2024:BHC-NAG:1986

Judgment

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

CRIMINAL APPEAL NO.723 OF 2004

Manik s/o Raghoba Mahadule,
aged about 64 years, occupation retired
patwari, r/o plot No.16, Netaji
Nagar, old Pardi Naka, Nagpur. ..... **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through the Dy.S.P.Anti Corruption
Bureau, Nagpur. ..... **Respondent**.

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Corrected as per the Court's order dt.12.2.24.

Shri Anil S.Mardikar, Senior Counsel assisted by Shri Kunal Pande, Advocate for the Appellant.
Ms.Sneha Dhote, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 16/01/2024
PRONOUNCED ON : 02/02/2024

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 25.10.2004 passed by learned Judge, Special Court, Nagpur (learned Judge of the trial court), in Special Case No.11/94 whereby the accused is convicted for offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (the said Act).

For offence under Section 7 of the said Act, he is sentenced to suffer simple imprisonment for six months and to pay fine Rs.1000/-, in default, to suffer simple imprisonment for two months.

For offence under Section 13(2) read with 13(1)(d) of said Act, he is sentenced to suffer simple imprisonment for two years and to pay fine Rs.1500/-, in default, to suffer simple imprisonment for three months.

2. Brief facts of the prosecution case are as under:

The accused was serving as Patwari at village Satak, district Nagpur during November 1992 to January 1993. Pushkar Mukund Padhye (the complainant), Ravi Boradkar, and Smita Dange, had purchased land survey Nos.60, 62 and 63 of village Satak, tahsil Parseoni, district Nagpur from one Jaswantsingh Balwantsingh Maras by way of three separate sale deeds. The said lands were purchased by the complainant and others for plantation of teak wood and they intending to obtain loan from a bank and, therefore, they were in requirement of 7/12 extract and map of lands purchased by them. It is alleged that the complainant met the accused on 4-5 occasions to obtain 7/12 extract and the map. However, the accused was avoiding to supply the same and, therefore, on 26.1.1993 the complainant along with one Ramankant Dange met the accused and requested him to supply aforementioned documents, but the accused demanded Rs.1500/- from the complainant. As the complainant has shown his inability mentioning that the amount is excessive, after negotiation, the amount was settled as Rs.1000/-. As per allegations, the accused was insisting to pay the amount immediately and, therefore, the complainant paid Rs.250/- only and agreed to pay balance amount Rs.750/- on 2.2.1993. As the complainant was not willing to pay the amount demanded by the accused, he approached the office of the Anti Corruption Bureau (the bureau) and lodged report on 1.2.1993.

3. After receipt of the report, officials 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 due procedure, it was decided to conduct a raid. The complainant produced tainted amount i.e. 7 currency notes of Rs.100/- and one currency note of Rs.50 denomination and numbers of currencies were noted. The demonstration as to phenolphthalein powder and solution was shown. The said solution was applied on the tainted notes

and the notes were handed over to the complainant who kept the same in his shirt pocket. The instructions were given to pancha No.1 Mahesh Wabgavkar to stay with the complainant and pancha No.2 Umakant Zade was asked to remain along with raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn.

4. After the pre-trap panchanama, the complainant along with panchas and raiding party members reached village Satak. After reaching, the complainant and pancha No.1 Mahesh Wabgaonkar proceeded towards the office of the accused. The complainant made enquiry about his work and the accused enquired whether he brought the amount. Thereafter the complainant handed over amount Rs.750/-. After accepting the amount by the accused, the complainant gave the pre-decided signal to the raiding party and the trap was laid. The amount was recovered from the accused. Accordingly, post trap panchanama was drawn. Panchas No.1 disclosed as to the demand and acceptance and, therefore, officer of the bureau Dilip Tidke lodged report about the incident, seized relevant documents and obtained sanction to

prosecute the accused. After completion of the investigation, chargesheet was filed.

