



Judgment

218 apeal239.04

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

CRIMINAL APPEAL NO.239 OF 2004

1. Laxman s/o Shrawan Raut, (Dead)
aged 57 years, occupation head constable,
r/o Zingabai Takli, Nagpur.

Legal Heirs of appellant No.1:

1-a. Jitendra s/o Laxmanrao Raut,
age 28 years, occupation pvt. job,
plot No.9, Aishwarya Gruh Society,
Om Sai Nagar, Godhani Railway,
Godhani Road, Zingabai Takli,
Nagpur.

1-b. Rajesh s/o Laxmanrao Raut,
age 32 years, occupation pvt. Job,
r/o quarter No.46, MHADA colony,
Near Zingabai Takli, Nagpur.

1-c. Sugandha wd/o Laxman Raut,
age 48 years, occupation housewife,
plot No.9, Aishwarya Gruh Society,
Om Sai Nagar, Godhani Railway,
Godhani Road, Zingabai Takli,
Nagpur.

2. Sudhakar s/o Balaji Irdande, (Dead)
aged 44 years, occupation at present,
head constable, r/o Raghuji Nagar,
police quarter No.105/5, Nagpur.

Legal Heirs of appellant No.2:

2-A. Smt.Savita wd/o Sudhakar

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Irdande, aged about 54 years,
occupation : household.

2-B. Harish Sudhakar Irdande,
aged about 31 years,
occupation : service,
Both r/o Police Quarter Raghuji
Nagar, Nagpur.

..... **Appellants.**

:: VERSUS ::

The State of Maharashtra,
through Anti Corruption Bureau,
Nagpur.

..... **Respondent.**

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Shri S.V.Sirpurkar, Counsel for Appellant Nos.1-a to 1c.
Shri R.M.Patwardhan, Counsel for Appellant Nos.2-A to 2-B.
Shri U.R.Phasate, Additional Public Prosecutor for the State

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 02/04/2024
PRONOUNCED ON : 22/04/2024

JUDGMENT

1. Being aggrieved and dissatisfied with judgment and order dated 29.3.2004 passed by learned Judge, Special Court under the Prevention of Corruption Act, Nagpur (learned Judge of the trial court), in Special Criminal Case No.19/1994, appellant No.1 Laxman Raut and appellant No.2 Sudhakar Irdande (the accused persons) have preferred this appeal.

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2. By the said judgment and order impugned, the accused persons are convicted for offences punishable under Sections 7 and 12 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer rigorous imprisonment for six months and to pay fine Rs.500/- by each of them, in default, to suffer further rigorous imprisonment for three months.

They are also convicted for offence punishable under Section 13(2) read with Section 13(1)(d) of the said Act and sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.1000/- by each of them, in default, to suffer further rigorous imprisonment for six months.

3. Pending disposal of the appeal, the accused persons died and their legal heirs are brought on record who prosecuted the appeal.

4. Brief facts of the prosecution run as under:

Prashant Deshpande (the complainant), was married to Vidhya Chauhan on 2.6.1991 and living with his wife and a daughter. On 11.6.1993, there was a quarrel between him and

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his wife and his wife left her matrimonial home along with her daughter. On 14.6.1993, she lodged a complaint against her husband, the complainant, alleging about ill-treatment and harassment at hands of the complainant for fulfillment of demand of money. Accused No.1 as Head Constable and accused No.2 as Police Constable were serving at Seminary Hills Police Chowky of Police Station Sadar. Assistant Police Inspector Madhukar Pawar was Incharge of the said Seminary Hills Police Chowky as Police Sub Inspector. An enquiry, as regards the complaint filed by the wife of the complainant, was entrusted to accused No.1. On 15.6.1993, the accused persons had visited the house of the complainant and took him to the Police Chowky. The complainant was informed about the complaint lodged by his wife. As per allegations, he was detained in the Police Chowky for four hours and his statement was recorded. It is contentions of the complainant that, though he has to proceed for tour on the next day, accused No.1 has not allowed him to go and demanded Rs.5000/- from him for hushing of the matter. As the complainant has shown his inability to pay the amount, after a negotiation, it was reduced to Rs.500/- and the

