



Judgment

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1

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

CRIMINAL APPEAL NO.487 OF 2005

Bhaurao s/o Raghoji Ingole,
aged about 63 years, occupation : retired
head master, r/o Fulumari, taluka
Manora, district Washim. **Appellant.**

:: V E R S U S ::

The State of Maharashtra, through
the Police Station Officer,
Police Station, Manora, district Washim
(through Deputy Superintendent of Police
Anti Corruption Bureau, Akola.) **Respondent.**

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Mrs.Geeta Tiwari, Counsel for the Appellant.
Shri V.A.Thakare, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 06/02/2024

PRONOUNCED ON : 22/02/2024

JUDGMENT

1. The appellant (accused) has challenged judgment and order of conviction and sentence dated 31.8.2005 passed by learned Special Judge, Washim (learned Judge of the trial court) in Special Case No.2/2002 whereby the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for three years and to pay fine Rs.5000/-, in default, to suffer further simple imprisonment for

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2

three months. He is also convicted for offence punishable under Section 13(1)(d) read with 13(2) of the said Act and sentenced to suffer rigorous imprisonment for five years and to pay fine Rs.5000/-, in default, to suffer further simple imprisonment for six months.

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

On 20.6.2001, complainant Akrosh Devisingh Chavan, resident of village Fulumari, taluka Manora district Washim, approached the office of the Anti Corruption Bureau, Akola (the bureau) and lodged a complaint alleging that he is an agriculturist and his niece Sandhya was studying in "Vasantrao Naik Vimukta Jati Ashram School". His niece passed 10th Std. Examination and was in need of School Leaving Certificate for admitting herself in Junior College at some other place. The accused being headmaster of the said school was having authority to issue the transfer certificate and, therefore, the complainant approached the accused on 21.6.2001 and requested to issue the transfer certificate. The accused told the complainant that at the time of admission of his niece, amount Rs.1000/- was agreed to pay which was not paid by her and he demanded amount Rs.1000/- for the said

3

transfer certificate. As the complainant was not having the amount, he has not paid any amount and contacted his brother and his brother told him that no amount is due against them. In view of a communication from his brother, the complainant again approached the accused at his house and told him that no amount is due against them, but the accused repeated his demand of Rs.1000/- and declined to issue the transfer certificate, till his demand is fulfilled. As the complainant was not willing to pay the amount, he approached the office of the bureau and lodged the report.

3. After receipt of the report, officers of the bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the First Information Report. After following due procedure, it was decided to conduct a raid and the amount, i.e currencies of Rs.100/- in denomination, is obtained from the complainant. The demonstration as to the use and characteristics of phenolphthalein powder and sodium carbonate solution was shown. The said solution was applied on the tainted amount and kept the amount in a pyjama pocket of the complainant. The instructions were given to pancha No.1 Gajanan Mahadev Kale to stay with the complainant and pancha No.2 was asked

4

to stay along with other raiding party members. The complainant was further instructed to pay the amount only on demand. Accordingly, a pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant along with pancha No.1 proceeded at Fulumari at about 9:00 to 9:30 am. The complainant and panchas proceeded in the campus of the school. They met the accused and during communication, the accused demanded amount Rs.500/-. The accused drawn the transfer certificate from transfer certificates' register and handed over the same to the complainant. On demand, the complainant paid the amount and the accused kept it in a shirt pocket. Immediately, the complainant had given signal and the accused was caught. Pancha No.1 disclosed regarding the demand and acceptance. The hands of the accused and his shirt pockets were examined and the solution was found on his hand as well as shirt pocket. The amount was recovered from his shirt pocket. Accordingly, the post trap panchanama was drawn. The officers of the bureau lodged report, seized relevant documents, and after completion of investigation, chargesheet was filed.

4. During trial, the prosecution examined in all 3 witnesses, viz. Akrosh Devisingh Chavan vide Exhibit-34, the

5

complainant (PW1); Gajanan Mahdev Kale vide Exhibit-37, the shadow pancha (PW2), and Yadao Damu Patil vide Exhibit-66, the trap officer (PW3).

