2024:BHC-NAG:1878

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

CRIMINAL APPEAL NO. 73 OF 2012

Mahendra S/o Kisanrao Pinjarkar,
Aged about 42 years,
Occupation – Service,
R/o. Mangilal Plot, Amravati,
Tahsil & District – Amravati.

.... **APPELLANT**

// **VERSUS** //

The State of Maharashtra,
Through Station Officer,
Gadge Nagar, Police Station, Amravati,
Tahsil & District – Amravati.

.... **RESPONDENT**

Mr. Anil Mardikar, Senior Advocate assisted by Mr. Digvijay Singh, Advocate for Appellant.
Mr. S.S. Hulke, Additional Public Prosecutor for Respondent.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 31.01.2024.
PRONOUNCED ON : 15.02.2024.

JUDGMENT.

1. By preferring this appeal, the appellant (accused) has challenged the judgment and order of conviction and sentence dated 08.02.2012 passed by learned Additional Sessions Judge, Amravati/ Special Judge (learned Judge of the trial court), in Special Case

(ACB) No.3/2004 whereby the accused is convicted for the offences punishable under Section 7 of the Prevention of Corruption Act, 1988 (the Act of 1988) and sentenced to suffer one year simple imprisonment and to pay fine of Rs.2,000/- in default of payment of the fine amount, to suffer further simple imprisonment for a period of 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 simple imprisonment for two years and to pay fine of Rs.3,000/- in default of payment of the fine amount, to suffer further simple imprisonment for three months.

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

(i) The accused is serving as a Lineman, M.S.E.B., Gadgenagar Center, Amravati. The complainant Prashant Damodhar Shegokar runs the business of fabrication in the house which is standing in the name of his mother. The electric meter is in the name of his father. He had undertaken renovation work of his house. While carrying out the renovation work, the glass of electric meter was cracked, but the meter was properly running. As per his contention, he paid all the bills. One month prior to lodging the complaint, on

23.09.2003, the accused had been to his house and informed his mother that the glass of the electric meter was found broken and he has noticed theft of electricity. The meter requires to be changed and asked the complainant to meet him. When he returned back to the house in the evening, his mother informed him about the same. Therefore, on the next day, he visited the office of the accused, but he could not meet him as he was not present. Ten days prior to the lodging of the complaint, accused had been to his house, that time his cousin brother Sachin was present, the accused demanded bill and asked whether bill was paid or not. The cousin brother of the complainant informed the complainant to contact the accused.

(ii) On 23.09.2003 at about 03.00 p.m. when the complainant was present in his house, the accused with four other persons visited the house. The persons who were along with the accused were employees of the Contractor. The complainant handed over paid bill, thereafter, the old meter was removed and new meter was installed, but accused informed the complainant that new electronic meter would fetch more electricity and he has to pay more amount towards bill. Therefore, the complainant asked the accused to keep the old meter as it is, the accused demanded Rs.1,000/-. After negotiation, accused agreed to accept Rs.800/-. The complainant has gave Rs.500/- to the accused and after accepting Rs.500/-, he asked the complainant to pay remaining Rs.300/- in the evening. When the complainant shown his inability to pay the remaining amount of Rs.300/- in the evening, he told that he would come on the next day. As the complainant was not ready to pay the amount, he approached to the office of the Anti Corruption Bureau(ACB), Amravati and lodged report.

(iii) After receipt of report, Office of the Bureau called two panchas. In presence of panchas, the complainant narrated the incident, which was verified by the panchas from his complaint. After following due procedure, it was decided to conduct a raid. The panchas and the complainant were shown the demonstration as to the phenolphthalein powder and sodium carbonate solution. The complainant has produced the amount of Rs.300/- i.e. three currencies of Rs.100/-. The said solution was applied on the tainted notes and it was kept in the shirt pocket of the complainant. The complainant and the panchas were given necessary instruction. The complainant was instructed to hand over the amount only on demand, whereas the panch No.1 Narendra Khandekar was instructed to remain with the complainant. The panch No.2 was asked to stay along with the other raiding party members. Accordingly, Pre-trap Panchnama was drawn.