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complainant was directed to bring the amount by 2:00 pm on 18.6.1993. On 17.6.1993, the accused persons had again visited the house of the complainant and enquired whether he had made any provisions to pay Rs.500/-. The complainant was earlier threatened that if the amount is not paid, he would be put in jail. As the complainant could not make the provision, on 18.6.1993, he approached the Anti Corruption Bureau at Nagpur (the bureau) and lodged a report. On receipt of the report, officer of the bureau called two panchas on 19.6.1993 and in presence of panchas the complainant narrated the incident which was verified by panchas from the complaint. After following a due procedure, officers of the bureau decided to lay a trap. The complainant produced five currencies of Rs.100/-. A demonstration as to phenolphthalein powder and sodium carbonate was shown. The said solution was applied on tainted notes. The tainted notes were kept in shirt pocket of the complainant. Some instructions were given to pancha No.1 Santoshrao Laxmanrao Sao to stay along with the complainant. The complainant was instructed to hand over the amount only on demand. Accordingly, a pre-trap panchanama was drawn.

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5. After the pre-trap panchanama, the complainant along with pancha No.1 and other raiding party members proceeded towards Seminary Hills Police Chowky. The complainant along with pancha No.1 proceeded on his vehicle. Whereas, other raiding party members followed him. After reaching Seminary Hills Police Chowky, the complainant and pancha No.1 approached accused No.1 who was sitting outside and, thereafter, accused No.1 called accused No.2 and the complainant was called inside by accused No.2. Accused No.2 enquired about identity of the pancha, who was along with the complainant. Thereafter, accused No.2 took the complainant for a cup of tea. After having a cup of tea, they again came to the Police Chowky. Accused No.2 enquired with the complainant whether he brought the amount at the tea stall, which was replied in the affirmative by the complainant. However, the complainant has not handed over the amount by saying that some amount is with his friend. After returning to the police station, the complainant pretended that he obtained the amount from pancha and came inside alone in the Police Chowky and handed over the said amount to accused No.2 and, thereafter, he

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gave a pre-determined signal. In the meantime, accused No.2 left the place and accused No.1 was caught. Accused No.2 was chased by the raiding party members. After some distance, he left the vehicle and jumped from the compound wall and ran away. By running away, he thrown tainted notes near one tree, which was seized by officers of the bureau. Accordingly, post-trap panchanama was drawn. The officer of the bureau lodged report about the incident, seized relevant documents and after obtaining a sanction, prosecuted both accused. Accused No.2 subsequently surrendered before officers of the bureau and he was arrested. After completion of the investigation, chargesheet was filed.

6. During trial, the prosecution examined in all eleven witnesses viz., Prashant Deshpande vide Exhibit-22, the complainant (PW1); Ambikaprasad Tripathi vide Exhibit-30 (PW2); Santosh Sao vide Exhibit-37, the shadow pancha (PW3); Kewalram Maske vide Exhibit-56, the Police Constable (PW4); Dilip Kawale vide Exhibit-59, the Police Constable (PW5); Sunil Jaiswal vide Exhibit-71 (PW6); Madhukar Pawar vide Exhibit-

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72, the Assistant Police Inspector attached to the Police Chowky (PW7); Ramesh Borade vide Exhibit-73, Police Inspector attached to the Sadar Police Station (PW8); Vikas Tidke vide Exhibit-74, the Police Constable (ACB) (PW9); Harnarayan Sambariya vide Exhibit-83, the Sanctioning Authority (PW10), and Dilip Tidke vide Exhibit-92, the Trap Officer (PW11).

7. Besides the oral evidence, the prosecution placed reliance on complaint Exhibit-23; seizure memo Exhibit-24; personal search panchanama of the complainant Exhibit-25; intimation to the complainant Exhibit-27; complaint filed by the wife of the complainant Exhibit-28; statement of the complainant recorded during enquiry Exhibit-29; requisition Exhibit-31; pre-trap panchanama Exhibit-38, seizure memos Exhibits-39, 40, 44, 45, 48, 49, and 54; cheat seized from accused No.1 Exhibit-41; map Exhibit-46; post-trap panchanama Exhibit-47; order sheet as to preventive action Exhibit-50; preliminary order passed in preventive action Exhibit-51; Estegaasha (intimation) Exhibit-52; seizure memo Exhibit-54; extract of station entry Exhibit-62; extracts of duty register Exhibits-63 to 69; sanction order

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Exhibit-85; report by trap officer Exhibit-75; FIR Exhibit-77; letter to Chemical Analyzer Exhibit-79, and the Chemical Analyzer's Report Exhibit-94.

