



Judgment

191 apeal99.10

1

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

**CRIMINAL APPEAL NO.99 OF 2010**

1. Kuldeep s/o Thauraji Kale,  
aged about 38 years, occupation service.

2. Thawru s/o Hunji Rathod,  
aged about 29 years,  
occupation business.

Both r/o Arni, tahsil-Arni,  
district-Yavatmal. .... **Appellants.**

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

The State of Maharashtra,  
through Police Station Officer,  
Police Station, Arni, Thasil-Arni,  
District-Yavatmal ..... **Respondent.**

=====  
Shri Adwait Manohar, Counsel for Appellants.  
Shri A.G.Mate, Additional Public Prosecutor for the  
State.  
=====

**CORAM : URMILA JOSHI-PHALKE, J.**

**CLOSED ON : 27/02/2024**

**PRONOUNCED ON : 08/03/2024**

**JUDGMENT**

1. By this appeal, appellants (accused persons) have challenged judgment and order of conviction and sentence dated 19.1.2010 rendered by learned Additional Sessions Judge, Pusad

.....2/-

**2**

(learned Judge of the trial court) in Special Case No.4/2003.

2. By the said judgment and order impugned, accused No.1 is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.2000/-, in default, to suffer further rigorous imprisonment for three months.

Accused No.1 is also convicted for offence under Section 13(1)(d) punishable under Section 13(2) of the said Act and sentenced to suffer rigorous imprisonment for three years and to pay fine Rs.2500/-, in default, to suffer further rigorous imprisonment for four months.

Accused No.2 is convicted for offence punishable under Section 12 of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.2000/-, in default, to suffer further rigorous imprisonment for three months.

**3**

Learned Judge of the trial court directed that all sentences of accused No.1 shall run concurrently and set-off under Section 428 of the Criminal Procedure Code was given to accused persons as they were in jail.

3. Brief facts of the prosecution case emerges from police papers and recorded evidence are as under:

Accused No.1 was serving as Traffic Constable. Whereas, accused No.2 is shop owner of "Sonal TV Deck Repairs". On 11.1.2003, Pramod Kale (the complainant) had carried at Arni bags of "Tur Grams" in a jeep bearing No.MH-29/F/392 for selling in market at Arni. When the jeep reached at Shivaji Chowk at Arni, accused No.1, who was discharging duty as Traffic Constable, intercepted the said jeep and told the complainant that he is carrying excess load in the jeep and violated rules and, therefore, he would be challaned for violation of rules. Accused No.1 was making entries in his challan book. The complainant requested him not to challan the jeep.

**4**

As per allegations, accused No.1 demanded amount Rs.1000/- for not taking action against him. After negotiation, accused No.1 reduced the amount upto Rs.500/- and asked the complainant to pay the amount on 20.1.2003 as he would be attending duty on the same square on that day. On 19.1.2003, as the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau (the bureau) at Chandrapur and lodged a complaint.

4. On 18.1.2003, office of the bureau issued a letter to the Forest Officer to depute two panchas. Panchas were called on 20.1.2003. The complainant narrated the incident which was verified by panchas from the complaint. After following a due procedure, it was decided to conduct a raid. The complainant produced five currencies of Rs.100/- denomination. The demonstration as to phenolphthalein powder and sodium carbonate was demonstrated to the complainant and panchas. The said solution was applied on the tainted notes and kept in a shirt pocket of the complainant. Necessary instructions were given to

**5**

the complainant as well as panchas. Accordingly, pre-trap panchanama was drawn.

5. After the pre-trap panchanama, the complainant along with raiding party members reached Shivaji Chowk, Arni and waiting for accused No.1. After arrival of accused No.1, the complainant communicated accused No.1 and accused No.1 demanded the amount. Accused No.1 asked the complainant to follow him and went to the shop of accused No.2. Accused No.2 was present in his shop. Accused No.1 gave a signal to accused No.2 for accepting the bribe amount and, therefore, the complainant handed over the amount to accused No.2. Thereafter, the complainant gave a signal and both accused persons were caught. The tainted amount was recovered from accused No.2. Accordingly, post-trap panchanama was drawn. After completion of the investigation, chargesheet was filed against accused persons.

6. During trial, the prosecution examined in all five witnesses, viz. Pramod Punjaji Kale vide Exhibit-58 (PW1), the complainant; Yogeshwar

**6**

Murlidhar Jagtap vide Exhibit-62 (PW2), the shadow pancha; Ashok Vasantrao Mayalal vide Exhibit-78 (PW3), the police officer who registered the offence; Sk.Shabbir Ahamad Abdul Caffar vide Exhibit-86 (PW4), the trap officer, and Amitesh Kumar Yugalkishor Prashad vide Exhibit-103 (PW5), the sanctioning authority.

