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

CRIMINAL APPEAL NO. 85 OF 2007

Sunil S/o Narayanrao Bawane,
Aged about 36 years,
Occupation – Service,
R/o. (1) 812, Nandanwan Layout,
C/o Vinayak Thakre, Nagpur,
at present R/o Post Wadhegaon,
Tahsil Balapur, District – Akola. .... **APPELLANT**

// **VERSUS** //

State of Maharashtra,
Through Anti-Corruption Bureau,
Nagpur. .... **RESPONDENT**

Mr. Sunil Manohar, Senior Advocate assisted by Mr. Atharva Manohar, Advocate for Appellant.
Mr. A.G. Mate, Additional Public Prosecutor for Respondent.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 07.02.2024.
PRONOUNCED ON : 20.02.2024.

JUDGMENT.

1. By preferring this appeal, the appellant (accused) has challenged the judgment and order of conviction and sentence dated

21.02.2007 passed by the learned Judge, Special Court for ACB, designated under the Prevention of Corruption Act, 1988 (learned Judge of the trial court), Nagpur in Special Case No.32/2002 by which the appellant(accused) is convicted of the offences punishable under Section 7 of the Prevention of Corruption Act, 1988 (the Act of 1988) and sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.1,000/- in default of payment of fine, to suffer further rigorous imprisonment for three months. The accused is further convicted of the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act of 1988 and sentenced to suffer rigorous imprisonment for one year and shall also liable to pay fine of Rs.1,000/- in default of payment of fine, to suffer further rigorous imprisonment for three months.

2. The brief facts of the prosecution's case are as under :

(i) The accused is serving as a 'Revenue Assistant' in the month of April 2001 in Tax Department of Nagpur Municipal Corporation, Nagpur. The complainant Pravin Meshram was serving as a 'Police Constable', who had purchased a plot No.468 on 04.04.1993 from one Tarachand in the name of his wife and constructed house thereon in the year 1994-95. On 03.07.1995, complainant Pravin Meshram had filed an application to the office of Nagpur Municipal Corporation (N.M.C.), for mutation the name of his wife and deposited requisite fee. On 20.03.2001, the complainant Pravin Meshram came in contact with the accused to whom he made a request about issuance of tax assessment in the name of Tarachand Manwatkar. It is alleged that accused demanded Rs.500/- and the complainant paid only Rs.400/- on that day.

(ii) The complainant Pravin Meshram had received a notice from N.M.C. regarding tax assessment, therefore, on 23.04.2001, he met the accused who had written on the said notice in front of him as "Tarachand Manwatkar" and thereafter demanded Rs.1,000/- out of which he agreed to pay Rs.500/- on 25.04.2001. As the complainant was not desiring to pay the said amount, he approached to the office of the Anti-Corruption Bureau(ACB), Nagpur on 25.04.2001 and lodged a complaint.

(iii) After receipt of the report, office of the Bureau called two panchas. In presence of panchas, complainant narrated the incident which was verified by the panchas from the complaint. After following due procedure, it was decided to conduct a raid and panchas and the complainant were called on 25.04.2001. The complainant produced tainted amount of Rs.500/-, five in numbers of Rs.100/- denomination. The numbers of the currencies were noted. The demonstration of Sodium Carbonate and Phenolphthalein power was demonstrated to the complainant and the panchas. The said solution was applied on the tainted amount and kept in shirt pocket of the complainant. The instructions were given to the panch No.1 Nilkanth Kapse to stay along with the complainant and panch No.2 was asked to remain along with the raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, Pre-trap panchnama was drawn.

(iv) After the pre-trap panchnama, the complainant along with panchas and raiding party members reached at the office of the accused. The complainant and the panch No.1 Nilkant Kapse proceeded in the office, the Accused was present in the office, the complainant communicated with the accused and accused demanded Rs.500/-. On his demand, the complainant had taken out the amount of Rs.500/- and handed over to the accused. Thereafter, he has given decided signal and the accused was caught by the raiding party members. An enquiry was made with the panch No.1 P.W.-2 Nilkanth Kapse, thereafter, the accused was caught, the tainted amount was seized. Accordingly, post-trap panchnama was drawn. On completion of the investigation, the charge-sheet is filed.