(iv) After Pre-trap panchnama, the complainant along with the panchas and raiding party members proceeded towards Ashok Colony, Amravati and other raiding party members were nearby the house of the complainant. The accused came to the house of the complainant and went inside. After some time, he came out and went away on his motorcycle. He again returned back on his motorcycle and went inside the house of the complainant. After some time, the complainant came out of his house and gave a predetermined signal. Officers and panch No.2 then reached inside the house and the accused was caught. The tainted amount was found in the papers, which was in the hands of the accused. The accused was interrogated and he explained that he is not aware how the tainted notes came in the said papers. The notes were examined in ultra violet light, a solution of phenolphthalein powder and sodium carbonate was found on the said notes, the amount was seized. Accordingly, post-trap panchnama was drawn. The accused was arrested and the relevant documents are also seized by the Investigating Officer. After completion of the investigation, charge-sheet is filed.

3. During trial, the prosecution has examined in all five witnesses namely P.W.-1 Prashant Damodhar Shegokar/complainant Exhibit-14, P.W.-2 Narendra Devidas Khandekar/shadow panch Exhibit-25, P.W.-3 Narendra Ramraoji Rathod/panch No.2 Exhibit-75, P.W.-4 Pralhad Ajabrao Potdar/sanctioning authority Exhibit-79 and P.W.-5 Parshuram Bhasu Rathod/Investigating Officer Exhibit-84.

4. Besides the oral evidence, the prosecution placed reliance on following documents, complaint Exhibit-15, seizure memo Exhibit-16, electric bills Exhibit Nos.-17 and 18, pre-trap panchnama Exhibit-26, seizure memos Exhibit Nos.27 to 31, post-trap panchnama Exhibit-76, sanction order Exhibit-80, report Exhibit-87 and First Information Report Exhibit-90.

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. Anil Mardikar along with learned Counsel Mr. Digvijay Singh for the appellant and

learned Additional Public Prosecutor Mr. Hulke 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. Mardikar submitted that the judgment and order of conviction impugned is erroneous and without appropriate reasoning. Learned Judge of the trial Court failed to appreciate inconsistencies came in the evidence and failed to appreciate that the demand and acceptance is not proved. He further submitted that even the sanction to prosecute the accused as contemplated under Section 19 of the Act of 1988 is bad in law and, therefore, the conviction of the accused stood vitiated on that ground itself. He further submitted that the evidence of the complainant P.W.-1 Prashant Shegokar and panch P.W.-2 Narendra Khandekar is insufficient to prove the demand and acceptance. The learned Judge of the trial Court failed to appreciate that immediate explanation is given by the accused that he has left his bag in the house of the complainant and the amount was kept by the complainant in the said papers to falsely implicate the accused. The defence of the accused is supported by the circumstance as the amount was found in the papers. Thus, the entire prosecution fails for all above these grounds and accused/appellant deserves to be acquitted.

8. In support of his contentions, learned Senior Counsel for the appellant placed reliance on the judgment of this Court in ***Criminal Appeal No.265/2005***, (*Mohan Bhaiyyalal Shrivastava Vs. The State of Maharashtra*), decided on 04.09.2023 and ***Criminal Appeal No.247/2005*** (*Wasudeo S/o Nathuji Ukey Vs. The State of Maharashtra*), decided on 05.10.2023. He further placed reliance on ***Bismillakha s/o Salarkha Pathan Vs. State of Maharashtra***, reported in ***2003(5) Mh.L.J. 243***.

9. Per contra, learned Additional Public Prosecutor for the State submitted that the evidence of the complainant P.W.-1 Prashant Shegokar is corroborated by shadow panch P.W.-2 Narendra Khandekar and P.W.-3 Narendra Rathod. The amount recovered from the papers which were in the hands of the accused. The prosecution has also proved the sanction as per the law which is valid and, therefore, no interference is called for in the said judgment and order passed by the learned Judge of the trial Court. In support of his contention, he placed reliance on ***Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi)***, reported in ***(2020) 2 SCC 88***.

10. Since the 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, the prosecution placed reliance on the evidence of sanctioning authority P.W.-4 Pralhad Ajabrao Potdar, who testified that from 2002 to 2006 he was working as an Executive Engineer in M.S.E.B., Urban Division, Amravati, Gadge Nagar Centre, he was the appointing and removing authority of the Assistant Lineman. Accused Mahendra during the said period was working as an 'Assistant Lineman'. The ACB forwarded papers to him, he verified those papers and then accorded sanction. The sanction order is at Exhibit-80. From his evidence it reveals that the draft sanction order was forwarded to him by ACB, he put the rubber stamp of his office and his signature thereon and along with his covering letter, he sent it back to the ACB. He stated that after verifying the papers, he put his signature and accorded the sanction.