5. In support of the defence, the accused examined Naonath Kashinath Pawar vide Exhibit-103 (DW1).

6. Besides the oral evidence, the prosecution relied upon complaint Exhibit-35, seizure memos Exhibits-36 and 39 to 47, the pre-trap panchanama Exhibit-38, extract of general register Exhibit-45, post-trap panchanama Exhibit-47, seizure memos Exhibits-48 and 49, Chemical Analyzer's Report Exhibit-50, requisition to call panchas Exhibit-67, letter by General Hospital deputing panchas Exhibit-68, school leaving certificate Exhibit-69, explanation by the accused Exhibit-70, report Exhibit-72, and First Information Report Exhibit-73.

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.

8. I have heard learned counsel Mrs.Geeta Tiwari for the accused and learned Additional Public Prosecutor Shri V.A.Thakare for the State. I have been taken through the

6

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 entire trial vitiates as sanction is not obtained by officials of the bureau and, therefore, the trial without sanction is vitiated. She submitted that the accused was serving as headmaster and being he is a public servant, a sanction to prosecute the accused, as contemplated under Section 19 of the said Act, was required which is not obtained. As far as the demand is concerned, the same is not substantiated by any evidence. The amount was obtained by the accused as headmaster against dues of the school. An immediate explanation was given by the accused that the amount was collected for development of the society i.e. for construction and other repairs and using it for development of the society. She submitted that it was not a demand and the amount was not accepted as bribe amount. Thus, the demand and acceptance is not proved. Learned Judge of the trial court had not considered this aspect and erroneously convicted the accused.

7

10. In support of her contentions, learned counsel for the accused placed reliance on following decision:

- 1. S.K.Zutshi and anr vs. Bimal Debnath and anr¹;**
- 2. D.L.Rangotha vs. State of Madhya Pradesh²;**
- 3. State of Orissa, through Kumar Raghvendra Singh and ors vs. Ganesh Chandra Jew³;**
- 4. Anjani Kumar vs. State of Bihar and anr⁴;**
- 5. Anant s/o Kacharu Hiwale and anr vs. The State of Mah.⁵;**
- 6. Pranita Parakashrao Katewale vs. State of Mah., thr. ACB Office, Yavatmal⁶;**
- 7. Babarao vs. State of Mah., thr. ACB⁷;**
- 8. Mukhtiar Singh (since Deceased) thr.his LRs vs. State of Punjab⁸, and**
- 9. State of Punjab vs. Sohan Singh⁹.**

11. *Per contra*, learned Additional Public Prosecutor for the State submitted that as far as the sanction is concerned, on the date of cognizance, the accused ceased to be a public servant as he retired on 31.10.2001 and cognizance was taken on 7.3.2002. Thus, the accused was not public servant on the date of taking cognizance and, therefore, the sanction was not required. He submitted that as far as the demand and

1 (2004)8 SCC 31

2 (2015)12 SCC 733

3 (2004) 8 SCC 40

4 (2008)5 SCC 248

5 Cr.W.P.No.1107of 2026 decided by this court at Aurangabad Bench on 23.8.2017

6 2019 SCC OnLine Bom 1221

7 2023 SCC OnLine Bom 1837

8 2017 AIR (SC) 3382

9 (2009)6 SCC 444

8

acceptance is concerned, the evidence of complainant PW1 Akrosh Chavan and shadow pancha PW2 Gajanan Kale is consistent and not shattered during the cross examination.

12. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

- 1. Vinod Kumar Garg vs. State¹⁰;**
- 2. Station House officer CBI vs. B.A.Srinivasan¹¹;**
- 3. Neeraj Dutta vs. State (NCT of Delhi)¹², and**
- 4. State of Gujarat vs. Navinbhai Chandrakant Joshi¹³.**

13. Since question of sanction has been raised as a primary point, it is necessary to discuss whether the sanction was required or not.

