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

CRIMINAL APPEAL NO.49 OF 2005

Wasudeo Pundlik Satao,
aged about 57 years, occupation talathi,
(Block Borala Kd.), resident of Malikhel,
Jalgaon Jamod, tahsil Jalgaon Jamod,
district Buldhana.

Legal representatives of appellants

1. Gajendra Wasudeo Satao,
aged about 46 years, occupation legal
practitioner.

2. Manjubai Satav,
aged about major.

3. Sharda Choudhary,
aged about major.

4. Shobha Wankhede,
aged about major.

All r/o Jalgaon-Jamod,
tahsil and district Buldana. ….. **Appellants.**

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

The State of Maharashtra,
through ACB, Buldhana,
tahsil and district Buldhana. ….. **Respondent**.

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Ms.Garima Jain, Advocate h/f Shri S.V.Sirpurkar, Counsel for the Appellant.
Mrs.H.N.Prabhu, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 08/03/2024
PRONOUNCED ON : 26/03/2024

JUDGMENT

1. Being aggrieved and dissatisfied with judgment and order of conviction and sentence dated 31.12.2004 passed by learned Special Judge, Khamgaon (learned Judge of the trial court) in Special Anti Corruption Case No.05/2002, appellant - Wasudeo Pundlik Satao (the accused) has preferred this appeal.

2. By the said judgment impugned, the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer simple imprisonment for one year and to pay fine Rs.1000/-, in default, to suffer further simple imprisonment for three months.

He is also convicted for offence punishable under Section 13(1)(d) punishable under Section 13(2) of the said Act and sentenced to suffer simple imprisonment for two years and to pay fine Rs.2000/-, in default, to suffer further simple imprisonment for six months.

3. During the pendency of the appeal, the accused died and his legal heirs were brought on record.

4. In brief, the prosecution case runs as follows:

The accused was serving as Talathi at village Borala, taluka Jalgaon-Jamod in the year 2002. Rambhau Jadhav (the complainant) is agriculturist and he owns and possesses an agricultural land at Borala-Khurd and was residing at Akola. The complainant was regularly visiting Borala-Khurd from Akola on every Tuesday for looking after his agricultural land. As the complainant was not having sufficient space for his cattle shed, he purchased two plots gat No.04 from Vitthal Rajaram Gaiki and Shriram Rajaram Gaiki for construction of cattle shed. After purchasing above two plots, the complainant had constructed cattle shed in the year 2001-2002. The above construction was done by him without seeking permission from the Gram Panchayat and without converting the agricultural land into non-agricultural and, therefore, a notice was issued to the complainant on 5.2.2002 asking him to remain present in the Tahsil Officer, Jalgaon-Jamod on 8.2.2002. As it is not possible for the complainant to remain present in the Tahsil Office, on 8.2.2002 he approached the accused in Tahsil Office and apprised him about his difficulty. The complainant demanded 7/12 extract of his land and copy of mutation, on which the accused asked him to pay Rs.1280/- towards penalty and Rs.448/- towards non-agricultural tax and Rs.3000/- for supplying copies of mutation and 7/12 extract of agricultural land gat No.04. Thus, the accused demanded Rs.4728/- from the complainant. He had paid Rs.2428/- to the accused and Rs.448/- and Rs.700/- for supplying copies of 7/12 extract and mutation of gat No.4. After receipt of the amount, the accused informed him that amount Rs.2300/- was due from him and he has to pay the said amount. The complainant again approached the accused on 1.3.2002. On that day, the accused gave two receipts towards payment of penalty of Rs.1280/- and non-agricultural tax of Rs.448/-. On demanding copies of 7/12 extract, the accused demanded Rs.2300/-. Again, on 19.3.2002, the complainant approached the accused at Jalgaon-Jamod and demanded 7/12 extract. At that time also, the accused demanded Rs.2300/- on which the complainant told him that he would come with the money on 26.3.2002.

5. As the complainant was not willing to give bribe amount, he approached Office of the Anti Corruption Bureau, Buldhana (the bureau) and narrated his grievance by lodging a report.