7. Besides the oral evidence, the prosecution placed reliance on the complaint Exhibit-59, seizure memo Exhibit-60, invoice challan Exhibit-61, pre-trap panchanama Exhibit-63, seizure memos Exhibits-64 and 65, pre-trap personal search panchanama of the complainant Exhibit-68, post-trap personal search panchanama of the complainant Exhibit-69, personal search panchanama of accused No.2 Exhibit-70, personal search panchanama of accused No.1 Exhibit-71, map Exhibit-72, post-trap panchanama Exhibit-73, letter to Chemical Analyzer Exhibit-80, invoice challan Exhibit-81, letter to Superintendent of Police, Yavatmal Exhibit-82, letter to the Deputy Superintendent of Police of the bureau Exhibit-83, arrest panchanama of accused No.2 Exhibit-85,

**7**

requisition to forest officer Exhibit-87, letter by the bureau to Superintendent of Police Exhibit-88, report Exhibit-89, FIR Exhibit-90, arrest panchanama of accused No.1 Exhibit-91, sanction order Exhibit-104.

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

9. Heard learned counsel Shri Adwait Manohar for accused persons and learned Additional Public Prosecutor Shri 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.

10. Learned counsel for accused persons submitted that accused No.1 was serving as Traffic Constable. Perusal of the evidence reveals that the prosecution could not prove the demand and acceptance. As per evidence of complainant PW1 Pramod Kale, the demand was made on 11.1.2003 and the FIR was lodged on

**8**

19.1.2003. Though Trap Officer PW4 Sk.Shabbir Ahmed deposed that he received phone call of the complainant on 18.1.2003, there is no evidence to show that he received a phone call. The requisition letters were issued to the Forest Officer on 18.1.2003 though the complaint is filed by the complainant on 19.1.2003. As per the evidence of the complainant and the trap officer, panchas came in the office of the bureau on 20.1.2003. Whereas, the evidence of shadow pancha PW2 Yogeshwar Jagtap shows that he visited the office of the bureau on 18.1.2003. The evidence of the complainant shows that he requested accused No.1 not to challan his vehicle. The complainant was carrying excess load which is admitted by Police Officer PW3 Ashok Mayalal who deposed that it transpired during investigation that there were nine bags of "Tur Grams" in the jeep. As per the evidence of the complainant, the demand was made in presence of his driver who is not examined neither his statement was recorded. As per the evidence of complainant PW1 Pramod Kale; shadow pancha PW2 Yogeshwar Jagtap, and Trap Officer PW4

**9**

Sk.Shabbir Ahamad, accused No.2 was asked by accused No.1 to accept the money by signal. The said signal is not narrated by any of witnesses. At the time of accepting the amount by accused No.2, 2-3 persons were present in his shop whose statements were not recorded by Trap Officer PW4 Sk.Shabbir Ahamad. The previous demand is not verified by the trap officer. The evidence of the complainant and the shadow pancha is not consistent with each other and not corroborating. In view of above circumstances, the prosecution failed to prove the demand and acceptance. The sanction accorded by Sanctioning Authority PW5 Amitesh Kumar is also not valid. The said sanction order nowhere discloses that it was accorded after application of mind. For all above these reasons, the prosecution case fails and the judgment and order of conviction and sentence deserves to be set aside.

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

**10**

**1. Criminal appeal No.265/2005 (Mohan Bhaiyyalal Shrivastava vs. State of Mah.) decided by this court 4.9.2023;**

**2. Criminal Appeal No.342/2003 (Rajesh Vithalrao Patil vs. State of Mah.) decided by this court on 18.10.2022;**

**3. Tryambak LilaJI Binnar VS. State of Maharashtra<sup>1</sup>;**

**4. State of Punjab vs. Madan Mohan Lal Verma<sup>2</sup>;  
5. Dattatraya Jagannathrao Zombade vs. State of Mah.<sup>3</sup>,**

**6. Suraj Mal vs. The State (Delhi Administration)<sup>4</sup>;**

**7. G.V.Nanjudiah vs. State (Delhi Administration)<sup>5</sup>;**

**8. Sate of Madhya Pradesh vs. Mukesh and ors<sup>6</sup>,  
and**

**9. Criminal Appeal No.85/2007 (Sunil s/o Narayanrao Bawane vs. State of Mah.) decided by the court on 20.2.2024.**

12. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Pramod Kale and shadow pancha PW2 Yogeshwar Jagtap is consistent and corroborative on all material particulars. It is also corroborated by