14. It is submitted by learned Additional Public Prosecutor for the State that on the day of filing of the complaint i.e. 20.6.2001, the accused was serving as headmaster. He retired on 31.10.2001 and chargesheet is filed on 7.3.2002. Thus, when cognizance was taken, the accused ceased to be a public servant. He submitted that sub-section (1) of Section

¹⁰ (2020)2 SCC 88

¹¹ (2020)2 SCC 153

¹² (2023)4 SCC 731

¹³ (2018)9 SCC 242

9

19 of the said Act states that no court shall take cognizance of an offence punishable under Sections 7, 11, 13, and 15 alleged to have been committed by a public servant, except with the previous sanction. As the accused ceased to be a public servant on the day of the cognizance, the sanction was not required. In support of his contention, he placed reliance on the decision in the case of **Station House officer CBI vs. B.A.Srinivasan** *supra* wherein the Honourable Apex Court held that protection under Section 19 of the said Act is available to a public servant only till he is in employment and no sanction there under is necessary after the public servant demitted the office or retired from service.

15. On the contrary, learned counsel for the accused submitted that that protection is given to public servants under Section 197 of the Code of Criminal Procedure. The object of the said Section is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of

10

their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. She placed reliance on the decisions in the cases of **S.K.Zutshi and anr vs. Bimal Debnath and anr** and **State of Orissa, through Kumar Raghvendra Singh and ors vs. Ganesh Chandra Jew** *supra* wherein the Honourable Apex Court considered scope of Section 197 of the Code of Criminal Procedure and held that Section 197 of the Code can be evoked and before evoking the same, it must be shown that official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

16. Thus, it is apparent that the Honourable Apex Court held that no sanction is necessary under Section 19 of the said Act in respect of offences punishable under the said Act in case of a person who ceased to be public servant at the time the when court was asked to take cognizance. A protection under Section 197 of the Code of Criminal Procedure is available to public servants when an offence is said to have been committed “while acting or purporting to act in discharge of official duties”, but where acts are performed

11

using the office as a mere cloak for unlawful gains such acts are not protected.

17. The distinction between Section 19 of the said Act and Section 197 of the Code of Criminal Procedure is dealt by the Honourable Apex Court in the case of **State of Kerala vs. Padmanabhan Nair**¹⁴ and **State of H.P. vs. M.P.Gupta**¹⁵ wherein it is observed that “the correct legal position, therefore, is that an accused facing prosecution for offences under the Old Act or New Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 of the Code has application.”

18. Thus, question requires to be answered is, “whether an order of sanction was required”? There exists a distinction between sanction for prosecution under Section 19 of the said Act and Section 197 of the Code of Criminal Procedure. In terms of Section 19 of the said Act, it would not necessary to obtain a sanction in respect of those who had ceased to be public servants. Whereas, as per Section 197 of the Code of

¹⁴ MANU/sc/0400/1999

¹⁵ 2004 ALL MR (CRI) 519

12

Criminal Procedure, a sanction is required for those who were or are public servants.

19. For the purpose of attracting provisions of Section 197 of the Code of Criminal Procedure, the Honourable Apex Court, in the case of **Centre for Public Interest Litigation vs. Union of India**¹⁶, held that protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the

¹⁶ (2005)8 SCC 202

13

performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to

14

consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

20. Thus, after comparing Section 19 of the said Act with Section 197 of the Code of Criminal Procedure, the Honourable Apex Court in the case of **Kalicharan Mahapatra vs. State of Orissa**¹⁷, after considering several decision, came to conclusion that sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the said Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must

¹⁷ AIR 1998 SC 2595

15

have desired to maintain the distinction and hence the wording in the corresponding provision in the former Act of the said Act was materially imported in the new Act of the said Act without any change in spite of the change made in section 197 of the Code.

21. Thus, the law on the point is quite clear that sanction to prosecute public servants for offences under the said Act is not required if public servants had already retired on the date of cognizance of the court and, therefore, the submission of learned counsel for that accused, that protection under Section 197 of the Code of Criminal Procedure is available to the accused, is not substantiated and is liable to be discarded.

22. Thus, in the present case, the sanction was not required to prosecute the accused.

23. Besides the issue of the sanction, learned counsel for the accused submitted that the prosecution failed to prove that the accused had demanded gratification amount and accepted the same.

16

24. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Akrosh Chavan and shadow pancha PW2 Gajanan Kale.