5. During the trial, the prosecution examined in all seven witnesses as follows:

1. Pushkar Mukund Padhye vide Exhibit-20, the complainant (PW1);

2. Mahesh Annaji Wabgaonkar vide Exhibit-29, the shadow pancha (PW2);

3. Umakant Nathuram Zade vide Exhibit-37, pancha No.2 (PW3);

4. Damodhar Parasram Gade vide Exhibit-38 (PW4);

5. Vikas Pandharinath Tidke vide Exhibit-49, the carrier (PW5);

6. Yeshwant Wasudeo Gedam vide Exhibit-51, the sanctioning authority (PW6), and

7. Dilip Deorao Tidke vide Exhibit-54, the investigating officer (PW7).

6. Besides the oral evidence, the prosecution placed reliance on complaint Exhibit-21; seizure memo Exhibit-22, 7/12 extract Exhibits-23 and 25, map Exhibit-26, personal search panchanama Exhibit-27, personal search panchanama of the complainant prior to trap Exhibit-28, pre-trap panchanama Exhibit-30, seizure memo Exhibits-31 and 33,

post-trap panchanama Exhibit-35, map Exhibit-36, sanction order Exhibit-52, personal search panchanama of the accused Exhibit-56, report Exhibit-57, letter to the Chemical Analyzer Exhibit-59, Chemical Analyzer's Report Exhibit-60.

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

Corrected as per the Court's order dt.12.2.24.

8. Heard learned Senior Counsel Shri Anil S.Mardikar for the accused and learned Additional Public Prosecutor Ms.Sneha Dhote for the State. I have taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

9. Learned counsel for the accused submitted that the judgment and order of conviction and sentence impugned in the appeal is erroneous and without appropriate reasoning. As per allegations in the complaint, the alleged incident has taken place on 26.1.1993 which is National Holiday and all the Government offices remain closed. Moreover, the evidence adduced shows that the accused was not resident of village Satak, but he was residing at Nagpur and, therefore, presence

of the accused at village Satak on the day of the trap itself is a doubtful. He further submitted that even the sanction to prosecute the accused as contemplated under Section 19 of the said Act is bad in law and, therefore, the conviction of the accused stands vitiated on that ground itself. He submitted that evidence of shadow pancha PW2 Mahesh Wabgaonkar is also not corroborating the evidence of the complainant. The corroboration, as far as the demand and acceptance is concerned, is required. The pancha witness specifically admitted that the accused had demanded the amount towards labour charges. Complainant PW1 Pushkar Padhye, during his evidence, admitted that after purchase of the said lands, they erected a thorny fencing to the entire lands and the amount of measurement charges was to be paid to the accused. The accused engaged labourers for measurement and the measurement work was done by the accused. Thus, the evidence shows that the amount was paid to the accused towards labour charges. Learned Judge of the trial court failed to appreciate this evidence and erroneously convicted the accused. In the light of the above said evidence, the demand and acceptance is not proved. For all the above reasons, the accused deserves to be acquitted.

10. In support of his contentions, learned counsel for the accused placed reliance on decisions of this court in the cases of Criminal Appeal No.265/2005 (**Mohan Bhaiyyalal Shrivastava vs. The State of Mah., thr.its Police Inspector Anti Corruption Bureau, Akola**) decided on 4.9.2023 and Criminal Appeal No.247/2005 (**Wasudeo s/o Nathuji Ukey vs. The State of Mah., thr.PSO PS Andhalgaon, tahsil Mohadi, district Bhandara**) decided on 5.10.2023.

11. Per contra, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Pushkar Padhye is duly corroborated by shadow pancha PW2 Mahesh Wabgaonkar and the tainted amount was recovered from the accused. These circumstances are sufficient to prove the demand and acceptance by the accused. The prosecution has also proved that the sanction is valid as per law and, therefore, no interference is called for in the judgment impugned in the appeal. She further submitted that the evidence of complainant PW1 Pushkar Padhye specifically shows that the demand was made for issuing 7/12 extract and the map. The complainant PW1 Pushkar Padhye further stated that he already paid amount Rs.2000/- towards the

measurement work and, therefore, defence of the accused is that the amount accepted towards labour charges is no more in existence and liable to be discarded.

