2024:BHC-NAG:2778

Judgment

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

CRIMINAL APPEAL NO.136 OF 2006

Mahadeo s/o Sadashiv Kanoje,
aged about 58 years, occupation service,
Junior Engineer (Now Pensioner),
r/o Aheri, taluka Aheri,
at present r/o Nagpur, taluka and
district Nagpur. …… **Appellant**.

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

State of Maharashtra,
(through the ACB
Chandrapur/Gadchiroli). …… **Respondent**.

===
Shri R.B.Gaikwad, Counsel for the Appellant.
Shri V.A.Thakare, Additional Public Prosecutor for the State.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 26/02/2024
PRONOUNCED ON : 06/03/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order of conviction and sentence dated 1.3.2006 passed by learned Special Judge, Gadchiroli (learned Judge of the trial court) in Special Case No.10/1990.

2. By the said judgment and order impugned, the accused is convicted for offence punishable

under Section 161 of the Indian Penal Code and sentenced to suffer simple imprisonment for six months and to pay fine Rs.500/-, in default, to suffer simple imprisonment for one month.

He is also convicted for offence under Section 5(1)(d) punishable under Section 5(2) of the Prevention of Corruption Act, 1947 (the said Act) and sentenced to suffer simple imprisonment for one year and to pay fine Rs.500/-, in default, to suffer simple imprisonment for one month.

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

The accused was serving as Junior Engineer in the Public Works Department (PWD), Sub Division, Aheri, district Gadchiroli. In the year 1986, the PWD Division Office Alapalli, district Gadchiroli had issued a tender for construction of minor bridge on Ballarshah-Alapalli-Sironcha Road at kilometer No.125/600.

The said contract was allotted to G.V. Rajshekharrao who is from Andhra Pradesh. The said contractor initiated the construction of minor bridge, but had not completed the same and, therefore, it was terminated. The two running bills were paid to him. The accused was supervising the work of construction of the said minor bridge. After termination of the contract given to the said contractor, it was awarded to another contractor. As regards completion of work by the said contractor, final bill was pending. He had executed power attorney in favour of the complainant who was his partner namely Ambawarapu Reddy. As the accused was supervising the work, as per allegation, it was his duty to take measurement of work executed by the contractor, prepare bills and to submit the same to his superior for sanction. Prior to 15-20 days of lodging of complaint, an accountant of the complainant had been to the accused requesting to prepare bill. At that time, the accused demanded Rs.250/- for preparing final bill. The accountant informed the complainant about the demand by the accused. On 23.12.1986, the complainant met the accused and requested to prepare final bill regarding the work executed by contractor Shri G.V.Rajshekharrao. The accused demanded Rs.250/- for preparing final bill and asked the complainant to pay the said amount, till evening of 23.12.1986 in his office at Aheri.

4. As the complainant was not desiring to pay the amount, he approached the office of the Anti Corruption Bureau, Chandrapur (the bureau) and lodged the report on 23.12.1986.

5. After receipt of the report, officers of the bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the complainant. After following a due procedure, it was decided to conduct a raid. The complainant produced tainted currencies i.e. five currencies of Rs.50/- denomination and

numbers of currencies were noted. The demonstration as to phenolphthalein powder and sodium carbonate solution was shown. The said solution was applied on the tainted amount and kept in shirt pocket of the complainant. The instructions were given to the complainant and pancha No.1 Keshav Shrawan Chalmeshwar. The complainant was instructed to hand over the amount only on demand and after accepting the amount to give a signal to other raiding party members. Pancha No.1 was instructed to stay along with the complainant and to observe communication. Accordingly, a pre-trap panchanama was drawn.