3. During the trial, the prosecution has examined in all six witnesses namely P.W.-1 Pravin Vinayakrao Meshram/complainant Exhibit-11, P.W.-2 Nilkant Kapse/shadow panch Exhibit-22, P.W.-3 Manukumar Kumarshankar Shrivastav/ sanctioning authority Exhibit-30, P.W.-4 Harish Baburao Shende/carrier Exhibit-34, P.W.-5 Dipak Chandrakant Jambhulkar/who is serving in the N.M.C. office Exhibit-37 and P.W.-6 Anil Wasudeorao Bobde/Investigating Officer Exhibit-39.

4. Besides the oral evidence, the prosecution placed reliance on complaint Exhibit-17, notice issued by N.M.C. Exhibit-13, seizure memos Exhibit-20 and 21, pre-trap panchnama Exhibit-23, seizure memos Exhibit Nos.25 to 27, post-trap panchnama Exhibit-28, Letter by ACB to the Municipal Commissioner Exhibit-31, Resolution by Municipal Corporation Exhibit-32, sanction order Exhibit-33, First Information Report Exhibit-36, seizure memo Exhibit-38, seizure memos Exhibit Nos.41 and 42, complaint Exhibit-44 and C.A. report Exhibit-46.

5. After considering the evidence adduced during the trial, learned Judge of the trial Court held the accused guilty for the offence punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Act of 1988 and convicted and sentenced him as the aforesaid.

6. Heard learned Senior Counsel Mr. Sunil Manohar along with learned Counsel Mr. Atharva Manohar for the appellant and learned Additional Public Prosecutor Mr. A.G. Mate 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.

7. The learned Senior Counsel Mr. Manohar submitted that accused is a Revenue Assistant, the work of assessment is not with the accused. On perusal of the notice, which is served upon the complainant, shows that the assessment was done much prior to the demand i.e. 18.04.2000. Therefore, the question of demanding the amount for assessment of the tax does not arise. He further submitted that demand and acceptance is not proved, mere recovery of the amount from the accused is not sufficient to prove the charges. Admittedly, one Harshwardhan Bhat was along with the complainant at the time of initial demand, but he is not examined to corroborate

the evidence of the complainant. He further submitted that as per the evidence of the complainant, prior to 25.04.2001, he never visited the office of the ACB, whereas the document on record shows that requisition to call the panchas was issued on 23.04.2001. The evidence of P.W.-2 Nilkant Kapse, shadow panch, also shows that requisition was received in his office on 23.04.2001 i.e. prior to the lodging of the report. Thus, the prosecution has suppressed the genesis of the incident. Moreover, the accused was only the tax collector and not the assessing authority. The complainant is not the laymen, even the evidence of the Investigating Officer also shows the genesis suppressed. Immediate explanation is given by the accused to the Investigating Officer which shows that the amount was thrusted in the hands of the accused when the accused was in a hurry to leave the office to attend the marriage of his relative. He further submitted that the story narrated by the prosecution is not probable, independent witnesses are not examined. Considering the entire material on record which sufficiently shows that prosecution fails to prove the charge against the accused.

8. In support of his contentions, learned Senior Counsel for the appellant placed reliance on following decisions :

(i) ***Dattatraya Jagannathrao Zombade Vs. State of Maharashtra***, reported in ***2021 (2) ABR (CRI) 9***;

(ii) ***Punjabrao Vs. State of Maharashtra***, reported in ***(2002) 10 SCC 371***;

(iii) ***T. Subramanian Vs. State of Tamil Nadu***, reported in ***(2006) 1 SCC 401***;

(iv) ***Ashok Kumar Bhagchand Wardhani Vs. State of Maharashtra***, reported in ***2003 ALL MR (Cri) 88***;

(v) ***Raosaheb Vs. State of Maharashtra***, reported in ***1994 SCC OnLine Bom 614***;

(vi) ***State of Maharashtra (ACB) Pune, Chaturshringi Vs. Ratan Tulshiram Londhe***, reported in ***(2021) 1 Mh.L.J. (CRI) 124***;

(vii) ***State of Punjab Vs. Madan Mohan Lal Verma***, reported in ***(2013) 14 SCC 153***;