The evidence of complainant PW1 Akrosh Chavan in short is that he approached the accused on 21.6.2001 for obtaining the transfer certificate of his niece for admitting her in a college and the accused demanded Rs.1000/- for the same. He made enquiry with his brother and his brother disclosed that no money is due against them of the school. He again approached the accused on 25.6.2001, but the accused reiterated the demand and told him that unless amount Rs.500/- is paid, the transfer certificate would not be issued and, therefore, he approached the office of the bureau. He narrated the entire procedure carried out by officials of the bureau during the pre-trap panchanama. Regarding the demand, on the day of the trap, he testified that he along with shadow pancha PW2 Gajanan Kale approached the accused. The accused handed over him transfer certificate and asked him to pay the amount and, therefore, he taken out the bribe amount. The accused accepted the same. The accused was caught and the amount was recovered. The hand wash of the accused and his shirt were seized. Though complainant PW1

17

Akrosh Chavan was cross examined, his evidence was not shattered. The defence of the accused is that the amount was accepted towards development fund for construction and other repairs. However, the said defence was not put to the complainant during the cross examination. Though the explanation is given by the accused immediately to officials of the bureau, the said defence was not put to the complainant to show that the amount was accepted towards development fund. The cross examination shows that the complainant was not present when his niece was admitted in the school. On the contrary, cross examination shows that amount Rs.1000/- was already paid by his brother.

25. To corroborate the version of complainant PW1 Akrosh Chavan, shadow pancha PW2 Gajanan Kale is also examined. As regards the demand, he corroborated the version of the complainant that the complainant enquired about the transfer certificate with the accused and the accused asked him whether he brought the amount. When the complainant replied in affirmative, the accused drawn the transfer certificate and handed over the same to the complainant and accepted the amount. During cross examination of this pancha also, nothing transpired to disbelieve his version and

18

the complainant. The cross is on the aspect that he was not aware where rest of the raiding party would stay. Shadow pancha PW2 Gajanan Kale admitted that he is not aware what happened between the accused and the complainant prior to 21.6.2001 that is prior to the trap. Trap Officer PW3 Yadao Patil also narrated about the amount seized from the shirt pocket of the accused. His evidence shows that the hand wash of the accused was obtained and forwarded to the Chemical Analyzer. The Chemical Analyzer's Report Exhibit-50 shows that phenolphthalein powder and sodium carbonate are detected on Exhibits-1 to 5.

Thus, the oral evidence of complainant PW1 Akrosh Chavan and shadow pancha PW2 Gajanan Kale is corroborated by circumstance i.e. Chemical Analyzer's Report.

26. The accused has examined the defence witness. But the evidence of the defence witness also nowhere shows that the accused was directed to obtain the amount towards the development fund. On the contrary, the evidence of the defence witness shows that the ashram school wherein the accused was serving is having 100% grant since beginning. He further admitted that the school does not receive grant for building

19

but rent is received in grant. Thus, the evidence of this defence witness is also not helpful to the accused.

27. The investigating officer has collected the extract of general register which shows that Sandhya Chavan was admitted in “Vasantrao Naik Vimukta Jati Ashram School”. The transfer certificate was seized during the trap. As far as explanation of the accused is concerned, that he accepted the amount towards the development fund and not for personal gain, is not supported by any evidence. Even, this defence is not put to witnesses.

28. Admittedly, settled law is that proof of demand and acceptance is *sine quo non* to prove charges against accused.

29. It is also well settled that while deciding the issue involving the offence under the said Act, a fact required to be considered is that evidence of complainant is to be scrutinized meticulously.

30. The three Judges Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (NCT of Delhi)** *supra* held that as under:

20

"88. What emerges from the aforesaid discussion is summarised as under:

88.1.(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) 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.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe-giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In

21

such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

22

88.5. (e) The 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.

88.6. (f) In the event the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.

23

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.

93. In this regard, we would like to reiterate what has been stated by this Court in *Swantar Singh vs. State of Haryana*, "6. ... Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

94. The above has been reiterated in *A.B.Bhaskara Rao vs. CBI* by quoting as under from *State of M.P. V.Shambhu Dayal Nagar*: (*Shambhu Dayal Nagar case*, SCC p. 701, para 32)

"32. It is difficult to accept the prayer of the respondent that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of

24

the entire country. Large-scale corruption retards the nation-building activities and everyone has to suffer on that count."