6. After the pre-trap panchanama, the complainant along with shadow pancha proceeded to village Nagepalli. At about 5:30 pm, the complainant informed that at this time the accused would return to his house at Aheri and, therefore, they were waiting at bus stand of Nagepalli. At the relevant time, the accused was seen coming towards Alapalli from Aheri. At

about 6.05 pm, he was restrained by the complainant. After communication, the amount was handed over to the accused and the signal was given to raiding party members. Immediately, the accused was caught. The amount was recovered. Accordingly, post-trap panchanama was drawn. The office of the bureau seized relevant documents. The accused was arrested and after completion of investigation, after obtaining a sanction, chargesheet was filed.

7. During trial, the prosecution examined in all eleven witnesses, as under:

Mohd. Sharif Mohd.Shafik Sheikh vide Exhibit-16 (PW1), the muster clerk;

Sudhakar Mamidpalliwar vide Exhibit-17 (PW2), the Divisional Accounts Officer;

Dhanraj Meshram vide Exhibit-18 (PW3), the Police Station Officer, Aheri;

Keshav Chalmelwar vide Exhibit-25 (PW4), the shadow pancha;

Deorao Mohare vide Exhibit-33 (PW5);

Madhavrao Khavas vide Exhibit-34 (PW6);

Kondayya Nalganguwar vide Exhibit-35 (PW7);

Ambawaraku Reddi vide Exhibit-42 (PW8), the complainant;

Wasudeo Wadaskar vide Exhibit-47 (PW9);

Eknath Choudhary vide Exhibit-51 (PW10), the sanctioning authority, and

Mohd.Yasim vide Exhibit-53 (PW11), the officer.

8. Besides the oral evidence, the prosecution placed reliance on FIR Exhibit-19, letter to PSO Exhibit-20, pre-trap panchanama Exhibit-26, seizure memo Exhibits-27-30, pre-trap panchanama Exhibit-37, map Exhibit-32, complaint Exhibit-45, invoice challan Exhibit-48, sanction order Exhibit-52, requisition letter issued by the trap officer Exhibit-54, complaint lodged by the trap officer Exhibit-58, letter to C.A. Exhibit-59, C.A.Report Exhibit-60 and running account bill Exhibit-62.

9. After considering the evidence adduced during the trial, learned Judge of the trial

court held the accused guilty and convicted and sentenced him as the aforesaid.

10. I have heard learned counsel Shri R.B.Gaikwad for the accused and learned Additional Public Prosecutor for the State. I have been taken through the entire evidence so also the judgment and order impugned in the appeal.

11. Learned counsel for the accused submitted that perusal of the entire evidence reveals that first demand was made to PW7 Kondayya who was working as Accountant of the complainant. The said witness has not uttered a single word as to the demand by the accused of gratification amount. The evidence of complainant PW8 Ambawaraku also nowhere shows that on the day of the trap, the amount was demanded. On the contrary, the evidence shows that he met the accused and handed over the amount. It is corroborated by shadow pancha PW4 Keshav Chalmelwar who also stated that the amount was

handed over to the accused. Thus, there is absolutely no evidence as to the demand. He further submitted that on the day of trap, no work was pending with the accused. Merely because the contract was terminated, the accused is falsely implicated in the alleged offence. He submitted that to prove the charge, proof of a demand is *sine quo non* which is not proved by the prosecution. Mere recovery of the amount from the accused in absence of the evidence of demand is fatal to the prosecution. Learned Judge of the trial had not considered this aspect and erroneously convicted the accused.

12. On the other hand, learned Additional Public Prosecutor for the State supported the judgment and order impugned and submitted that the evidence of the complainant and other witnesses unerringly points out that it was the accused who has to prepare bills and submit for sanction. The accused had demanded the amount for preparing bills and accepted the same. The evidence of the complainant is corroborated on

material particulars. There is a valid sanction. In view of that, the appeal is devoid of merits and liable to be dismissed.

13. Learned counsel for the accused raising an issue of sanction submitted that there was no valid sanction. The sanction order was challenged on the ground that there was no application of mind and the sanction was accorded mechanically.