(viii) ***Tryambak Lilaji Binnar Vs. State of Maharashtra***, reported in ***2002(3) Mh.L.J. 293***;

(ix) ***Criminal Appeal No.342 of 2003***, *Rajesh S/o Vithalrao Patil Vs. State of Maharashtra*, **decided on 18.10.2022**;

(x) ***Criminal Appeal No.265 of 2005***, *Mohan Bhaiyyalal Shrivastava Vs. The State of Maharashtra*, ***decided on04.09.2023*** and

(xi) ***Criminal Appeal No.148 of 2006***, *Ramesh Tukaram Waghmare Vs. State of Maharashtra*, ***decided on 22.01.2024***.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of the complainant P.W.-1 Pravin Meshram is corroborated by shadow panch P.W.-2 Nilkant Kapse. The amount is recovered from the possession of the accused is also proved. The prosecution has also proved that the sanction accorded as per the law and valid and, therefore, no interference is called for in the judgment and order passed by the learned Judge of the trial Court.

10. 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.

11. In order to prove the sanction order, the prosecution has placed on the evidence of sanctioning authority P.W.-3 Manukumar Shrivastav who examined vide Exhibit-30. As per his evidence, he was serving as a Municipal Commissioner of N.M.C. On 07.10.2002

he has received a letter of the ACB requesting to accord the sanction. The then Municipal Commissioner and office of the N.M.C. submitted a proposal to the General Body N.M.C., Nagpur for according sanction to prosecute the accused. The General Body Meeting was held on 25.07.2002 and in the said meeting, resolution was passed according sanction to prosecute the accused was considered and approved. The House took into accounts the documents tabled by Municipal Commissioner and thereafter, resolution was passed. He further stated that after being satisfaction that there was a *prima facie* case against the accused, he decided to implement the Resolution No.26 and signed the sanction order, which is at Exhibit-33. His cross-examination shows that he was not present in the meeting when the General Body Meeting was held on 25.07.2002, as he had not taken the charge as a Municipal Commissioner of N.M.C., Nagpur. It further came in his evidence that the document Exhibit-13, is the tax assessment, the concerned person has to pay the tax as per the tax assessment. It further came in his evidence that if the person is aggrieved with the tax, he has to take a necessary action. He further stated that he was not the appointing authority of the accused and denied the contention that he has not applied the mind. The Exhibit-31 is the letter issued to the Municipal Commissioner, Nagpur by the Investigating Officer for according the sanction. The

Exhibit-32 is the resolution passed by the Municipal Corporation, Nagpur wherein the Resolution No.26 passed is reproduced as under :

> *"With reference to the letter bearing No. C.R. 151/Nagpur – 2001 – 2963 dated 29.9.2001 as well as letter bearing No. 151/NGP.2001-3337 dated – 8.11.2001 of Deputy Commissioner of Police/Superintendence of Police, Anti Corruption Bureau, the house has considered the question to give permission to file the case in the Court and prosecute Shri Sunil Narayan Bawane, the Revenue Assistant under suspension/C.E.A. Tax Assessment Department under (the provisions of) sections 7, 13(1) read with section 13(2) of Prevention of Corruption Act and Police Act and thereby the house has accorded sanction by voicing unanimously."*

12. On perusal of the sanction order which shows that in the sanction order entire prosecution case is reproduced and in second last para, it is mentioned that upon carefully reading the papers of the investigations into Crime No.3067/2001 and after carefully reevaluating evidence on record, he is satisfied that there was adequate evidence to prosecute the said Sunil Narayanrao Bawane for the offences constituted by the Acts herein above stated and punishable as mentioned above.

13. The learned Senior Counsel for the appellant submitted that the sanction was accorded merely because the House of the

N.M.C. has passed the resolution, there is no independent application of mind. The appointing authority is N.M.C. whereas, removing authority is the Commissioner. While granting sanction, the sanctioning authority has not considered the material independently and accorded the sanction only on the basis of draft sanction order. He stated that para No.2 of the sanction order shows that the sanctioning authority has received the draft sanction order and on the basis of said draft sanction order, the sanction was accorded. He submitted that law on the sanction is well settled. According the sanction is not an empty formality, but it is a sacrosanct act. He submitted that the evidence of the sanctioning authority itself sufficient to show that the sanction order was accorded on the basis of the resolution passed by the House of the N.M.C.