6. After receipt of the report, office of the bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the complaint. After following a due procedure, it was decided to lay a trap on 26.3.2002 and, therefore, the complainant and panchas were called on 26.3.2002. On 26.3.2002, the complainant produced tainted amount i.e. 4 currency notes of Rs.500/- and 3 currency notes of Rs.100/-. The demonstration as to phenolphthalein powder and sodium carbonate solution was was shown to the complainant and panchas. The said solution was applied on tainted notes and kept in shirt pocket of the complainant. Instructions were given to pancha Np.1 Avinash Tayde to stay with the complainant and pancha No.2 was asked to remain along with raiding party members. The complainant was further instructed

not to hand over the amount unless it is demanded. Accordingly, pre-trap panchanama was drawn.

7. After the pre-trap panchanama, the complainant along with pancha No.1 Avinash Tayde went to the house of the accused at noon time on 26.3.2002. After initial communication between them, the complainant enquired about his work and the accused asked him whether he brought the payment and, thereafter, the complainant handed over amount Rs.2300/- from his shirt pocket to the accused. On giving signal by the complainant, raiding party members caught the accused. The hand wash of the accused was obtained as well the shirt pocket of the accused was dipped into the solution and samples of the said solution were obtained in a separate bottle. The amount was recovered from the accused. Accordingly, post-trap panchanama was drawn. The officer of the bureau lodged report about the incident, seized relevant documents and obtained sanction to prosecute the accused. After completion of the investigation, chargesheet is filed.

8. During trial, the prosecution examined in all five witnesses namely: Ramesh Jadhav vide Exhibit-1 (PW1), the

complainant; Avinash Tayde vide Exhibit-21 (PW2), shadow pancha; Sk.Rehman Sk.Yasin vide Exhibit-31 (PW3), Naib Tahsildar; Dinesh Waghmare vide Exhibit-42 (PW4), the Sanctioning Authority; and Devidas Mahale vide Exhibit-48 (PW5), the Trap Officer.

9. Besides the oral evidence, the prosecution placed reliance on complaint Exhibit-15, 7/12 extracts Exhibits-16 to 20, pre-trap panchanama Exhibit-23, seizure memos Exhibits-24 to 26, post-trap panchanama Exhibit-26, map Exhibit-28, notice to the complainant Exhibit-32, report of accused dated 8.1.2002 Exhibit-33, 7/12 extract Exhibit-34, order-sheet Exhibit-35, receipt dated 5.3.2002 Exhibit-36, and receipt Exhibit-37, sanction order Exhibit-43, report by officer of the bureau Exhibit-50, First Information Report Exhibit,-51 invoice challan Exhibit-53, Chemical Analyzer Report Exhibit-54.

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

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11. I have heard learned counsel Shri S.V.Sirpurkar for the accused and learned Additional Public Prosecutor Mrs.H.N.Prabhu 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.

12. Learned counsel for the accused submitted that the judgment and order of conviction impugned is erroneous and without appropriate reasoning. Learned Judge of the trial court failed to appreciate that complainant PW1 Ramesh Jadhav has constructed cattle shed without obtaining permission of competent authority and, therefore, the accused has made the report to the Tahsildar on which notice was issued to the complainant. Though the complainant was asked to remain present in the said proceeding, instead of remaining present before the Tahsildar, he approached the accused. The accused asked him to pay penalty and taxes. As an action is taken against the complainant, after thought, he lodged the report. As per the evidence of the complainant, demand was made to him first time on 5.2.2002 and he paid amount on 8.2.2002. The evidence of the complainant,

shadow pancha PW2 Avinash Tayde, and investigating officer shows presence of one kotwal, at the time of trap, at the time of incident on 5.2.2002, who was not examined by the prosecution to prove the demand and acceptance. The immediate explanation of the accused shows that he accepted the amount towards dues. The sanction accorded is not as contemplated under Section 19 of the said Act and it is bad in law and, therefore, the conviction of the accused stood vitiated on that ground itself. He submitted that defence of the accused is supported by circumstances that report was filed by the accused against the complainant on which the notice was issued to the complainant. Though the complainant paid the amount on 5.2.2002, he stated that he approached the accused on 8.2.2002. The report lodged by the complainant is dated 22.3.2002 i.e. more than one month which creates a doubt regarding genuineness of the complaint. The investigating officer has not verified genuineness of the complaint. For all above reasons, the accused deserves to be acquitted.