14. In order to prove the sanction order, the prosecution examined sanctioning authority PW10 Eknath Chaudhari who deposed that he received documents like FIR, panchanamas, and statements of the accused and he studied those papers and accorded the sanction. As per his evidence, after studying relevant papers, there was a *prima facie* sufficient evidence to accord the sanction and thereafter he accorded the sanction which is at Exhibit-52. Though this witness is cross examined, nothing incriminating is brought on record. The sanction order also shows that

in exercise and for purposes of provisions of the said Act, he accorded the sanction to prosecute the accused for offences constituted and accordingly the sanction was accorded.

15. Thus, though sanctioning authority PW10 Eknath Chaudhari in his evidence stated that he has received papers, he studied the same, and, thereafter, accorded the sanction, perusal of the sanction order shows that the sanction order was completely silent to show that it was he who applied his mind and accorded the sanction.

16. It is well settled that sanctioning authority has to apply his/her own independent mind for generation of its satisfaction for sanction. Thus, application of mind on the part of sanctioning authority is imperative. The orders granting sanction must demonstrate that he/she have applied his/her mind while according sanction. No doubt, an elaborate discussion is not required. However, decision making on relevant material should be reflected in the

order. Admittedly, grant of sanction is a serious exercise of powers by competent authority.

17. After going through the evidence, admittedly, the sanction order nowhere reflects documents which he had received and on the basis of which documents he came to conclusion that the sanction has to be accorded.

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

1 1979 AIR 677

therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

19. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[2] has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if

2 2014 Cri.L.J.930

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.

20. Besides the issue of sanction, the prosecution claimed that the accused demanded gratification amount and accepted the same. In order to prove the demand, the prosecution mainly placed reliance on the evidence of complainant PW8 Ambawaraku, PW7 Kondayya, and shadow pancha PW4 Keshav Chalmelwar.

21. To prove a fact that the accused was supervising the construction work allotted to contractor G.V. Rajshekharrao and complainant PW8 Ambawaraku and it was the accused's duty to prepare bills, the prosecution examined muster clerk PW1 Mohd. Sharif Mohd.Shafik Sheikh; the Divisional Accounts Officer PW2 Sudhakar Mamidpalliwar, and pancha No.2 PW5 Devrao Mohare.

22. The accused was prosecuted for the offence punishable under Section 161 of the Indian Penal Code which was subsequently repealed by the

Prevention of Corruption Act 1988. Initially, it was dealing with public servants taking gratification other than legal remuneration in respect of an official act.

23. The offences under Sections 161 of the Indian Penal Code (Old Act) and 5(2) of 5(1)(d) of the said Act are relating to public servants taking bribe and to prove the same demand of illegal gratification and acceptance thereof is required to be proved. The proof of demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing offence under the said Act. To prove the offence under the above provisions, the accused must be a public servant and he should accept or obtain or agree to accept by corrupt or illegal means for any pecuniary advantage.

24. In the light of legal provisions, the evidence adduced by the prosecution requires to be seen.

Firstly, the evidence of complainant PW8 Ambawaraku is material. He testified that in the year 1986 G.V.Rajshekharrao had given him power of attorney. He along with Rajshekharrao were contractors for construction of work of PWD. Their contract was terminated. The accused was Junior Engineer supervising the work. One bill was pending with the PWD and, therefore, his accountant approached the accused and the accused demanded amount of Rs.250/- for preparation of the bill. Regarding the demand on the day of trap, his evidence shows that on 23.6.1986 he along with the pancha and raiding party members proceeded to Alapalli. They stopped near a square of Nagepalli. After some time, the accused came on motorcycle on Nagepalli square and motorcycle was stopped. He paid amount to the accused. Thereafter, the trap officer along with raiding party members caught the accused. During his cross examination, it came on record that the accused told that the bill is already sent and the work was already completed.