14. After going through the evidence of sanctioning authority, P.W.-3 Manukumar Shrivastav, admittedly, the sanction order nowhere reflects who has applied the mind and which documents are considered by the sanctioning authority and on what basis the sanctioning authority came to the conclusion that sanction is to be accorded to launch the prosecution against the accused. After going through the evidence of sanctioning authority, though he stated that he has applied his mind and perused the investigation papers, the

sanction order nowhere discloses that he has applied his mind by perusing the investigation papers. The wording used in the sanction order shows that the Municipal Commissioner as the Chief Executive Officer of the Nagpur Municipal Corporation is responsible for implementing the said resolution of the N.M.C. and thereby he is according the sanction. The sanction order only shows that the House of the N.M.C. has passed the resolution, the said resolution is on record, it nowhere discloses that which documents are considered by the House while according the sanction. There is no reference of the activities carried out by the N.M.C. to accord the sanction. The sanction order discloses that the material was examined by the House and the satisfaction for according of the sanction was arrived by the House and the resolution was passed. The sanction order does not specifically mentioned who has actually undertaken the exercise of examining the material and recorded the subjective satisfaction in this regard while passing the resolution. Thus, the evidence of the sanctioning authority is not sufficient to held that P.W.-3 Manukumar is the person who has applied his mind while according the sanction. Admittedly, the grant of sanction is serious exercise of powers by the competent authority. It has to be apprised of all the relevant materials and on such materials the authority has to take a conscious decision as to whether the facts would show the commission of the offence under the relevant provisions. No doubt, elaborate discussion is not required, however, the decision making on relevant materials should be reflected in the order.

15. On the point of valid sanction, the settled law is to be taken into consideration. The Hon'ble Apex in the case of ***Mohd.Iqbal Ahmad vs. State of Andhra Pradesh***, reported in ***1979 AIR 677*** 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.

16. The Hon'ble Apex Court, in another decision, in the case of ***CBI vs. Ashok Kumar Agrawal***, reported in ***2014 Cri.L.J. 930*** 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 Hon'ble 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.

17. The Hon'ble Apex Court in the case of ***State of Karnataka vs. Ameerjan*** reported in ***(2007)11 SCC 273***, 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.

18. The view in the case of ***State of Karnataka vs. Ameerjan*** (*supra*) is the similar view expressed by this court in the case of ***Anand Murlidhar Salvi vs. State of Maharashtra***, reported in ***2021 SCC OnLine Bom 237***.

19. This court in the case of ***Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra***, reported in ***2016 ALL MR (Cri) 3697*** 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.

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 the sanction.

21. Besides the issue of the sanction, the prosecution claimed that the accused has demanded gratification amount and accepted the same. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of the complainant P.W.-1 Pravin Meshram and P.W.-2 Nilkant Kapse. The prosecution has also examined P.W.-5 Dipak Jambhulkar, employee of

the N.M.C. The accused is prosecuted for the offence punishable under Section 7 and 13(1)(b) of the Act of 1988.

22. It is now well settled that the offence is under the Prevention of Corruption 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 a *sine quo non* for establishing the offences under the Act of 1988.

23. The Hon'ble Apex Court in the case of ***K.Shanthamma vs. The State of Telangana***, reported in ***2022 LiveLaw (SC) 192*** referring the judgment in the case of ***P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr***, reported in ***(2015) 10 SCC 152*** 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 Act of 1988. 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 Act of 1988 would not entail his conviction thereunder. The Hon'ble Apex Court

has reproduced paragraph No.23 of its decision in the case of ***P.Satyanarayana Murthy*** *supra*, which reads thus:

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

24. To prove the offence under Sections 7 and 13(1)(d) of the Act of 1988, 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 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.