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

13. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW6 Yeshwant Gedam. As per his evidence, in the year 1994, he was working as the Sub Divisional Officer, Ramtek and the accused was working as Talathi. He received case papers from the office of the bureau at Nagpur in connection with the trap laid on the accused about accepting the bribe for supplying copy of 7/12 extract. As he was appointing authority of Talathis, he has gone through papers received from office of the bureau and satisfied himself that the alleged offence is made out and he accorded the sanction to launch prosecution against the accused. The sanction order is

at Exhibit-52. He forwarded the sanction order along with covering letter Exhibit-53.

The cross examination of the said witness shows that he is unable to tell which papers he received from the office of the bureau. It further shows that a draft of the sanction order was received by him. He further stated that at the relevant time, when 7/12 extract was demanded by the complainant, mutation of lands was not carried out and the work of confirmation of mutation entry requires to be done by the Revenue Inspector. His evidence further shows that for certificate of mutation entries, notices are issued to concerned parties and Talathi submits entry of mutation before the Revenue Inspector and the Revenue Inspector certifies it. He specifically admitted that 7/12 extract was issued to purchasers only after certificate of mutation entry. His evidence specifically states that he had made modifications in the draft sanction order and after signing, the same was sent to the office of the bureau.

14. Thus, the evidence of Sanctioning Authority PW6 Yeshwant Gedam is to the extent that unless and until mutation is certified in the name of purchaser/s, he is not

entitled to receive 7/12 extract. In the present case, mutation was not certified in the name of Complainant PW1 Pushkar Padhye. The evidence specifically shows that while according the sanction, he has not taken into consideration these aspects. His specific admission, that by making modification in the draft sanction order, he accorded the sanction, sufficiently shows the nature of exercise carried out by him. Perusal of the sanction order shows that in first paragraph he mentioned about designation of the accused and in subsequent paras the entire prosecution case is reproduced. In second last paragraph, it is only mentioned that upon reading papers of investigation, he has formed his opinion and accorded the sanction.

15. 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.

16. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[1] has held that what the Court has to see is whether or not the sanctioning

1 1979 AIR 677

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.

17. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[2] 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

2 2014 Cri.L.J.930

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.

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18. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[3], 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 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.

19. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his/her own independent mind for generation of its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his/her own independent mind on the basis of the evidence which came before it. An order of sanction should not be construed

3 (2007)11 SCC 273

in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

20. Thus, the 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.

21. After going through the evidence of Sanctioning Authority PW6 Yeshwant Gedam, though he stated that he has applied his own mind, the sanction order nowhere discloses that which documents he has taken into consideration to accord the sanction. On the contrary, his admission during the cross examination, that he has made some modifications in the drat sanction order and after signing, the same was sent to the office of the bureau, sufficiently demonstrates that he has not applied his own independent mind and he accorded the sanction mechanically without application of mind. The sanction order is also silent regarding nature of

documents taken into consideration. Thus, the prosecution failed to adduce evidence to prove that the sanction was accorded by Sanctioning Authority PW6 Yeshwant Gedam after application of mind.

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

23. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Pushkar Padhye examined vide Exhibit-20; shadow pancha PW2 Mahesh Wabgaonkar examined vide Exhibit-29; pancha No.2 PW3 Umakant Zade examined Exhibit-37 who removed the tainted notes from the possession of the accused, and PW4 Damodhar Gade examined vide Exhibit-38. The accused is prosecuted for offences under Sections 7 and 13(1)(d) of the said Act.

24. 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.

25. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**[4] referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**[5] 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 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

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5 (2015)10 SCC 152

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."

26. 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.

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

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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.