13. In support of his contentions, learned counsel for the accused placed reliance on following decisions:

1. Neeraj Dutta vs. State (Govt.of NCT of Delhi)[1];

2. P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr[2];

3. B.Jayaraj vs. State of Andhra Pradesh[3];

4. Mukhtiar Singh (since deceased) through his LR vs. State of Punjab[4];

5. State of Karnataka vs. Ameerjan[5];

6. Vinod vs. State of Mah., thr.Police Station, and

7. Mohd.Iqbal Ahmed vs. State of Andhra Pradesh[6].

14. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Ramesh Jadhav is corroborated by shadow pancha PW2 Avinash Tayde who proves demand and acceptance. The amount is recovered from shirt pocket of the accused and sanction is as per law and valid. The evidence adduced by the prosecution is consistent and corroborative and no interference is called for in judgment impugned in the appeal.

1 2023 SCC OnLine SC 280
2 (2015)10 SCC 152
3 (2014)13 SCC 55
4 (2017) 8 SCC 136
5 (2007)11 SCC 273
6 (1979)4 SCC 172

15. In support of her contentions, learned Additional Public Prosecutor for the State placed reliance on the decision of the Honourable Apex Court in Criminal Appeal No.2345/2009 (**State of Maharashtra, through CBI vs. Mahesh G.Jain**) decided on 28.5.2013 and on the decision of this Court in Criminal Appeal No.2/2003 (**Shivrao Wamanrao Deshmukh vs. State of Mah., thr.PSO Jalgaon Jamod, district Buldana**) decided on 8.5.2012.

16. The validity of the sanction has been challenged by learned counsel for the accused. Whereas, as per learned Additional Public Prosecutor for the State, the sanction order is valid and legal one and it is a valid sanction.

17. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW4 Dinesh Waghmare, who testified that at the relevant time, he was serving as District Collector, Buldana. The Superintendent of Police (ACB) sent a proposal along with relevant documents for according the sanction for initiating prosecution against the accused. He made scrutiny of all documents and gone through all

relevant provisions and after examining all materials, accorded the sanction.

18. The sanction order is challenged on ground that a draft sanction order was sent to Sanctioning Authority PW4 Dinesh Waghmare. The witness admitted that he received proforma of sanction order, however he clarifies that he has not used the same. His cross examination further shows that he did not make any enquiry whether amounts Rs.1280/- and Rs.448/- were deposited by the accused. His evidence shows that the sanction order was challenged on ground that the competent authority has accorded the sanction mechanically without application of mind.

19. Perusal of the sanction order shows that at initial part of the sanction order entire events of the incident are mentioned and at second last para, it is mentioned that upon reading papers of investigation carefully into Crime No.3030/2002 of Jalgaon-Jamod Police Station and after evaluating the evidence carefully, he is satisfied that there is adequate evidence to prosecute the accused and accorded the sanction.

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

21. The Honourable Apex Court in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh** *supra***,** on which learned counsel for the accused placed reliance, 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.

Learned counsel for the accused also placed reliance of this court in the case of **Vinod vs. State of Mah., thr.Police Station** *supra* wherein it is held that before considering evidence of

Sanctioning Authority, it is necessary to see object of Section 19 of the said Act. Under Section 19, grant of sanction is a weapon to discourage vexatious prosecution and it is a safeguard for the innocent, though not a shield for the guilty. Essential of a valid prosecution can be stated as under -

> (i) 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. 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;
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> (ii) 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;

(iii) 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;

(iv) 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;

(v) 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. Thus, it is submitted that in the present case, the sanction order nowhere discloses application of mind and, therefore, the sanction is bad in law.

23. The Honourable Apex Court in the case of **State of Maharashtra, through CBI vs. Mahesh G.Jain** *supra,* on which learned Additional Public Prosecutor for the State placed reliance, by referring various judgments, held that it is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

24. Thus, sum and substance of decisions referred above show that an order of sanction should not be construed in a pedantic manner, but Sanctioning Authority has to apply his/her independent mind for generation of its satisfaction for granting sanction. 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 prosecution or not.

25. The Honourable Apex Court in the case of **CBI vs. Ashok Kumar Agrawal**[7] 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 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

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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.

26. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[8] *supra* 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

8 (2007)11 SCC 273

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.

27. This court in the case of **Vinod vs. State of Mah., thr.Police Station** *supra* 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.

28. Thus, after going through the evidence of Sanctioning Authority PW4 Dinesh Waghmare, admittedly, the sanction order nowhere reflects material on the basis of which the Sanctioning Authority came to conclusion that the sanction is to be accorded to launch the prosecution against the accused. Application of mind on the part of the Sanctioning Authority is imperative. The orders

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

29. In the present case, application of mind of the Sanctioning Authority PW4 Dinesh Waghmare is not reflected from the sanction order.