25. In the light of the above well settled legal position, if the evidence of the prosecution is appreciated, it would that the prosecution has placed reliance on the evidence of the complainant P.W.-2 Pravin Meshram. As per his oral evidence, the accused is serving as a Revenue Assistant. The complainant has purchased the plot in the year 1993 and constructed the house. He has applied for the mutation in the name of his wife and therefore, submitted an application on 03.07.1995. Though he visited the office of the N.M.C. on several occasions, the name of his wife was not mutated. He

received the notice on 05.01.2001 from Nagpur Corporation wherein, it is mentioned that plot No.468 is still in the name of his vendor Manwatkar and, therefore, notice was also issued by the Nagpur Corporation in the name of his vendor. Therefore, he visited the office of N.M.C., Tax Department and made enquiry. On enquiry, he came to know that the accused is the incharge of his Ward, therefore, he contacted the accused on the same day. The accused demanded some documents from him, accordingly, he handed over the said documents to the accused. It was informed to him that the application for mutation was rejected and he has to submit a fresh application. He also requested for assessment of the tax of his house and accused informed him that in the month of March the tax generally assessed and therefore, he should meet him in the month of March. In the month of March 2001 one Vaidya met him on behalf of accused and demanded house tax receipt. He enquired with said Vaidya whether the tax was assessed over his property or not and on his enquiry, said Vaidya informed him that he shall meet the accused in this respect. Therefore, he met the accused in his office on 20.03.2001 and shown him the papers and notice. The accused demanded Rs.500/-, the complainant paid Rs.400/-. Thereafter, he met the accused on seven to eight occasions, but the tax was not assessed. As per the evidence of the complainant on 23.04.2001, he visited the office of the accused along with one Harshwardhan Bhat, he met the accused and the accused demanded Rs.1,000/- for the assessment of the tax. He shown inability to pay the amount and after negotiation, it was decided to pay Rs.500/-, but as he has not desire to pay the amount and he approached to the office of ACB. Thereafter he has narrated the procedure carried out by the officials of the Bureau during pre-trap and post-trap panchnama.

26. As per the evidence of P.W.-1 Pravin Meshram, he and P.W.-2 Nilkant Kapse proceeded on his scooter and the members of the raiding party and panch No.2 followed them in a Government vehicle. They visited the office of the accused wherein two-three persons were present. The yellow coloured registered was also in-front of accused. He shown the papers and notice to the accused, the accused has mentioned the name of Tarachand Manwatkar on the said notice and thereafter, the accused asked him about his amount and he told that amount was brought and he handed over the said amount and thereafter he has given a signal, the accused was caught and the amount was recovered.

27. To shatter the evidence of the complainant he is cross-examinated at length, during his cross-examination it came on record

that he met the accused on 16.04.2001 much prior to that also. The notice Exhibit-13 was regarding the assessment of the tax for the period from 01.04.1990 to 01.04.2000. The rate of yearly tax is also mentioned in the said notice and he was informed that he has to pay total tax about Rs.1100/- to Rs.1200/-. His evidence further shows that he did not meet with Mr. Jambhulkar in connection with the work of tax assessment, but when he met with Mr. Jambhulkar, he enquired about the sitting place of accused. It further came in his evidence that the tax assessment was entrusted with Mr. Jambhulkar. His evidence specifically states that prior to 25.04.2001, he has not visited the ACB office. The notice issued by the N.M.C. was received by him on 10.04.2001, thereafter he had taken the same to the accused and accused told him that amount of Rs.1200/- to Rs.1500/- will be required towards tax. Thus, his evidence shows that firstly he visited the ACB office on 25.04.2001 prior to that he has not visited the ACB office. His evidence further shows that the notice Exhibit-13 issued to him is for the assessment year from 01.04.1990 to 01.04.2000. The said notice is on record which shows the issued date as 18.04.2000.

28. The learned Senior Counsel for the appellant submitted that on perusal of the evidence of the complainant, it is apparent that

he has received the notice on 01.04.2001 whereas the notice Exhibit-13 bears the date as 18.04.2000. The said notice shows the tax was assessed much prior to the alleged demand by the accused.