1 2002(3) Mh.L.J. 293

2 (2013)14 SCC 153

3 2021(2) ABR (Cri) 9

4 AIR 1979 SC 1408

5 1987 (Supp) SCC 266

6 2006(10) SCALE 346

**11**

Trap Officer PW4 Sk.Shabbir Ahamad. No flaws are pointed out as far as the sanction is concerned. The prosecution has proved that a valid sanction is accorded. Accused No.1 is caught at the spot of the incident and accused No.2 was found along with the tainted notes. Learned Judge of the trial court appreciated the evidence and rightly convicted accused persons. No interference is called for in the judgment and order impugned in the appeal and prays for dismissal of the appeal.

13. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision of the Honourable Apex Court in the case of **C.M.Sharma vs. State of Andhra Pradesh, through Inspector of Police<sup>7</sup>**.

14. Learned counsel for accused persons submitted that accused No.1 was serving as Traffic Constable at the relevant time and was a public servant discharging his duties. There is no valid sanction to prosecute accused No.1. In absence of the valid sanction, the entire trial vitiates.

<sup>7</sup> (2010)15 SCC 1

**12**

15. Since question of validity of sanction has been raised as primary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on the ground that it is accorded without application of mind.

16. In order to prove the sanction, the prosecution relied upon the evidence of Sanctioning Authority PW5 Amitesh Kumar. The sum and substance of his evidence is that on 24.1.2003, Police Inspector A.V.Mairal sought an information about accused No.1. Accordingly, he sent information along with necessary documents. He received a communication for according the sanction to launch the prosecution against accused No.1 along with crime papers. He perused crime papers, satisfied himself, and accorded the sanction which is at Exhibit-104. During his cross examination, it came on record that he carefully scrutinized papers. He admitted that while reading paper, if he would have found out errors, he would have corrected it. There were mistakes in the sanction order. He specifically admitted that he has not specifically referred crime papers while passing

**13**

the sanction order. He further admitted that there is a difference between reading of papers and application of mind. He has not mentioned that he had applied his mind.

Thus, his evidence shows that he neither mentioned papers he received nor the sanction order states which papers he considered while according the sanction. Perusal of the sanction order shows that the prosecution story is reproduced and in second last para it is mentioned that upon carefully reading papers of investigation, he satisfied that there is an adequate evidence to prosecute accused No.1 and accorded the sanction.

17. The law is well settled on the point of sanction since 1979.

18. On the point of valid sanction, the settled law is to be taken into consideration. The Honourable Apex Court in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**<sup>8</sup> has held that what the Court has to see is whether or not the sanctioning authority at the time of giving the

<sup>8</sup> 1979 AIR 677

**14**

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.

19. The Hon'ble Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**<sup>9</sup> 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

**15**

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

**16**

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.

20. Thus, it is well settled that an order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is to be passed should always be borne in mind. The sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the Act by refusing to accord sanction for his prosecution or not. Thus, the application of mind on the part of sanctioning authority is imperative. The order granting sanction must demonstrate his/her mind while according sanction. In absence of description of documents by sanctioning authority and only considering grievances made by complainant would show lack of application of mind by competent authority. If documents other than complaint were taken into consideration, those documents should reflect in sanction order.

**17**

21. In the present case, Sanctioning Authority PW5 Amitesh Kumar has not specified that which documents are considered and on what basis it came to conclusion that sanction is to be accorded. He has not described documents which he considered.

22. As per the evidence of complainant PW1 Pramod Kale, he was challaned for carrying excessive load in the jeep by violating traffic rules. It is apparent that from his evidence that he was challaned on 11.1.2003. Whereas, the challan book seized by Trap Officer PW4 Sk.Shabbir Ahamad from accused No.1 shows that the complainant was challaned on 15.1.2003. The sanctioning authority has not verified genuineness of allegations by ascertaining whether accused No.1 was on duty on 11.1.2003 at Shivaji Chowk, Arni. It is apparent that besides crime papers, the sanctioning authority has not considered other relevant documents to rule out possibility of false implication.

23. Thus, it is apparent that Sanctioning Authority PW5 Amitesh Kumar has not applied his mind while

**18**

according the sanction which is imperative on his part.