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

9. Heard learned counsel Shri S.V.Sirpurkar for accused No.1; learned counsel Shri R.M.Patwardhan for accused No.2, and learned Additional Public Prosecutor Shri U.R.Phasate for the State. I have been taken through the entire evidence so also the judgment and order impugned in the appeal.

10. Learned counsel appearing for the accused persons respectively submitted that the judgment impugned is erroneous and without appropriate reasoning. The evidence adduced by the prosecution falls short to establish that the amount was accepted towards remuneration or reward. No independent witness is examined to prove the demand. The acceptance of the amount by accused No.2 is also not proved by the

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prosecution as the amount is not recovered from him, but it was recovered from a an open place. The sanction to prosecute the accused persons, as contemplated under Section 19 of the said Act, is bad in law and, therefore, the conviction and sentence imposed upon the accused persons stands vitiated on that ground itself. The defence of the accused persons is supported by cross examination. Thus, presumption is rebutted by the accused persons on the basis of preponderance of probability. As proof of demand, which is *sine qua non*, is not established and, therefore, the entire case of the prosecution fails. In view of the same, the accused persons deserve to be acquitted.

11. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed contentions of learned counsel appearing for the accused persons respectively and submitted that the evidence of the complainant is corroborated by shadow pancha PW3 Santosh Sao, which proves the demand by accused No.1 and acceptance by accused No.2. The evidence further shows that the wife of the complainant had filed the complaint against the complainant and enquiry was entrusted to accused No.1.

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Accused No.1 visited the house of the complainant and demanded the amount. In pursuance of the demand, the amount was accepted. The circumstance, that accused No.2 ran away after the incident, also supports the case of the prosecution. The defence raised by accused No.1 is that he had not issued No Objection Certificate in favour of the father of PW11 Dilip Tidke, the Trap Officer, to run a bar and, therefore, he is implicated falsely, is not probable and reasonable. Not only the evidence of complainant PW1 Prashant Deshpande and pancha but also the evidence of Police Constable deputed at the Police Chowky, where the accused persons were deputed, corroborates facts that accused No.1 was looking into enquiry and the amount was demanded for not taking action against the complainant. He submitted that looking into circumstances and evidence, which is consistent, no interference is called for in the judgment impugned in the appeal.

12. Since question of validity of the sanction has been raised as a primary point by learned counsel for the accused persons, it is necessary to discuss an aspect of sanction. The sanction order

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was challenged on ground that it was accorded without application of mind and mechanically and, therefore, it is not valid sanction.

13. In view of well settled principles of law, the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. A sanction order should speak for itself. It is well settled that sanction order should not be so elaborate like an order of court containing a detailed reasons, but it should be after application of mind. Ultimately, an object of grant of sanction should be able to consider evidence and material before it and the Sanctioning Authority shall come to conclusion that whether the prosecution in circumstances be permitted or forbidden.

14. To prove the sanction, the prosecution examined Sanctioning Authority PW10 Harnarayan Sambariya. As per his evidence, in the year 1994, he was serving as the Commissioner of Police. Accused No.1 was working as Head Constable and accused No.2 was working as Police Constable. Being the Commissioner of Police, he was appointing and competent

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authority to remove them from services. He received case papers pertaining to crime No.255/1993 along with relevant investigation papers for grant of sanction. He had gone through papers and also called Investigating Officer and after application of mind, he satisfied himself regarding fact that there was a sufficient evidence to put the accused on trial. Accordingly, he accorded the sanction which is at Exhibit-85. During cross examination, he admitted that he received a draft sanction order and he does not remember whether he made any changes in the draft sanction order. He has not found necessary to mention specific papers on the basis of which the sanction is granted. Even during the cross examination, he stated that he had gone through relevant papers and accorded the sanction. Perusal of the sanction order reveals that he had mentioned entire events which took place during the pre-trap and post-trap panchanamas and specifically mentioned that upon reading papers of investigation, he is of opinion that a sanction should be granted to prosecute the accused persons.