29. To corroborate the version of the complainant, the prosecution placed reliance on the evidence of the P.W.-2 Nilkant Kapse, who testified that on 23.04.2001, he was called in the ACB office along with panch No.2. They have attended the office as the ACB officers called them on 25.04.2001. Thereafter, he has narrated entire procedure carried out by the ACB officials during the pre-trap panchnama. His evidence further shows that when he visited the office of the accused along with the complainant, two-three persons were sitting in the office of the accused. Regarding demand and acceptance, he stated that accused asked the complainant about the money and complainant handed over the said amount to the accused. During his cross-examination he specifically stated that after handing over the amount by the complainant, the accused asked the complainant to wait he will issue the receipt, but as soon as the amount was given, the complainant went outside to give signal. His cross-examination further shows that when he went there, five to six persons were present.

30. The learned Senior Counsel for the appellant submitted that the evidence of the complainant and panch No.1 is inconsistent as the evidence of the complainant shows that first time he visited the office of ACB on 25.04.2001 whereas the evidence of the panch No.1 shows that he was called in the ACB office by issuing requisition letter dated 23.04.2001, the requisition issued for call the panchas is also on 23.04.2001 i.e. prior to lodging of the complaint by the complainant. He submitted that this circumstance speaks for itself that only to implicate the accused falsely, this false document was prepared. There was no reason for the ACB officials to issue the requisition when there was no complaint with them. He further submitted that the cross-examination of the panch witness itself shows that after accepting the amount, the accused asked the complainant to take the receipt and he was about to receive the receipt. Thus, this admission sufficiently shows that the amount was accepted by the accused towards the tax. He further submitted that the genuineness of the occurrence itself is suppressed by the ACB officials as the allegations of the complainant is that he received the notice on 05.01.2001, whereas the notice was issued on 18.04.2001 itself. Thus, the entire allegations made by the complainant are falsified by these circumstance.

31. The prosecution has also examined P.W.-5 Dipak Jambhulkar, whose evidence shows that the work of assessment was not with the accused, but it was with him. The accused was only the recovery officer. He specifically stated that work of assessment of the house of Savita Meshram was with him and notice of assessment was given by him. He further stated that the power of recovery of tax of the house of Savita Meshram was with the accused. He specifically admitted that assessment of tax of the house of Savita Meshram was already done prior to the date of trap. Thus, the evidence of this P.W.-5 also corroborated the defence that no work was lying with the accused. Moreover, the tax was already assessed much prior to the trap, which sufficiently shows that only the involvement the present appellant falsely, this report is lodged.

32. The prosecution has also examined P.W.-6 Anil Bobde, who is the ACB official who narrated about the complaint lodged by him after due investigation and the procedure carried out by him. His evidence also shows that the accused had submitted his explanation in writing on spot and as per the said explanation, when the Notice under Section 132 of the N.M.C. Act was served upon the complainant, at that time, he was told by the accused that the amount of Rs.1200/- tax requires to be deposited by him, but the

complainant had disclosed his intention to pay only Rs.500/- towards tax. P.W.-6 further stated in his evidence that in the explanation accused had stated that if the complainant desires to pay Rs.500/- towards payment of tax then he would get the receipt to that effect and, therefore, the amount was accepted. He further stated that during investigation it was transpired that tax regarding the assessment of the house of Savita Meshram was already approved by the N.M.C. i.e. before the trap. During investigation it was transpired that on 16.04.2001 the accused was on leave and therefore, he could not meet the accused. His evidence specifically states that he had not come across during investigation of documents seized by him in respect of mutation of the house of wife of the complainant. The dispute was regarding the assessment of tax of the house of complainant's wife. Thus, the evidence of the Investigating Officer also shows that much prior to the trap, the tax was assessed by the N.M.C. regarding the house which is standing in the name of wife of the complainant.

33. The learned Senior Counsel for the appellant submitted that the evidence of the complainant, shadow panch and the Investigating Officer consistently shows that the demand was made for the assessment of tax. The evidence further shows that the tax

was assessed much prior to the trap. The assessment of the tax was not with the accused, the accused was only to recover the tax amount. The immediate explanation of the accused to the Investigating Officer shows that he has accepted the amount towards the tax. The admission given by the shadow panch also sufficiently shows that the accused asked the complainant to take the receipt, but the complainant went outside and gave a signal. He submitted that all these events clearly shows that the accused is implicated falsely in the alleged offence only because he has demanded the tax amount from the complainant. The complainant is not a layman, he is the police constable. He further submitted that mere proof of receipt of money by the accused in absence of proof of demand and acceptance of money as illegal gratification not sufficient to establish guilt of the accused. This aspect is dealt with by the Hon'ble Apex Court in the case of ***T.Subramnanian Vs. State of T.N.*** (*referred supra*) wherein it is held that mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, not sufficient to establish guilt of the accused. If accused offers reasonable and probable explanation based on evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal. He further submitted that presumption would attract when the prosecution established the charge against the accused beyond reasonable doubt.