12. Perusal of the sanction order reveals that its first paragraph the designation of the accused is stated, whereas in rest of

the paragraphs the prosecution case is narrated. Last paragraph of the sanction order shows that as being the competent Authority to remove the accused, he accorded the said sanction to launch prosecution.

13. The law is settled regarding the sanction. Whether the sanction is valid or not and whether said sanction can be called as a valid, the same is settled by the catena of decisions.

14. 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.

15. 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.

16. 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.

17. 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**.

18. 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.

19. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his own independent mind for generation of its satisfaction for sanction. The admission given by P.W.-4 shows that he has put his seal and signature on the draft sanction order and sent it to the ACB office. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in

mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the Act of 1988 by refusing to accord sanction for his prosecution or not.

20. Thus, the application of mind on the part of the sanctioning authority is imperative. The orders granting sanction must demonstrate that he/she should have applied his/her mind while according sanctions.

21. After going through the evidence of sanctioning authority P.W.-4 Pralhad Potdar, though he stated that he has applied his mind and perused the investigation papers, the sanction order nowhere discloses which documents he perused and on what basis he satisfied himself for according the sanction. The sanctioning authority has to be apprised of all the relevant materials and thereafter, 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. Admittedly, the grant of sanction is a serious exercise of powers by the competent authority.

22. After going through the evidence of sanctioning authority P.W.-4 Pralhad Potdar, admittedly, the sanction order nowhere reflects the material on the basis of which the sanctioning authority came to conclusion that the sanction is to be accorded to launch prosecution against the accused. There is no finding by learned Judge of the trial Court as to validity of the sanction.

23. Besides the issue of 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 complainant P.W.-1 Prashant Shegokar and shadow panch P.W.-2 Narendra Khandekar. The prosecution has also examined P.W.-3 Narendra Rathod as a panch No.2, who removed the tainted amount from the papers which were in the hands of the accused. The accused is prosecuted for the offence punishable under Section 7 and 13(1)(d) of the Act of 1988.

24. It is now well settled that the offence is under the Act of 1988 relating to public servants taking bribe require a demand of illegal gratification and the acceptance thereof. The proof of demand of a bribe by a public servant and its acceptance by him is a *sine quo*

non for establishing the offences under the Act of 1988. The evidence of the complainant recorded vide Exhibit-14 reflects that he is running the welding workshop at his house and one electric meter installed at his house, which is in the name of his father, it is a three phased meter. It is also an admitted position that the electric meter was cracked, however, it was in a working condition. To assess the bill, the accused has visited his house and found that the meter is in a broken condition and, therefore, the accused informed that said meter should be changed. As per the allegations, the accused and the employees of the contractor visited the house of the complainant to change the meter. They have installed the new electric meter, but the accused informed the complainant that it will fetch more bill and therefore, the complainant asked him to keep the old meter as it is and for that purpose, the accused has demanded Rs.1,000/-. After negotiation, the accused agreed to accept Rs.800/-, out of which the complainant has paid Rs.500/- and Rs.300/- remain to be paid. As the complainant was not willing to pay the said amount, therefore, he approached to the ACB office and lodged the report. He has narrated the entire procedure carried out by the ACB officials to conduct the raid.

25. As far as subsequent demand is concerned, evidence of the complainant is that he along with the shadow panch P.W.-2 Narendra Khandekar were present in his house, when accused visited his house. As per his evidence, the accused came at his house and kept his bag in his house and left the house for some work, after some time, again the accused came and demanded the amount. On demand, he handed over the said amount, accused accepted the same, thereafter, he gave predetermined signal and accused was caught. As per his evidence, after demanding the amount, the accused asked him to keep the amount in the bundle of papers, accordingly he put the same in the bundle of papers, thereafter, he gave a signal, accused was caught and amount is found in the papers and accordingly, post-trap panchnama was drawn. During his cross-examination, it came on record that no electric meter in his name prior to 23.09.2023. The accused had visited his house and inspected the meter and demanded the electric bill. He further admitted that the meter was broken and it is alleged that the electric power was being stolen and the accused informed him the meter is required to be changed. He further stated that employees of the contractor had come with new meter, accused has demanded the electric bill from him, it is possible that his name was mentioned in the list where the temporary disconnection was to be made. It further came in his