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15. Thus, Sanctioning Authority PW10 Harnarayan Sambariya, while according the sanction, considered investigating papers and also got acquaintance with facts of the case and the evidence by discussing the same with ACB office PW11 Tidke and after reading the papers and considering the entire material accorded the sanction.

16. It is a well settled that sanction is solemn and sacrosanct act. It is also well settled that the law requires no sanction to be given in particular form. The sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Section 19 of the said Act.

17. In the present case, not only relevant papers are perused by Sanctioning Authority PW10 Harnarayan Sambariya but also he had called an officer of the bureau and discussed with him about the material collected and the evidence and after satisfying himself, he accorded the sanction.

18. As observed earlier, that the sanction order is not required to be passed as of a court order, sub section (4) of

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Section 19 of the said Act states that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice.

19. The issue of sanction should not be put at such pedestal as would make it impossible for the prosecution and the court to prosecute an accused. The object and purpose of grant of sanction and protection contemplated thereby does not mean that technical and trivial objections to legality and validity of sanction to be entertained. When all relevant materials placed before the sanction authority are found to be taken into consideration in correct perspective. The sanction accorded is by application of mind. Merely because there are some irregularities the same would not lead to conclusion that there was non-application of mind by the sanctioning authority.

20. By applying the above well settled principles of law to the instant case, the evidence of Sanctioning Authority PW10 Harnarayan Sambariya sufficiently shows that he not only considered investigating papers but also obtained necessary

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information for the Investigating Officer and after application of mind, he accorded the sanction.

21. Thus, the sanction accorded is after application of mind and, therefore, the contention of learned counsel for the accused persons is not sustainable and is liable to be discarded.

22. Besides the sanction order, the prosecution claimed that the accused persons demanded gratification amount and accepted the same. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Prashant Deshpande and shadow pancha PW3 Santosh Sao.

23. On the question of demand and payment of bribe for performance of public duty or forbearance to perform such duty, it is necessary to see testimony of complainant PW1 Prashant Deshpande. The evidence of the complainant shows that he is serving as a Medical Representative in Pharmaceutical Company. He married with one Vidhya Chauhan and was living with her and a daughter. On 11.6.1993, a quarrel took place between

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him and his wife. On 12.6.1993, he left the house for tour and behind his back, his wife also left the house along with the daughter. When he returned home on 13.6.1993, he came to know about this fact. On 14.6.1993, the accused persons visited his house and informed him that his wife lodged the complaint against him and took him along with them in Seminary Hills Police Chowky. He further testified that he was unnecessarily detained for four hours and when he requested to let him go, accused No.1 demanded amount Rs.5000/- from him for not taking action against him. After a negotiation, accused No.1 agreed to accept amount Rs.500/- and asked him to come along with the amount on 18.6.1993. Prior to that, on 17.6.1993, the accused persons visited his house and accused No.1 asked as to whether he made the provision of Rs.500/-. As he could not arrange the amount, he approached the office of the bureau on 18.6.1993 and lodged the complaint.

The evidence of the complainant further shows that the office of the bureau called two panchas and he narrated the entire events which took place during pre-trap panchanama. On

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the day of the trap, he along with the pancha proceeded to the office of the accused persons. Accused No.1 was sitting outside the Police Chowky. Whereas, accused No.2 was inside. He met accused No.1 and accused No.1 called accused No.2. On the say of accused No.2, he went inside. Thereafter, accused No.2 took him at a tea stall and demanded the amount as asked by accused No.1. However, he has not paid the amount at the tea stall on a pretext that some amount is with his friend. Thereafter, he pretended that he obtained the amount from the shadow pancha and again went inside. He handed over the said amount to accused No.2. Thus, as per the evidence, accused No.1 has demanded the amount and asked accused No.2 to accept the same. Accordingly, accused No.2 accepted the same. As regards the acceptance, his evidence shows that after the amount is accepted by accused No.2, he immediately came out of the Chowky and gave a pre-determined signal. Till the raiding party reached the spot, accused No.2 left the place on his two wheeler, but accused No.1 was caught. Accused No.2 was chased by raiding party members, but after some distance, he left the vehicle on road and jumped from the compound wall and ran

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away by throwing envelope of the tainted amount. The tainted amount was found under a tree.