34. In the case of ***Punjabrao Vs. State of Maharashtra*** (*cited supra*) held that accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. The accused can establish his defence by preponderance of probability. If the explanation offered by him under Section 313 of the Code of Criminal Procedure is found to be reasonable, then it cannot be thrown away merely on the ground that he did not offer the said explanation at the time when the amount was seized. Thus, the learned Senior Counsel submitted that the consistent view is that the prosecution has to prove the charges against the accused beyond reasonable doubt.

35. The Constitution Bench of the Hon'ble Apex Court in the case of ***Neeraj Dutta Vs. State (Govt. of NCT of Delhi)***, reported in ***2022 LiveLaw (SC) 1029***, 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 Hon'ble Apex Court, while discussing expression "accept", referred the judgment in the case of ***Subhash Parbat Sonvane vs. State of Gujarat***, reported in ***(2002)5 SCC 86*** 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 13(1) (b) of the Act of 1988, 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), (ii) and (iii) of Section 13(1)(d), the emphasize is on the word "obtains". Therefore, there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression "accept", the Hon'ble 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'.

36. 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. The evidence of the P.W.-1 Pravin Meshram shows that first time he approached to the ACB office and make his grievance that he approached to the office of the accused for assessment of the tax on 23.04.2001 and the accused has demanded the money. He specifically admits that before 25.04.2001, he never attended the office of ACB. The evidence of the complainant further shows that first demand was made to him on 23.04.2001 in presence of one Harshwardhan Bhat. Admittedly, the said Harshwardhan is not examined by the prosecution, even his statement is not recorded by the Investigating Officer. It is well settled that the evidence of the complainant should be corroborated in material particulars.

37. The Hon'ble Apex Court in the case of ***Panalal Damodar Rathi vs. State of Maharashtra***, reported in ***(1979)4 SCC 526*** 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 will have to see whether this part of the evidence of the complainant has been corroborated. The Hon'ble Apex Court held that it should corroborate to each other.

38. In the decision of the Hon'ble Apex Court in the case of ***Mukhtiar Singh (since deceased) through his LR vs. State of Punjab***, reported in ***2017 SCC OnLine SC 742***, 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.

39. While deciding the issue involving the offence under the Act of 1988, a fact required to be considered is that the evidence of the complainant P.W.-1 Pravin Meshram will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

40. In the case of ***M.O.Shamsudhin vs. State of Kerala***, reported in ***(1995)3 SCC 351***, 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.

41. In the case of ***Bhiva Doulu Patil vs. State of Maharashtra***, reported in ***1963 Mh.L.J. (SC) 273***, 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."

42. 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.

43. In the present case, the evidence of the complainant shows that prior to 25.04.2001, he has not visited the ACB office whereas, the evidence of P.W.-2 shadow panch Nilkant Kapse shows that his office has received the letter on 23.04.2001 i.e. prior to lodging of the report calling him in the ACB office on 25.04.2001 to act as a panch. The requisition issued by the ACB officer to the office of the P.W.-2 also shows that the requisition was issued on 23.04.2001. As per the evidence of the complainant, he approached to the accused for assessment of the tax, whereas the notice issued vide Exhibit-13 shows that the tax was assessed much prior to the trap i.e. on 18.04.2000 itself. The evidence of the panch witness shows that accused had asked the complainant to take the receipt after acceptance of amount also supports the story put forth by the

accused that immediately after conducting the raid while giving his explanation that he accepted the amount towards the tax. Thus, admission given by the panch that accused asked the complainant to take receipt sufficiently shows that the appellant/accused has accepted the amount towards the tax in part. Prior conducting the raid, the officers of the Bureau have not verified whether the allegations made by the complainant are genuine and there was a demand by the accused. P.W.-6 Anil Bobde has issued the requisition for calling the panchas in anticipation that some complaint would be filed on 25.04.2001. These events creates the doubts regarding the genuineness of the complaint lodged by the complainant.