evidence that on 24.09.2023, the accused kept his bag in his house thereafter, he left by keeping his bag in the house and while the accused left, there was no talk about the amount. He further stated that he was having an apprehension that the prosecution would be in the name of his father and his parents have no complaint about the demand of money from them by the accused. He specifically stated that during the talk, the accused had not made the demand of money, the accused asked water from him and thereafter, he went out and gave signal to police and thereafter, police rushed and caught the accused. He further stated that there was no trace of solution on the hands of the accused. The tainted notes were seized from the papers and there was an immediate explanation by the accused that he is not aware how the amount is found in the said papers.

26. P.W.-2 Narendra Khandekar, shadow panch is also examined to corroborate the version of the complainant, who narrated about the entire incident happened during pre-trap panchnama and post-trap panchnama. As far as demand is concerned, his evidence is that the accused told the informant to pay money as agreed, the informant took out the currency notes and handed over the accused, the accused asked him to place those currency notes on a papers, accordingly, the complainant put the said

currency notes in the papers and gave a signal. During the evidence, especially from the cross-examination, P.W.-2 also admitted that the allegations was that money was demanded to change the glass of the electric meter. The electric meter was not standing in the name of the complainant, the person in whose name the said electric meter was standing has not lodged any report with ACB. His evidence further states that the accused and other employees had gone somewhere else after keeping the bag in the house of the informant, till the time the accused returned again to the house of the informant, he had not demanded the money. Those currency notes were found kept in the papers annexed with the list Exhibit-28. He further stated that enquiry was made with the accused, the accused has stated that he kept the bag in the house of the informant and had gone to another place for disconnection and he is not aware as to how the currency notes were found in the documents. No glaze was found on the hands or any other part of the body of the accused. Thus, the cross-examination of the panch witness also shows that there was no demand by the accused when he came in the house of the complainant till he left the house of the complainant. As per their evidence, demand was made after the accused returned to the house of the complainant. Thus, as far as the demand is concerned, the evidence of P.W.-1 and P.W.-2 shows that though the accused has visited the house of complainant and kept his bag in the house of complainant and left the house of the complainant for some time, till then there was no demand. The evidence further shows that the demand was made after the accused returned and thereafter the signal was given. Both the witnesses have admitted that there was no demand by the accused as soon as he entered in the house of the complainant. Admittedly, the amount was found in the papers. The evidence of P.W.-1, P.W.-2 and the recitals of the post-trap panchnama shows that immediate explanation is given by the accused that he is not aware how the amount came into the papers. The defence of the accused is that his bag was kept in the house of the complainant and it was the complainant who kept the amount in the said papers, which is also admitted by P.W.-1 and P.W.-2 to the extent that accused has left the house of the complainant by keeping his bag in the house.

27. The prosecution has also examined P.W.-3 Narendra Rathod who acted as a panch No.2. His evidence is only to the extent that the tainted notes are found in the papers which were in the hands of the accused. He also admitted during the cross-examination that the accused had given a complaint that the meter was faulty and it should be replaced and for that reason, the complainant had lodged the complaint with ACB. The evidence of P.W.-3 shows that

the complaint was lodged as the complainant was asked to replace the meter. Thus, from the evidence on record, it shows that the meter was already in a broken condition, the accused visited the house of the complainant and observed the same. He has also asked the complaint to change the meter. The employees of the contractor have replaced the meter, but on the request of the complainant, again the old meter was kept as it is. As per the allegations of the complainant, the amount was demanded for keeping the old meter in his house. The evidence of P.W.-5 Investigating Officer is also recorded, during his cross-examination, also it came on record that the employees of the contractor have changed the meter of the complainant. He also admitted that accused came to the house of the complainant and after five minutes, he came out from the house, at the relevant time there was no bag in his hand and he has kept the said bag in the house of the complainant. Admittedly, the currency notes and the papers which were in the hands of the accused were not forwarded to the C.A. Thus, the entire evidence on record sufficiently shows that after leaving the bag in the house of the complainant, the accused left for some time and thereafter again returned in the house of the complainant and thereafter, the complainant has given a signal and amount was recovered from the papers.