24. Complainant PW1 Prashant Deshpande is cross examined at length. During the cross examination, he admitted that preventive action was taken against him and for that, he attended the office of the Special Executive Magistrate. His cross examination further shows that while lodging the report, he has not narrated some facts to the extent that he returned the house on 17.6.1993 and accused No.1 asked him whether he has made the provision.

Thus, some omissions are brought on record.

As regards accused No.2, it came during his cross examination that accused No.2 jumped over wall of Manganese Ore India Limited. The concerned wall is having height 5.7 and the barbed wire was fitted on angles.

Thus, an attempt was made that jump from the said wall was impossible. As far as demand and acceptance is concerned, there was no fruitful cross examination by the defence.

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25. To corroborate the versions of PW1 Prashant Deshpande, the prosecution also examined shadow pancha PW3 Santosh Sao. As to the demand and acceptance, his evidence is that he accompanied the complainant on his vehicle "Luna" and other raiding party members followed them. They went in Seminary Hills Police Chowky. Accused No.1 was sitting in verandah. Accused No.1 asked the complainant whether he has brought the amount. The complainant replied in the affirmative. Thereafter, he called accused No.2. Accused No.2 called him inside and, thereafter, accused No.2 took the complainant along with him on a tea stall. After some time, they returned. At the relevant time, the shadow pancha was sitting in the verandah. The complainant asked him to accompany him in the room. The complainant took out the currency notes by his left hand and gave it to accused No.2. Accused No.2 accepted the same by his right hand and kept it in an envelope and kept the same in his pocket and left on his scooter. Thereafter, he gave a signal. Accused No.1 was caught and accused No.2 was chased. Accused No.2 fled away jumping from the compound wall of Manganese Ore India Limited. The envelope along with the cash

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were found lying under a tree. One shoe was also seized from the said place. Accordingly, post-trap panchanama was drawn.

Thus, the evidence of the shadow pancha shows that the demand was made by accused No.1 and in pursuance of the said demand, accused No.2 accepted the amount.

26. Insofar as defence of the accused persons is concerned, from 1982 to 1984, Trap Officer PW11 Dilip Tidke and accused No.1 were attached to the Ganeshpeth Police Station. Father Devrao of Dilip was partner of one Sardar Sukhdev in Mayur Bar situated within jurisdiction of the said police station. Accused No.1 had given a negative report as regards “No Objection Certificate” and, therefore, Dilip Tidke was having a grudge against accused No.1 and, therefore, he implicated him falsely.

27. In the light of the defence, if the cross examination of shadow pancha PW3 Santosh Sao is taken into consideration, nothing fruitful is brought on record to falsify the version. It also specifically came during cross examination that he and

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complainant PW1 Prashant Deshpande were in the room of Police Chowky, till accused No.2 left after accepting the amount.

Thus, this cross examination also shows that the shadow pancha was along with the complainant when the demand was made by accused No.1 and acceptance was made by accused No.2. Thus, as far as the demand is concerned, the evidence of the complainant and the shadow pancha is consistent and corroborative and is not shattered during the cross examination.

28. To corroborate the prosecution case, it has also adduced evidence of Police Constable PW4 Kewalram Maske attached to the Sadar Police Station, Nagpur at the relevant time. He also deposed that the accused persons were attached to the Seminary Hills Police Chowky. Police Constable PW5 Dilip Kawale was also attached to the Sadar Police Station, who deposed that the Police Inspector of the Sadar Police Station received a letter demanding documents. Accordingly, documents were provided to the office of the bureau. At the relevant time, Assistant Police Inspector PW7 Madhukar Pawar was also attached to the Seminary Hills Police Station. His evidence shows that on

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14.6.1993 the complaint was lodged by Vidhya, which was written complaint against her husband. The said complaint bears her endorsement directing to the Assistant Sub Inspector. He directed accused No.1 to call complainant PW1 Prashant Deshpande to the Seminary Hills Police Chowky. On 16th, 17th, 18th he was on bandobast duty and, therefore, he could not attend the police chowky and he came to know that accused No.1 was caught in a trap. His cross examination shows that he was incharge on 15.6.1993 at the Seminary Hills Police Chowky. Police Inspector PW8 Ramesh Borade was also attached to the Seminary Hills Police Chowky, who also narrated that accused No.1 was entrusted with the enquiry regarding the complaint filed by the wife of the complainant.

