the challan. He specifically admitted that as the amount of challan was exorbitant, he approached the bureau. He specifically admitted that he is not aware about contents of the report. Accused No.1 did not demand for himself, but for challan. He further admitted that without reading the documents, he signed the same. He further admitted that all the documents, which he signed, were in the office of the bureau. He further stated that no role is played by accused No.1 in demanding or acceptance of the amount. He specifically admitted that it

was informed to him if he does not want to go to the court, he can pay the challan to the chowki.

32. Thus, the cross examination of informant PW1 Satish Jaiswal shows that he left loyalty towards the prosecution and specifically admitted that there was no demand from accused No.1. He also admitted that the amount was paid against the challan.

33. To corroborate the version of informant PW1 Satish Jaiswal, the prosecution examined shadow pancha PW2 Uttam Nikode.

The evidence of shadow pancha PW2 Uttam Nikode is to the extent that on 29.11.2007 a trap was laid. The officials of the bureau shown them demonstration. They had verified the complaint. Accordingly, the pre-trap panchanama was drawn. Thereafter, he along with the informant went to the Bus Stand Police Chowki. They were waiting for accused No.1. The informant shown him accused No.1 who came on vehicle two-wheeler. Thereafter, the informant had a talk with accused No.1

and the informant disclosed that he had brought the money. Accused No.1 told them to go to the police chowki. Accordingly, they went to the police chowki. He stopped at the door of the chowki and the informant went inside and handed over the amount. Thereafter,, accused No.2 was caught and the amount was recovered.

His cross examination shows that accused No.1 said to the informant that he shall pay the money and take the receipt. Except the same, there was no communication between them. He further admitted that he had not listened conversations in the police chowki between the informant and accused No.2. He specifically admitted that constable Rathod and the informant came out of the chowki and he followed them and, thereafter, accused No.2 told the informant that they shall visit Ramnagar Police Station and pay the challan and obtain signatures.

34. Thus, informant PW1 Satish Jaiswal and shadow pancha PW2 Uttam Nikode both have admitted that there

was no demand either by accused No.1 or by accused No.2. The amount was paid against the challan. Though investigating officer PW3 Shriram Todase deposed before the court that the amount was accepted against the demand, pancha No.1 has not witnessed that accused No.2 has accepted the amount as he was outside the police station at the relevant time, as per his evidence. Admittedly, investigating officer PW3 Shriram Todase has not verified the demand prior to the trap. He admitted that he has not witnessed accused No.2 accepting the amount as he was present outside the police station along with the raiding party members.

35. After appreciating the evidence on record, it shows that the action was taken against informant PW1 Satish Jaiswal as he was carrying excessive passengers in his vehicle. A Notice was given to him on 25.11.2007 itself which is at Exhibit-32 which shows that he was asked to remain present on 25.11.2007 at 11:00 am in the court. The evidence of the informant shows that as on that day he was not having amount Rs.500/-,

subsequently, he approached the police station and paid the amount. Thus, as far as the demand is concerned, informant PW1 Satish Jaiswal and shadow pancha PW2 Uttam Nikode both have not stated that accused No.1 has demanded the amount and accused No.2 has accepted the same. In fact, the evidence of pancha No.1, who is examined as PW2, shows that accused No.1 only asked them to pay the amount in the police station. As far as the demand by the accused No.2 is concerned, evidence of shadow pancha PW2 Uttam Nikode shows that he had not entered into the police station and not heard the communication between the informant and accused No.2. Thus, the evidence of shadow pancha PW2 Uttam Nikode, as far as the demand is concerned, is not helpful to the prosecution case. Whereas, informant PW1 Satish Jaiswal specifically admitted that he had paid the amount against the challan.

36. Learned counsel appearing for the accused persons submitted that the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**

cited *supra* held that there could be no doubt that the evidence of the 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 has been corroborated. The Honourable Apex Court held that it should corroborate to each other.

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

38. In the case of **M.O.Shamsudhin vs. State of Kerala**[10]**,** 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.

10 (1995)3 SCC 351

39. 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."

40. In the present cases, learned counsel appearing for the accused persons rightly pointed out that neither informant PW1 Satish Jaiswal nor shadow pancha PW2 Uttam Nikode stated about the demand and acceptance. On the contrary, the cross examination frustrates the case of the prosecution as there is a specific admission by the informant that he has paid the amount against the challan and there was no demand either by accused No.1 or by accused No.2. There is no other evidence to show that

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

the accused persons have demanded the amount and accepted the same. Though the prosecution has examined shadow pancha PW2 Uttam Nikode, his evidence shows that in his presence only communication between the informant and accused No.1 was that the informant shall pay the amount in the police station. The communication between accused No.2 and the informant is neither witnessed nor heard by shadow pancha PW2 Uttam Nikode.

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

42. 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**[12] as follows:

> "13. Before averting to the evidence, apt it would be to refer to the provisions of the Act

12 2017 SCC ONLine SC 742

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.
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> 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."

43. In the present cases, 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 accused in such cases, in the present cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt.

44. When a trap is set for proving charge of corruption against public servants, evidence about prior demand has its own importance. The reason is that complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from public servants at any costs and, therefore, whenever public servants bring to notice of such an interested witness, certain official difficulties, person

interested in work may do something to tempt public servants to bye pass rules by promising him some benefits. Since proof of demand is *sine qua non* for convicting accused, in such cases, the prosecution has to prove charges against accused. Whereas, burden on accused is only to show probabilities and he is required to prove facts beyond reasonable doubts.

45. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**[13] held that primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what 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 to the pleasure or

13 (1997)10 SCC 600

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.

46. In the case of **State of Maharashtra vs. Rashid B.Mulani**[14] 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

14 (2006)1 SCC 407

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.

47. As far as 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**) cited *surpa* 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 to be raised by the court as a legal presumption or a presumption in law.

48. In the instant cases, as observed earlier, prior demand by the accused persons is not proved by the prosecution and a doubt is created as to the demand of the amount as informant PW1 Satish Jaiswal and shadow pancha PW2 Uttam Nikode admitted that there was no demand by the accused persons.

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

50. In the present cases, sanction order Exhibit-57 nowhere discloses that what material was examined by the sanctioning authority to come to substantive satisfaction.

51. Thus, the entire exercise carried out, as far as the sanction is concerned, is without application of mind. Thus, on the ground of sanction also, the prosecution in the present cases fails. The prosecution also failed to prove the demand and acceptance. As such, both the appeals deserve to be allowed and, therefore, I proceed to pass following order:

<u>ORDER</u>

(1) The criminal appeals are **allowed**.

(2) The judgment and order of conviction and sentence dated 31.7.2017 passed by learned Additional Sessions Judge-4 and Special Judge, Chandrapur in Special ACB Case No.2/2009 convicting and sentencing accused No.1 and accused No.2 is hereby quashed and set aside.

(3) Accused No.1 and accused No.2 are acquitted of offences for which they were charged and sentenced.

The appeals stand **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!