24. Besides the issue of the sanction, the prosecution claimed that accused No.1 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 PW1 Pramod Kale and shadow pancha PW2 Yogeshwar Jagtap..

25. The evidence of the complainant shows that first demand was made to him on 11.1.2003, when he was carrying "Tur Gram" in his jeep, he was restrained by accused No.1. He was challaned for excessive load and to avoid action, he requested not to challan for which accused NO.1 demanded bribe amount Rs.1000/- which was reduced to Rs.500/-. He was called by accused No.1 on 20.1.2003 at Shivaji Chowk, Arni for paying the said amount. On 18.1.2003, he contacted the office of the bureau and on 19.1.2003 he lodged the report. On 20.1.2003, formality of pre-trap panchanama was completed and

**19**

panchas were present in the office of the bureau on 20.1.2003. As per his evidence, on 20.1.2003, a trap was laid. He met accused No.1 and accused No.1 demanded the amount and accused No.2 accepted the same on behalf of accused No.1. Both accused persons were caught. His cross examination shows that the alleged place of the incident was crowdy road and various shops were situated including one pan shop. At the time of the incident, the said pan shop was opened. As per his evidence, first demand was made on 11.1.2003. At that time, accused No.1 was only constable attending duties. His driver was along with him when the demand was made by accused No.1. He specifically stated that he went to office of the bureau on 19.1.2003. He also admitted that on 19.1.2003 pancha witnesses were not called. He has also not communicated accused No.2 on that day.

26. Thus, as per contentions of the defence, driver of complainant PW1 Pramod Kale was not examined to corroborate the version. It was the complainant who violated traffic rules. It also came in the evidence that the challan book was seized from accused No.1.

**20**

The complainant specifically admitted that he was annoyed because his jeep was challaned. To corroborate his version, the prosecution examined shadow pancha PW2 Yogeshwar Jagtap who also deposed that on 18.1.2003 they were called by their superior and asked to attend the office of the bureau. Accordingly, they visited the office on 19.1.2003 and on 20.1.2003. He also narrated about the entire procedure carried out during the pre-trap panchanama. As regards the demand, his evidence is that they were waiting for accused No.1 at Shivaji Square. Accused No.1 came there and asked the complainant whether he brought the amount and, thereafter, accused No.1 took them in front of shop of accused NO.2. Accused No.1 conveyed accused No.2 to accept the amount and the complainant handed over the amount. The cross examination of shadow pancha PW2 Yogeshwar Jagtap shows that after communicating the complainant, accused No.1 gave a signal to accused No.2. Shadow pancha PW2 Yogeshwar Jagtap stated regarding communication between complainant and accused NO.2. Whereas, the evidence of the complainant nowhere

**21**

states that there was any communication between him and accused No.2. The evidence of the pancha shows that three persons were sitting in the shop. Admittedly, the Trap Officer PW4 Sk.Shabbir Ahmed neither recorded nor examined their statements as witnesses. The evidence of Trap Officer PW4 Sk.Shabbir Ahamad also shows that he seized challan book of accused No.1. On page No.23 of the book, number of vehicle No.MH-29/F/392 is mentioned which is at Exhibit-62. It bears his signature and signatures of panchas. Neither complainant PW1 Pramod Kale nor shadow pancha PW2 Yogeshwar Jagtap narrated about the exact signal given by accused No.1 to accused No.2.

27. Perusal of evidence of these witnesses shows that the entire story revolves around the incident of the first demand which took place on 11.1.2003. As per the evidence of complainant PW1 Pramod Kale, the first demand was made to him on 11.1.2003 in presence of his driver. Admittedly, to corroborate the version of the complainant the evidence of driver of the complainant was material, but investigating

**22**

officer neither recorded his statement nor any interrogation was carried with him. Trap Officer PW4 Sk.Shabbir Ahamad has not verified genuineness as to the first demand.

28. Learned counsel for accused persons rightly pointed out on the basis of decision of this court in the case of **Tryambak LilaJI Binnar** *supra* wherein it is held that the prosecution has not chosen to examine Kotwal who was present at the time of earlier demand. Even, statement was not recorded and no attempt was made by investigating officer to get himself satisfied regarding complainant's assertion having come from accused for illegal gratification. It is held by this court that while considering the evidence of prosecution it is necessary to bear in mind the importance of evidence of prior demand which if trustworthy makes the trap a legitimate to eradicate corruption otherwise it could be an illegitimate trap.

29. The Hon'ble Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**<sup>10</sup> held that

<sup>10</sup> (1979)4 SCC 526

**23**

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.