29. Thus, the evidence adduced by the prosecution consistently shows that accused No.1 was entrusted with the enquiry regarding the complaint filed by the wife of the complainant. During enquiry, the accused persons have visited the house of the complainant and the alleged demand was made. Admittedly, except the evidence of the complainant,

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there is no other evidence as regards the prior demand. As far as the demand, on the day of the trap is concerned, it is corroborated by the shadow pancha. Though both witnesses are cross examined, the evidence as to the demand and acceptance is not shattered.

30. It is well settled that besides direct evidence, demand and acceptance can be proved on the basis of circumstantial evidence.

31. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**¹ held that for recording conviction under Sections 7 and 13 (1)(d)(i) (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence in the absence of direct or oral evidence. It further held that under Section 7 of the said, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which

¹ 2023 4 SCC 731

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would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the said Act.

32. Besides the oral evidence of complainant PW1 Prashant Deshpande and shadow pancha PW3 Santosh Sao, circumstance, that accused No.2 was chased by officials of the bureau, but he fled away by throwing the tainted amount, is also brought on record by the prosecution by examining witnesses PW6 Sunil Jaiswal, whose evidence shows that he was member of the raiding party. His evidence shows that after receipt of the signal from the complainant, they rushed towards the police chowky. The person, to whom they saw earlier accompanying the complainant to the Golden Restaurant, was seen by them proceeding on a scooter. They immediately learnt that accused who accepted the amount left the place and, therefore, they chased accused Sudhakar, but accused Sudhakar did not stop. Thereafter, he left the scooter on the right side of the road and

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jumped from the wall compound of Manganese Ore India Limited. The other members of the trap party tried to catch him, but he was not found. His cross examination shows that pancha No.1 was near the complainant.

Thus, the cross examination of this witness also shows that when the alleged incident took place, the complainant and pancha were along with each other.

33. Police Constable of the bureau PW9 Vikas Tidke, is another witness, who was member of the trap party. His evidence also shows that he was present during the pre-trap panchanama. He carried seized articles to the Chemical Analyzer. The Chemical Analyzer's Report is also on record, which shows that the article seized from the complainant, after the trap, i.e. shirt pocket, was containing phenolphthalein powder and sodium carbonate solution.

34. Thus, the evidence of prosecution witnesses shows that the wife of the complainant filed the complaint against her husband, which was entrusted to accused No.1 for enquiry. For

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the said enquiry, the accused persons visited the house of the complainant and brought him at the Police Chowky. Accused No.1 demanded Rs.5000/-, but after a negotiation, agreed to accept amount Rs.500/-. On the day of the trap i.e. 18.6.1993, complainant PW1 Prashant Deshpande along with shadow pancha PW3 Santosh Sao approached the accused. Accused No.1 was sitting on the verandah to whom the complainant approached. The evidence of the shadow pancha shows that accused No.1 enquired the complainant whether he brought the amount, which was replied in the affirmative. Thereafter, accused No.1 called accused No.2. Accused No.2 called the complainant inside the Police Chowky and enquired whether he brought the amount. Accused No.2 took the complainant along with him to have a cup of tea and at Golden Restaurant, which was witnessed by PW6 Sunil Jaiswal. After returning from the restaurant, the complainant took the pancha along with him inside the room and on demand, the amount was handed over.

35. Thus, the evidence which is consistent in nature shows that accused No.1 has demanded the amount and accused No.2

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has accepted the same for accused No.1. Though the defence is taken that they are implicated falsely, as accused No.1 has not given "No Objection Certificate" to the father of Trap Officer PW11 Dilip Tidke, this defence is not substantiated either by material or the evidence on record or through the cross examination.