44. 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.

45. 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*** (referred 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."

46. In the case of The State of ***Maharashtra vs. Ramrao Marotrao Khawale***, reported in ***2017 ALL MH (Cri) 3269***, 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 probability and he is not required to prove facts beyond reasonable doubt.

47. The Hon'ble Apex Court in the case of ***Mohmoodkhan Mahboobkhan Pathan Vs. State of Maharashtra***, reported in ***(1997)10 SCC 600***, 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 whatever received by the accused was gratification. The word "gratification" is not defined in the Act. Hence

it must be understood in its literal meaning. In the Oxford Advanced Learner's Dictionary of Current English, the word “gratification” is shown to have the meaning “to give pleasure or satisfaction to”. The word “gratification” is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient. If the money paid is not for personal satisfaction or pleasure of the recipient it is not a gratification in the sense that it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the Court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at any stage.

48. In the case of State of ***Maharashtra vs. Rashid B.Mulani***, reported in ***(2006)1 SCC 407***, 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.

49. 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* for convicting the accused in such cases, it cannot be said that the prosecution has been successful in proving it's case beyond reasonable doubt.

50. After appreciating the evidence on record, as per the prosecution case, the accused has demanded the amount for assessment of the tax. The work of assessment of the tax was not with the accused. The evidence of the complainant shows that the demand was made in presence of one Harshwardhan, who is not examined by the prosecution even his statement was not recorded. The evidence of the complainant further shows that first time he approached to the ACB office on 25.04.2001, whereas the panchas were called on 23.04.2001 i.e. much prior to the lodging of the complaint. As per allegations, the demand was made for the

assessment of the tax, whereas the Notice Exhibit-13 shows that tax was assessed much prior to the trap i.e. on 18.04.2000. The evidence of the P.W.-2 Nilkant Kapse, shadow panch shows that after acceptances of the amount, the accused asked the complainant to take the receipt, but the complainant went outside and gave a signal. The immediate explanation by the accused that he has accepted the amount towards part payment of tax and was ready to issue the receipt is substantiated by the evidence of the P.W.-2 panch witness. The evidence of the P.W.-6 Anil Bobde, Investigating Officer also shows that during investigation it revealed to him that the tax regarding assessment of tax was already approved by the N.M.C. before the trap. It further revealed to him during the investigation that in the explanation given by the accused wherein he stated that if the complainant desire to pay Rs.500/- towards part payment of tax then he will get receipt to that effect. P.W.-6 has not came across any the documents to show that mutation of house of wife of the complainant was in her name. Thus, the entire evidence is not inspiring the confidence and the intention of the complainant can be gathered from the circumstances. If this evidence is taken into consideration, in the light of the fact that no tax remain to be assessed on the date of the complaint. The explanation of the accused is supported by the evidence of the shadow panch, which clearly shows that the appellant has rebutted the presumption on the basis of the preponderance of probability by way of cross-examination. The defence offered and proved by the accused is reasonable one.

51. It is also well settled that while deciding the offence under the Prevention of Corruption 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 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.

52. As far as applicability of presumption is concerned, the Hon'ble Apex Court recently in the case of ***Neeraj Dutta vs. State (Govt.of NCT of Delhi)*** (*referred 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.

53. In the present case, as observed earlier that prior demand by the accused is not proved by the prosecution, a doubt is created as to the demand of the amount as the independent witness is not examined and there is no consistency between the evidence of the complainant and the shadow panch. I have already observed that principles for according the sanction are also not followed. The sanctioning authority has to exercise powers strictly keeping in mind all the relevant facts and material and accord the sanction. The sanction order nowhere discloses the said satisfaction. Thus, the entire exercise carried out by the sanctioning authority is without application of mind. The evidence as to the demand and acceptance is not satisfactory. The demand and acceptance required to be proved which is *sine quo non* for establishing the charge. As such, 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 21.02.2007 passed by the learned Judge, Special Court for ACB, designated under the Prevention of Corruption Act, 1988 Nagpur in Special Case No.32/2002 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.)

Kirtak