39. The Hon'ble Apex Court in the case of K.Shanthamma vs. State of Tenangana reported in (2022) 4 SCC 574 at paragraphs 10 and 11 has held as under :

"10. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires 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 qua non for establishing the offence under Section 7 of the PC Act.

11. In P.Satyanarayana Murthy vs. State of A.P., this Court has summarised the well-settled law on the subject in para 23 which reads thus :

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

25

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 thereunder."

The Hon'ble Apex Court in the case of **Subha Rao vs. State through Inspector of Police, CBI/SPE, Visakhapatnam, Andhra Pradesh reported in (2013) 2 SCC 162** at paragraph 42 has held as under :

"42. Insofar as the charge under Section 13(1)(d) read with Section 13(2) of the PC Act is concerned, the ingredients of that offence are viz.: (a) that the accused should be a public servant; (b) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant; (c) he should not have obtained a valuable thing or pecuniary advantage; and (d) for himself or any other person, and we have already noted the materials placed by the prosecution to substantiate the abovesaid offence."

31. The statutory presumption under Section 20 of the said Act came into play by bringing on record some evidence either direct or circumstantial that the money was accepted other than for the motive or the reward under Section 7 of the said Act. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is

26

a threshold of a lower degree than proof beyond all reasonable doubts.

32. In the case at hand, condition precedent for drawing such allegation, presumption that the accused demanded and was paid bribe money has been proved and established by incriminating material on record. Thus, presumption under Section 20 of the said Act becomes applicable for the offence committed by the appellant under Section 7 of the said Act.

33. Learned counsel for the accused placed reliance on the decision in the case of **Anant s/o Kacharu Hiwale and anr vs. The State of Mah.** *supra* wherein on the basis of documents, this court held that the amount was demanded for admitting his son which is offence under the provisions of the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011.

34. In the present case, there is no evidence that the amount was accepted towards the development fund.

35. Similarly, learned counsel for the accused placed reliance on the decision in the case of **Pranita Parakashrao Katewale vs. State of Mah., thr. ACB Office, Yavatmal**

27

supra wherein also amount Rs.700/- was collected from girls students in contravention of the policy of the Government and, therefore, this Court held that at the most it is the offence under the provisions of the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011.

36. As observed earlier, there is no evidence that the amount is accepted for the school or the society as no such defence is put to the witness and there is no other material to show that the amount is accepted towards the development fund even the evidence of defence witness nowhere shows that the accused was directed to collect the development fund. During the statement under Section 313 of the Code of Criminal Procedure, the accused has not explained that the amount is accepted by him towards the development fund. He explains that due to enmity with the complainant, he is falsely implicated.

37. Though learned counsel for the accused placed reliance on the decision in the case of **Mukhtiar Singh (since deceased) thr.his LRs vs. State of Punjab** *supra*, the said decision is not helpful to the accused as there is specific evidence against the accused regarding acceptance and

28

demand. The decision in the case of **State of Punjab vs. Sohan Singh** *supra* is on independent witness. However, the evidence nowhere shows that at the relevant time anybody was present along with the complainant when the accused demanded the amount. The evidence of the complainant consistently shows that he approached the accused when the accused demanded the amount. There is corroboration from shadow pancha PW2 Gajanan Kale as far as demand at the time of trap is concerned.

38. In the case is hand, the accused has not offered any explanation to rebut the presumption under Section 20 of the said Act. On the other hand, from the evidence of the complainant and shadow pancha PW2 Gajanan Kale it is proved that the accused demanded the amount and accepted the same. Besides the evidence of these witnesses, the circumstantial evidence i.e. Chemical Analyzer's Report substantiates the fact regarding the acceptance of the amount and hand wash of the accused was obtained and forwarded it to the Chemical Analyzer and Chemical Analyzer Report is positive. While appreciating the evidence, learned Judge of the trial court has given reasoning regarding credibility of the evidence of complainant PW1 Akrosh Chavan and shadow

29

pancha PW2 Gajanan Kale. When findings recorded by learned Judge of the trial court are based upon appreciation of the evidence, there is no reason to interfere with the judgment and order of conviction impugned.

39. In the light of the above, the appeal deserves to be dismissed and the same is **dismissed**. The accused shall surrender himself to serve remainder of his jail sentence.

(URMILA JOSHI-PHALKE, J.)

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