27. In the light of the well settled law, if the evidence of Complainant PW1 Pushkar Padhye is appreciated, it would show that he along with his partners purchased survey Nos.60 to 63 situated at village Satak and, therefore, he approached the accused for obtaining 7/12/ extract. As per allegations, the accused demanded Rs.1000/- for issuing 7/12 extract and map. As per the evidence, amount Rs.250/- was given by the

complainant PW1 Pushkar Padhye immediately and he was called by the accused on 2.2.1993 along with the balance amount. However, he approached the office of the bureau and lodged the complaint. He narrated about the entire procedure carried out by officials of the bureau before conducting the raid. As per his evidence, it was decided to conduct a raid and accordingly they have visited the office of the accused on the next day. During conversation with the accused, the accused demanded the amount when shadow pancha PW2 Mahesh Wabgaonkar was along with him and he handed over the said amount. The accused accepted the amount and kept the same in left side of his pant.

To shake credibility of complainant PW1 Pushkar Padhye, he was cross examined and it came on record that he was acquainted with the accused. The accused was aware about execution of sale deed. The accused engaged labourers for the work of compound of the land and the complainant PW1 Pushkar Padhye was required to pay labour charges. His cross examination further shows that labourers were also required for measurement who were brought by the accused.

Thus, the evidence of complainant PW1 Pushkar Padhye shows that it was the accused who deputed labourers for measurement of lands purchased by complainant PW1. Complainant PW1 engaged labourers with the help of the accused for erecting thorny fencing.

28. To corroborate the version of complainant PW1 Pushkar Padhye, the prosecution also examined shadow pancha PW2 Mahesh Wabgaonkar, who narrated the entire procedure carried out by officers of the bureau before laying the trap. Regarding the demand and acceptance, the evidence of shadow pancha PW2 Mahesh Wabgaonkar shows that there was communication between complainant PW1 Pushkar Padhye the accused. Complainant PW1 Pushkar Padhye enquired about his work and the accused asked him to wait and thereafter taken out his record, shown documents and asked complainant PW1 Pushkar Padhye to pay balance amount on which the complainant handed over the amount and the accused accepted the said amount.

In cross examination, shadow pancha PW2 Mahesh Wabgaonkar specifically admitted that the accused asked complainant PW1 Pushkar Padhye to pay Rs.750/- towards labour charges.

Thus, the evidence of complainant PW1 Pushkar Padhye shows that it was the accused who engaged labourers to erect thorny fencing as well as for measurement of lands.

The pancha witness also admitted the amount is accepted as remaining charges towards labour charges.

29. The evidence of pancha No.2 PW3 Umakant Zade is only to the extent of recovery of the amount from the accused. The defence of the accused is that to assist complainant PW1 Pushkar Padhye and due to the acquaintance with the complainant, he provided labours and the amount was accepted towards labour charges. This fact is also corroborated by PW4 Damodhar Gade, who is independent witness. He testified that on the day of the incident, he had gone to the office of Patwari for 7/12 extract. When he was siting in front of the accused, two persons were sitting and the accused was preparing copy of 7/12 extract and map for those persons. The accused asked him to wait, till completion of their work. While they were leaving the

office of Patwari, the accused demanded Rs.750/- towards labour charges. Accordingly, the amount was accepted. Though he was declared hostile, in cross examination, nothing incriminating which will shatter the evidence came on record.

30. Investigating Officer PW7 Dilip Tidke, is examined to prove the report and the trap conducted by him. As far as the demand is concerned, his evidence nowhere shows that after receipt of the complaint, he has verified genuineness of allegations made by complainant PW1 Pushkar Padhye. The fact of the demand was not verified by him before laying the trap. His evidence shows that during investigation, it did not reveal to him that the accused was assisting the complainant and his partners. It also did not reveal to him that there was a close relationship between the complainant and the accused.

Thus, from the evidence of the Investigating Officer, it transpired that he has not verified about the earlier demand as well as the subsequent demand.

31. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of**

Delhi)[6] 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**[7] 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 for any

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7 (2002)5 SCC 86

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'.

32. In the light of the above well settled legal position, if the evidence of complainant PW1 Pushkar Padhye; shadow pancha PW2 Mahesh Wabgaonkar, and PW4 Damodhar Gade is appreciated, complainant PW1 admitted that it was the accused who engaged labours for measurement of his lands as well as for erecting thorny fencing around his lands.

Shadow pancha PW2 Mahesh Wabgaonkar, has admitted that the accused has demanded the amount towards labour charges which is corroborated by PW4 Damodhar Gade.

Thus, the evidence of complainant PW1 Pushkar Padhye is that it was the accused who assisted him by engaging labourers for measurement and other works, but he denies that the amount is demanded towards the labour charges. However, shadow pancha PW2 Mahesh Wabgaonkar, who is independent witness, and PW4 Damodhar Gade, in whose presence the communication took place between the complainant and the accused in the office of the bureau, also supported that the amount was demanded towards the labour charges.

33. Thus, if the entire evidence is appreciated in the light of the evidence of Sanctioning Authority PW6 Yeshwant Gedam, who is superior authority working in the Revenue Department who admitted that certification of mutation entry is always done by Revenue Inspector, the only role assigned to the Talathi to submit entry of mutation before the Revenue Inspector. His evidence also shows that copy of 7/12 extract requires to be issued to purchasers only after certification of mutation entry. He further admitted that mutation entry was not certified in favour of the complainant and the complainant has also admitted the same. Thus, possibility of thrusting the amount for getting copies of 7/12 extract cannot be ruled out.

.....28/-

The evidence further shows that the amount was received towards labour charges.

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

35. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**[8] 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. 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

8 (1979)4 SCC 526

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.

In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[9] 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.

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

37. In the case of **M.O.Shamsudhin vs. State of Kerala[10],** it has been held that word " accomplice" is not

9 2017 SCC ONLine SC 742
10 (1995)3 SCC 351

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.

38. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[11], 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."

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

39. 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.

40. In the present case, there is consistent evidence that the accused engaged labourers for measurement and erecting fencing. The evidence of shadow pancha PW2 Mahesh Wabgaonkar and PW4 Damodhar Gade shows that the amount was demanded towards labour charges. As per the evidence of Complainant PW1 Pushkar Padhye, he and Ravi Boradkar met the accused. Said Boradkar is not examined by the prosecution. The Investigating Officer PW7 Dilip Tidke has also not verified genuineness of allegations before laying the trap.

41. 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.

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 *supra* as follows:

> "13. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:
>
> > "7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for 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.”

43. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale[12],** this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the reason being that the complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to bye-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. Whereas, burden on accused is only to show

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probability and he is not required to prove facts beyond reasonable doubt.

44. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**[13] 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 not precluded from drawing appropriate

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presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

45. 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 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.

46. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing and since the proof of demand is a *sine quo non*

14 (2006)1 SCC 407

for convicting the accused in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt. It is also well settled that while deciding the offence under the said Act, the complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. The complainant cannot 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.

47. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)** *supra* 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.

48. In the instant case, as observed earlier, prior demand by the accused is not proved by the prosecution. Regarding the subsequent demand and acceptance, satisfactory and reliable evidence is not adduced. On the contrary, the evidence shows that the amount was accepted as labour charges were due from complainant PW1 Pushkar Padhye. Sanctioning Authority PW6 Yeshwant Gedam had also not considered principles while according the sanction. The sanction nowhere discloses that after application of mind and satisfaction, the sanction was accorded.

49. Thus, the entire exercise carried out by Sanctioning Authority PW6 Yeshwant Gedam is without application of mind.

50. In this view of the matter, the appeal deserves to be allowed and, therefore, I proceed to pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 25.10.2004 passed by learned Judge, Special Court, Nagpur in Special Case No.11/94 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 !!