36. The evidence of Trap Officer PW11 Dilip Tidke narrates about the entire pre-trap and post-trap panchanamas as well as entire events carried out by him. He admitted during cross examination that one Sardar Sukhdev was running Mayur Bar and his father was partner. He also admitted that "No Objection Certificate" by the police authority was required to start the bar, but he shown his ignorance whether accused No.1 was entrusted with the mater for grant of "No Objection Certificate." He specifically denied that he was knowing accused No.1 who had given negative report as regards the "No Objection Certificate" required by his father.

Thus, except this cross examination, there is no other material to show that there was any reason for Trap Officer

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PW11 Dilip Tidke to implicate accused No.1 in the alleged offence. On the contrary, the consistent evidence proves the demand and acceptance.

37. It is well settled that offences under the said Act relating to public servants taking bribe require demand of illegal gratification and acceptance thereof. The proof of demand of bribe by public servants and its acceptance by him is *sine qua non* for establishing offences under the said Act.

38. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**² referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**³ held that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not

² 2022 LiveLaw (SC) 192

³ (2015)10 SCC 152

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entail his conviction thereunder. The Honourable Apex Court has reproduced paragraph No.23 of its decision in the case of **P.Satyanarayana Murthy** *supra*, which reads thus:

“The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d) (i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction”.

39. To prove the offence under Sections 7 and 13(1)(d) of the said Act, following are ingredients of the said Sections, which require to be prove:

under Section 7: (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and

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(5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision; (6) to make out an offence under this provision, there has to be actual obtainment, and (7)

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since the legislature has used two different expressions namely “obtains” or “accepts”, the difference between these two have to be taken into consideration.

40. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)** *supra* held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression “accept”, referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**⁴ observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Section 13(1) and (b) of the said Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the

4 (2002)5 SCC 86

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word 'obtains'. In sub clauses (i) and (ii) (iii) of Section 13(1) (d), the emphasize is on the word “obtains”. Therefore, there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression “accept”, the Honourable Apex Court observed that “accepts” means to take or receive with “consenting mind”. The ‘consent’ can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to ‘acceptance’ and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be

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`acceptance'. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Sections, the prosecution has to prove that the accused `obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Section 5(1)(a) and (b) and not under Section 5(1)(c), (d) or (e) of the 1947 Act. According to this court, `obtain' means to secure or gain (something) as the result of request or effort. In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Indian Penal Code, which can be established by proof of either `acceptance' or `obtainment'.

41. In the light of the above well settled legal position, if the evidence adduced is appreciated, there is no dispute as to the

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fact that the prosecution is under obligation to prove the demand as well as the acceptance. The evidence of complainant PW1 Prashant Deshpande and shadow pancha PW3 Santosh Sao is consistent and corroborative to each other on the demand and acceptance. It is also corroborated by the evidence of the police officials which shows that the enquiry regarding the complaint filed by the wife of the complainant was entrusted with accused No.1. Though all these witnesses are examined, their evidence is not shattered. Accused No.2 ran away and thrown the tainted amount is the additional evidence in the nature of the circumstance. The work of the complainant was with accused No.1. The demand and acceptance is proved.

42. The statutory presumption under Section 20 of the said Act comes into play when evidence either direct or circumstantial shows that money was accepted other than for motive of reward under Section 7 of the said Act. The standard required for rebutting presumption is tested on the touchstone of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubts.

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43. In the case at hand, a condition precedent to draw such a legal presumption, that accused No.1 demanded the amount and accused No.2 accepted the same, has been proved and established. Thus, presumption under Section 20 of the said Act comes into play and no reasonable explanation is forthcoming that may rebut the presumption.

44. The Honourable Apex Court, in the case of **C.M.Girish Babu vs. CBI Cochi, High of Kerala**⁵, held that it is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

5 (2009)3 SCC 779

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45. Thus, as observed earlier, the accused persons have not offered any explanations to rebut the presumption under Section 20 of the said Act. On the other hand, the evidence of complainant PW1 Prashant Deshpande and shadow pancha PW3 Santosh Sao shows that accused No.1 demanded the amount and accused No.2 accepted the same.

46. Thus, in the present case, a primary condition for acting on the legal presumption, that the prosecution should have proved that whatever received by accused was gratification, is proved by the prosecution. 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.

47. Learned Judge of the trial court has rightly appreciated the evidence adduced and convicted and sentenced the accused persons.

Judgment

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48. In the light of the above, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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