**24**

30. In the case of **State of Punjab vs. Sohan Singh<sup>11</sup>**; the Honourable Apex Court also considered aspect of non examination of independent witness and held that it is fatal to the prosecution.

31. Besides the evidence of complainant PW1 Pramod Kale and shadow pancha PW2 Yogeshwar Jagtap, it has to be seen whether there is any corroboration to fact that accused No.1 demanded the amount from the complainant on 11.1.2003. The investigating officer seized the challan book. Relevant entry as far as vehicle is concerned, is at page No.23 Exhibit-62. It is filled which shows that the vehicle of the complainant was intercepted on 15.1.2003 at about 2:00 pm and, therefore, the evidence of the complainant that the first demand was made to him 11.1.2003 at about 12:00 pm is also not corroborated by the challan. Exhibit-66 shows time as 14:00. Thus, the evidence of the complainant as regards the first demand neither is corroborated by any independent witnesses nor by documents. Why driver of the complainant is not examined is also not

11 (2009)6 SCC 444

**25**

explained by the prosecution. Admission of the complainant, that he was annoyed as his vehicle was challaned, also requires consideration.

32. As far as the demand on the day of the trap is concerned, only the evidence of complainant PW1 Pramod Kale that accused No.1 asked whether the amount is brought, it nowhere clarified that the amount demanded by accused No.1 was bribe amount or fine amount towards the challan. If there was an intention by accused No.1 to demand gratification amount, admittedly, he would not have prepared the challan receipt on 15.1.2003 itself. The prosecution case becomes a doubtful on other aspects also. As already observed, that as per the evidence of the complainant, the demand was made on 11.1.2003, challan shows that the vehicle was restrained on 15.1.2003. Though the demand was made on 11.1.2003, the complainant has not made complaint, till 19.1.2003. Why the complainant kept mum approximately for nine days is not explained by the complainant. Though the complainant and Trap Officer PW4 Sk.Shabbir Ahamad stated that the complainant

**26**

contacted on 18.1.2003, the complaint was lodged on 19.1.2003. As per the evidence of complainant, he contacted the office of bureau. Whereas, Trap Officer PW4 Sk.Shabbir Ahamad states that he received phone call of the complainant. No evidence is adduced as to the receipt of the phone call. The requisitions were issued on 18.1.2003 though the complaint is lodged on 19.1.2003. As per the evidence of the complainant and Trap Officer PW4 Sk.Shabbir Ahamad, shadow pancha PW2 Yogeshwar Jagtap came to the office of the bureau on 20.1.2003. Whereas, the pancha stated that he went to the office of the bureau on 19.1.2003. Neither the complainant nor the pancha stated about exact signal given by accused No.1 to accused No.2. The evidence of the complainant shows he did not speak with accused NO.2. Whereas, the pancha stated that the complainant spoke with accused No.2. During the investigation, it reveals to Police Officer PW3 Ashok Mayalal that the complainant was carrying excessive load in his vehicle and, therefore, his vehicle was challaned.

**27**

33. In the background of above said circumstances, if the evidence of complainant PW1 Pramod Kale and other witness is appreciated and genuineness of allegations is ascertained, it reveals that genesis of the incident is not brought on record. The allegation of the complainant that first demand was made on 11.1.2003 itself is falsified by challan Exhibit-62.

34. Learned counsel for accused persons rightly placed reliance on various judgments wherein it is consistently held that demand of illegal gratification is *sine qua non* for constituting an offence under the said Act. Mere recovery of tainted amount is not sufficient to convict accused when substantive evidence in the case is not reliable. Unless there is an evidence to prove amount of bribe or to show that the amount was taken voluntarily as a bribe, mere receipt of the amount by accused is not sufficient to fasten guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification.

**28**

35. The burden rests on accused to displace statutory presumption by bringing on record evidence either direct or circumstantial to establish with reasonable probability that the money was not accepted by him. while invoking provisions of Section 20 of the said Act, the court is required to consider explanation offered by accused, if any, only on touchstone of preponderance of probability and not on touchstone of proof beyond all reasonable doubt. However, before accused is called upon to explain how the amount in question was found in his possession, foundational facts must be established by the prosecution.

36. After appreciating the evidence on record, it reveals that, as per the prosecution case, accused No.1 demanded the amount for not to take action against complainant PW1 Pramod Kale for violating traffic rules. The entire evidence of the complainant shows that on 11.1.2003 he was proceeding in his jeep by carrying "Tur Gram" and his vehicle was intercepted on the ground that there was excessive load and the vehicle was challaned.