30. Besides issue of the sanction, the prosecution claimed that the accused demanded gratification amount and accepted the same.

31. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Ramesh Jadhav; shadow pancha PW2 Avinash Tayde, and Naib Tahsildar PW3 Sk.Rehman Sk.Yasin. The accused is prosecuted for offences punishable under Sections 7 and 13(1)(d) of the said Act.

32. It is now well settled that the offences under the said Act relating to public servants taking bribe require a demand of illegal gratification and the acceptance thereof. The proof of

demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing offences under the said Act.

33. 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 (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour, and
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> **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 acceptable 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) since the legislature has used two different expressions namely “obtains” or “accepts”, the difference between these two have to be taken into consideration.

34. In the light of the well settled law, if the evidence of the prosecution is appreciated, it would show that the prosecution has placed reliance on complainant PW1 Ramesh Jadhav. As per

his oral evidence, the accused is serving as Talathi and he approached the accused as he received notice from the Tahsil Office. The accused demanded Rs.2300/- from him as bribe amount. The sum and substance of his evidence is that he is an agriculturist having his agricultural land at Borala, but there was no place in the agricultural field for cattle shed and, therefore, on 4.2.2000 he purchased 4356 square feet agricultural land for consideration of Rs.32,000/- from Vitthal Rajaraj Gaiki and Shriram Rajaram Gaiki which is adjacent to his land. He constructed a cattle shed over it in the year 2002 without converting the same into non-agricultural. He received a notice from tahsil on 5.2.2002 asking him to remain present at the Tahsil Office at Jalgaon-Jamod on 8.2.2002. As he was unable to attend the Tahsil Office at Jalgaon-Jamod on 8.2.2002, he approached the office of the accused on 5.2.2002. He requested the accused that he is unable to attend the office on 8.2.2002 and shown notice on which the accused asked him to pay fine amount and non-agricultural tax . On that day, he could pay Rs.1280/- towards fine amount and Rs.448/- towards non-agricultural tax. As per his allegations, the accused demanded Rs.3000/- as bribe amount. As

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he was not willing to pay the amount, he approached the office of the bureau. He narrated the entire procedure carried out in the office of the bureau. As regards the demand, on the day of the trap, his evidence is that he along with shadow pancha No.2 Avinash Tayde went in the office of the accused and made enquiry with the accused, but the accused told him that he would not hand over the copy of mutation unless amount Rs.2300/- is paid and, therefore, the complainant handed over the amount and after acceptance, gave a signal. The amount was seized from the accused.

35. To corroborate the version of complainant PW1 Ramesh Jadhav, the prosecution also examined shadow pancha PW2 Avinash Tayde who has also narrated that he was called along with pancha No.2 in the office of the bureau. In their presence, the complainant narrated his grievance and they verified the same and, thereafter, it was decided to lay down a trap. The shadow pancha narrated the entire procedure carried out by officials of the bureau during pre-trap and post-trap panchanamas. As far as the demand is concerned, his evidence is that he along with the

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complainant went to the office of the accused. An old man was present in the office. There was a communication between the complainant and the accused and the accused replied that since his daughter's marriage is scheduled in the month of April, the complainant should approach him after 13.4.2003. The evidence further shows that when the complainant was about to leave the house of the accused, at that time, the accused asked him whether he brought the payment and the complainant replied in the affirmative and handed over the amount. Thus, the evidence of the shadow pancha shows that the accused asked about the payment and, thereafter, the amount was handed over.

36. To corroborate the version of complainant PW1 Ramesh Jadhav, the prosecution also examined Naib Tahsildar PW3 Sk.Rehman Sk.Yasin. As per his evidence, at the relevant time, he was serving as Naib Tahsildar at Jalgaon-Jamod. The accused was serving as Talathi during his tenure. On 8.1.2002, the accused gave a report to the Tahsil Office to the effect that one Ramesh Jadhav, the complainant, is occupant of gat No.4 and he unlawfully constructed shed without obtaining permission. On the basis of

the report, proceeding was initiated against the complainant and notice was issued to him. The notice was served upon the complainant. Report of the Talathi is at Exhibit-33. He also stated that the complainant has paid Rs.1280/- and receipt was issued to him on 5.3.2002. Another receipt was given towards amount Rs.448/-.