28. It is now well settled that the offences under the Act of 1988 relating to public servants taking bribe require a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing the offences under the Act of 1988.

29. 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.*"

30. 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:

> **<u>under Section 7</u>**: (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.

> **<u>under Section 13(1)(d)</u>**: (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.

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

While discussing the expression "accept", the 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'.

32. 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 complainant P.W.-1 Prashant Shegokar and P.W.-2 Narendra Khandekar appears that the accused has left his bag in the house of the complainant and there was no demand by the accused after he come to the house of the complainant till he leaves the house by keeping his bag inside the house. Admittedly, the bag of the accused was in the house of the complainant for some time and thereafter, when the accused returned, the complainant has given a signal and the tainted amount was found in the papers. The evidence of the Investigating Officer shows that he has not sent the tainted notes and the papers for C.A. to ascertain whether the solution of phenolphthalein powder and sodium carbonate solution was found on the said papers or not. The examination of the said papers by C.A. analysis was required, which was not done by the Investigating Agency. It is pertinent to note that for some period bag of the accused was in the house of the complainant. Admittedly, there was no demand as soon as the accused visited the house of the complainant. The evidence further shows that another meter was already installed in the house of the complainant. Then question would arose what is the reason for the accused to demand the amount. Considering the entire scenario, the possibility of keeping the amount in the absence of the accused in his bag in the documents to implicate the accused, cannot be ruled out.

P.W.-3 Narendra Rathod panch No.2 specifically stated that the accused has made a complaint against the complainant regarding the broken meter and, therefore, the complainant has filed the complaint. In the light of this cross-examination, the possibility of keeping the amount in absence of the accused in the papers which were in his bag cannot be ruled out.

33. It is well settled that the evidence of the complainant should be corroborated in material particulars. As far as the examination of independent witnesses is concerned, as per the evidence of the complainant, once prior to the incident, the accused has visited his house, at that time his cousin brother Sachin was present in the house to whom the accused met is not examined by the prosecution.

34. 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.

35. 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.

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

37. In the case of ***M.O.Shamsudhin vs. State of Kerala***, 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.

38. 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."*

39. Thus, in catena of decisions, it is held that complainant himself is in the nature of accomplice and his story *prima facie* suspects for which corroboration in material particulars is necessary.

40. In the present case, admittedly, the Investigating Officer has not verified whether the allegation of the demand made by the complainant are genuine and there was a demand by the accused. It is well settled that mere possession and recovery of currency notes from the accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d)(i)(ii) of the Act of 1988.

41. 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.

42. 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.

43. Considering the evidence recorded before the trial Court, 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. Though the learned APP placed reliance on the decision of ***Vinod Kumar Garg*** (*referred supra*) wherein also the Hon'ble Apex Court held that the statutory presumption under Section 20 of the Act of 1988 can be confuted by bringing on record some evidence, either direct or circumstantial that the money was accepted other than for the motive or the report under Section 7 of the Act of 1988. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.

44. After appreciating the evidence on record, as per the prosecution case, the accused has demanded the amount for keeping the old meter, the evidence of Investigating Officer shows that the employees of the contractor have already installed the new meter. The circumstance that the accused has not demanded the amount as soon as he entered in the house of the complainant and left the house of the complainant by keeping his bag for some time thereafter, returned back and, thereafter, signal was given. The said circumstances shows that the possibility of putting the said amount in the bag of the accused cannot be ruled out.

45. 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 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.

46. As far as applicability of presumption is concerned, the Hon'ble Apex Court 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.

47. 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 there was no verification of the demand by the Investigating Agency. I have already observed that principles for according the sanction are not taken into consideration. The sanctioning authority to exercise powers strictly keeping in mind all the relevant facts and material and accord the sanction. The sanction order nowhere discloses that the said satisfaction. Thus, the entire exercise carried out by the sanctioning authority is without application of mind. The demand and acceptance require 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 08.02.2012 passed by learned Additional Sessions Judge, Amravati in Special Case (ACB) No.3/2004 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