**29**

Whereas, Exhibit-62 shows that the vehicle was challaned on 15.1.2003. Though the demand was made on 11.1.2003, the complaint was not lodged till 19.1.2003. Though there was no complaint, panchas were called on 18.1.2003. As per the evidence of the complainant, first time, he visited the office of the bureau on 19.1.2003 at about 5:00 pm. Whereas, the evidence of pancha shows that he visited the office of the bureau on 18.1.2003 itself. The evidence of Trap Officer PW4 Sk.Shabbir Ahamad shows panchas were called on 20.1.2003. As far as the first demand made in front of driver of the complainant is concerned, the said driver is not examined. At the time of acceptance, as per the evidence of pancha, 2-3 persons were sitting in the shop of accused No.2. The trap officer neither recorded their statements nor examined them as witnesses.

37. It is well settled that when a trap is set for proving charge of corruption against a public servant, evidence about prior demand has its own importance. The reason being that complainant is also considered to be an interested witness or a

**30**

witness who is very much interested to get his work done from a public servant at any costs and whenever a public servant brings to notice to such an interested witness certain official difficulties, persons interested in work may do something to tempt the public servant to bypass rules by promising him some benefits. Since proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. The burden on accused to only show probability and he is not required to prove facts beyond reasonable doubt.

38. The Honourable Apex Court, in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**<sup>12</sup>, held that the primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word "gratification" is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learner's Dictionary of Current

<sup>12</sup> (1997)10 SCC 600

**31**

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 gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at any stage.

39. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt. of NCT of Delhi)**<sup>13</sup> 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

<sup>13</sup> 2022 LiveLaw (SC) 1029

**32**

in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression "accept", referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**<sup>14</sup> observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Sections and 13(1) and (b) of the said Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. In sub clauses (i) and (ii) (iii) of Section 13(1) (d), the emphasize is on the word "obtains". Therefore, there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any

14 (2002)5 SCC 86

**33**

person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression "accept", the Honourable Apex Court observed that "accepts" means to take or receive with "consenting mind". The 'consent' can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to 'acceptance' and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be 'acceptance'. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Sections, the prosecution has to prove that the

**34**

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'.

40. If the entire evidence is appreciated, it shows that complainant PW1 Pramod Kale was illegally carrying excessive load and, therefore, his vehicle was challaned. The amount was paid towards the fine amount. The complainant filed the complaint after nine days without explaining delay. Prior to lodging

**35**

of the complaint, in anticipation of trap, panchas were called. There is inconsistency in the evidence of the complainant and shadow pancha PW2 Yogeshwar Jagtap. Neither the complainant nor the shadow pancha explained the signal which given by accused No.1 to accused No.2 for accepting the amount. The independent witnesses in whose presence accused No.2 accepted the amount are not examined by recording their statements by Trap Officer PW4 Sk.Shabbir Ahamad. The driver of the complainant in whose presence the first demand was made was also not examined to corroborate the prosecution case.

41. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra** *supra* 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

**36**

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 Honourable Apex Court held that it should corroborate to each other.

In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**<sup>15</sup> 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 means constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent

<sup>15</sup> 2017 SCC ONLine SC 742

**37**

and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

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

43. In the case of **M.O.Shamsudhin vs. State of Kerala**<sup>16</sup>, 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.

16 (1995)3 SCC 351

**38**

44. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**<sup>17</sup>, 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.”

45. Thus, the evidence of complainant PW1 Pramod Kale is neither corroborated by shadow pancha PW2 Yogeshwar Jagtap nor it is corroborated by independent witnesses. It has already been observed that the prior demand by accused No.1 is not proved by the prosecution and a doubt is created as to the demand of the amount and independent witnesses are also not examined. It has already been observed that for according the sanction, there was no application of mind. The sanction order nowhere discloses satisfaction of the authority. The demand and

<sup>17</sup> 1963 Mh.L.J. (SC) 273

**39**

acceptance required to be proved which is *sine qua non* for establishing the charge are also not proved. 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 19.1.2010 rendered by learned Additional Sessions Judge, Pusad in Special Case No.4/2003 convicting and sentencing accused persons is hereby quashed and set aside.

(3) The accused persons are acquitted of offences for which they were charged and convicted.

The appeal stands **disposed** of.

**(URMILA JOSHI-PHALKE, J.)**

!! BrWankhede !!

...../-