37. Complainant PW1 Ramesh Jadhav, shadow pancha PW2 Avinash Tayde, and Naib Tahsildar PW3 Sk.Rehman Sk.Yasin are cross examined at length. Defence of the accused is that the amount was accepted towards remaining fine amount and it was not bribe amount. Another defence of the accused is that the complainant is the client of his son and some amount towards fees of the son was due from the complainant and the same amount was paid by the complainant on that day. The cross examination shows that the son of the accused is practising Advocate in the court of Jalgaon-Jamod. He further admitted that title of piece of agricultural land purchased from Vitthal and Shirram was confirmed by him through the son of the accused and the son of the accused handed over him certificate to that effect. His cross

examination further shows that on 5.2.2002 Kotwal Narayan was also present in the office.

It is submitted by learned counsel for the accused that though said Kotwal was present, he is not examined by the prosecution to seek corroboration. It is further submitted that from the cross examination, it is crystal clear that fine amount was due from the complainant out of which he paid Rs.1280/- on 5.2.2002 and amount Rs.448/- towards the tax and the remaining amount was due. It was also revealed that the complainant was client of the son of the accused and son of the accused assisted the complainant to get title clear.

38. The cross examination shadow pancha PW2 Avinash Tayde also shows that on the day of the trap, one person was sitting in the office of the accused when communication between the complainant and the accused took place. As regards the demand, his evidence shows that accused asked about the payment and the amount was handed over. The evidence of Naib Tahsildar PW3 Sk.Rehman Sk.Yasin shows that as the complainant constructed a cattle shed without obtaining permission, report was

made by the accused for appropriate action against the complainant and the notice was issued to the complainant. On receipt of the notice, it was the complainant who approached the accused and amount Rs.1280/- is deposited vide receipt No.3836349 and amount Rs.448/- is also received vide receipt No.3237184. All these receipts are of dated 5.3.2002. The cross examination further shows that the Collector, Buldana directed all concerned Revenue Officers and Talathis to collect additional revenues from all persons and target was fixed. In the notice, it was stated that the complainant was asked to remain present along with all documents for depositing the fine amount.

Learned counsel for the accused submitted that this evidence itself is sufficient to show that as the complainant has contravened provisions, he was called upon to remain present for depositing the fine amount.

For reference, recital of notice Exhibit-32 is reproduced, as under:

Thus, it is crystal clear from the notice that fine amount was due from the complainant.

> “वरील प्रकरणात दिनांक ८/२/२००२ रोजी सकाळी १०.३० वाजता तुम्ही आमचे समोर जळगांव जामोद येथे वरील प्रकरणात आवश्यक असणा—या कागतपत्रांसह/दंडाची रक्कम भरण्या करीता हजर राहावे.”

39. The prosecution has also examined Investigating Officer PW5 Devidas Mahale, who narrated about investigation carried out. His evidence shows that he also recorded statement of shadow pancha No.2 Avinash Tayde, who stated that the accused asked the complainant whether he brought the payment. Thus, the payment is asked referring to the fine amount. The evidence of the Investigating Officer also shows that one Kotwal Narayan was found sitting in the office of the accused when he entered in the office. Said Kotwal is not examined by the prosecution. Immediate explanation of the accused also shows that he accepted the amount towards the fine amount and he has not seen how much amount is handed over to him by the complainant.

40. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj 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**[9] 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 Sections and 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 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

9 (2002)5 SCC 86

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 `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 is appreciated, there is no dispute as to the fact that the prosecution is under obligation to prove the demand as well as the acceptance.

42. The evidence of complainant PW1 Ramesh Jadhav shows that notice was issued to him by the Tahsil Office stating in it that he shall remain present in the Tahsil Office along with

documents for depositing the fine amount. The evidence of the complainant as well as evidence of Naib Tahsildar PW3 Sk.Rehman Sk.Yasin shows that the complainant had constructed a cattle shed without obtaining permission and, therefore, the accused has given report contending that necessary action is to be taken against the complainant. The said report is dated 9.1.2002. On the basis of the said report, proceeding bearing No.NAP/36/49Borala/0102 was registered. The order sheet of the said proceeding Exhibit-35 shows that the complainant has used portion of gat No.4 admeasuring 4240 square feet without obtaining any non-agricultural permission from 2000-2001 and, therefore, notice was issued to him. By this notice, the complainant was asked to attend the office on 8.2.2002, but he approached the accused on 5.2.2002 itself. As per his evidence, he deposited amount Rs.1280/- and Rs.448/- on 5.2.2002 and he was asked by the accused to pay remaining amount on 26.3.2002 and, therefore, he approached the office.

Thus, the evidence of the complainant shows that initial demand was made to him on 5.2.2002, 12.3.2002, 19.3.2002 and, thereafter, he lodged report on 22.2.2002.

The evidence further shows that on 5.2.2002 as well as 26.2.2002 one Kotwal was present in the office who is not examined by the prosecution.

43. It is well settled that evidence of complainant should be corroborated in material particulars.

44. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**[10] has 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.

10 (1979)4 SCC 526

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.

45. In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab,** *supra* also it is 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.

46. While deciding issue involving offence under the said Act, a fact required to be considered is that evidence of

complainant is to be scrutinized meticulously. Testimony of such person requires careful scrutiny.

47. In the case of **M.O.Shamsudhin vs. State of Kerala**[11]**,** 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.

48. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[12], 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

11 (1995)3 SCC 351
12 1963 Mh.L.J. (SC) 273

> 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."

49. 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.

50. The evidence of pancha shows that the accused asked him about payment. Admittedly, complainant PW1 Ramesh Jadhav received notice for payment of fine. The evidence shows that amount Rs.2300/- was remaining amount and the accused asked him to come along with the remaining amount. Considering a fact that on the basis of report by the accused, a proceeding was initiated against the complainant that can be a reason for the complainant to implicate the accused.

51. Whether the accused demanded the amount towards bribe or payment of fine, the best corroboration available with the prosecution was recording evidence of Kotwal Narayan, whose

presence was in the office of the accused not only on 26.2.2002 but also on 5.2.2002 when the initial demand was made. However, the Investigating Officer neither recorded his statement during investigation nor he was examined by the prosecution. The immediate explanation of the accused shows that he accepted the amount towards remaining fine amount and not counted the amount, otherwise, he would have returned some of amounts to the complainant, which appears to be probable and acceptable. Prior conducting of the raid, officers of the bureau have not verified whether allegations made by the complainant are genuine and there was demand by the accused. Initiation of the proceeding on the basis of report of the accused could be sufficient reason to the complainant to implicate the accused falsely.

52. 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.

53. 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 *supra,* as relied by learned counsel for the accused, 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 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."

54. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**[13]**,** this court has held that when a trap is set for proving charges of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the reason being that 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, 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,

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burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt.

55. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**[14] 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 work "gratification" is shown to have the meaning "to give pleasure or satisfaction to". The word "gratification" is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient. If the money paid is not for personal satisfaction or pleasure of the recipient it is not gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is

14 (1997)10 SCC 600

not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

56. In the case of **State of Maharashtra vs. Rashid B.Mulani**[15]**,** 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 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.

57. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory in the light of

15 (2006)1 SCC 407

fact that the action was initiated against the complainant on the basis of report by the accused and immediate action of the accused. Since proof of demand is *sine qua non* for convicting accused in such cases, mere recovery of amount is not sufficient to infer that accused accepted amount towards gratification. The prosecution has to prove its case beyond reasonable doubt. The words used by the accused, that amount is to be paid towards the payment and the immediate explanation that he accepted the amount towards the fine amount, appear to be probable and acceptable.

58. In the instant case, as observed earlier, the prior demand by the accused neither is verified nor is proved by the prosecution by examining Kotwal Narayan, whose presence is not only stated by complainant PW1 Ramesh Jadhav and shadow pancha PW2 Avinash Tayde but also admitted by the Investigating Officer. Said Kotwal Narayan, as per the evidence, was not only available on the day of the trap, but also he was present in the office of the accused on the day of the first demand i.e. 5.2.2002.

59. Thus, the evidence adduced by the prosecution is not sufficient and satisfactory to prove the demand and acceptance. I have already observed that principles for according sanctions are not taken into consideration. The Sanctioning Authority to exercise powers strictly keeping in mind all relevant facts and materials. The satisfaction of the Sanctioning Authority does not reflect from the sanction order.

60. Thus, the entire exercise carried out by Sanctioning Authority PW4 Dinesh Waghmare is without application of mind. The evidence as to the demand and acceptance is also not satisfactory which requires to be proved.

61. In the light of the above discussion, as the appeal deserves to be allowed, following order is passed:

ORDER

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

(2) The judgment and order of conviction and sentence dated 31.12.2004 passed by learned Special Judge, Khamgaon in Special

.....45/-

Anti Corruption Case No.05/2002 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!