25. As per recital of the complaint and evidence of complainant PW8 Ambawaraku, first demand was made to his Accountant PW7 Kondayya. The evidence of the said witness nowhere whispers that the accused demanded the amount Rs.250/- for him to prepare the bill. His evidence is only to the extent that the accused was supervising the said work on behalf of the Government. He talked to the accused to prepare the bill and Reddy had not talked to the accused in his presence. Thus, as far as the first demand is concerned, there is no corroboration to the evidence of the complainant. Regarding the second demand, the complainant has not stated specifically when exactly the said demand was made to him.

26. To corroborate the version, the prosecution mainly placed reliance on the evidence of shadow pancha PW4 Keshav Chalmelwar

who has not supported the prosecution case. His evidence is that he was called to act as pancha. He was informed by the trap officer that they have to visit Alapalli to conduct a raid as one Junior Engineer had demanded gratification amount and, thereafter, the amount of gratification was produced. The trap officer obtained the said amount. He narrated about the procedure carried out by the trap officer. As far as the demand is concerned, his evidence is that on the day of the trap, they were waiting in the square of Nagepalli. They have seen the accused coming on his motorcycle. The complainant stopped him. The accused enquired with Reddy why he has not brought the payment of labour and asked to make the payment. The evidence further shows that, thereafter, Reddy took out notes from the pocket of T-shirt and handed over to the accused. Thus, the evidence is only to the extent that the amount was handed over to the accused, but he has not supported as to fact that the accused has demanded the amount. Shadow pancha PW4 Keshav Chalmelwar is cross examined by learned APP, but the said witness has not supported contentions of the prosecution that on demand the amount was handed over to the accused.

27. PW5 Deorao Mohare is another pancha. Admittedly, his evidence is not as to the demand. His evidence is only to the extent of recovery of amount from the accused.

28. To show connection of the accused with the work of preparation of bill, the prosecution examined muster clerk PW1 Mohd. Sharif. His evidence shows that he along with the accused was supervising the said construction work. The evidence of Divisional Accounts Officer PW2 Sudhakar Mamidpalliwar also not supported the prosecution case as to the fact that the work of preparing the bill was of the accused. Executive Engineer PW6 Madhavrao Khavas has stated that the accused was working under him as Junior Engineer. The work of construction of

minor bridge was allotted to G.V. Rajshekharrao and the accused was supervising the said work. The measurements were being taken by the accused and the accused was preparing bills. He specifically admitted that the contractor stopped the work and left the work incomplete and his contract was terminated. In December 1987, final bill was prepared by the accused. Thus, the evidence laid by the prosecution shows that the accused was supervising the work and it was the duty of the accused to prepare the bill.

29. The prosecution has also examined Trap Officer PW11 Mohd.Yasim who narrated about the entire procedure carried out by him. As far as the demand and acceptance are concerned, his evidence is not direct evidence. He came on spot after acceptance of the amount. His cross examination shows that the accused prepared final bill and submitted on 23.12.1986. In the background of this admission, if Exhibit-62 is taken into account, which is proved by the investigating officer, the same shows that the

said bill was prepared by the accused on 7.12.1986 itself and it was submitted prior to the trap. The bill showing signature of the accused is dated 7.12.1986. The signature of the Sub Divisional Engineer is also dated 7.12.1986. As per the evidence, the Sub Divisional Officer is the authority who sanctions the bills.

30. Thus, the evidence on record shows that on the day of trap no work was pending with the accused. As per recital of the complaint lodged by complainant PW8 Ambawaraku, the first demand was made prior to 15-20 days of lodging of the complaint. Admittedly, he has not narrated the exact date when first time the demand was made. Recital of the complaint shows that the first demand was made to his Accountant PW7 Kondayya, however, he has not stated anything about the said demand. The evidence of the complainant and pancha witness regarding the demand on the day of the trap also shows that without any

demand the amount was handed over to the accused.

31. It is well settled that to prove charge against accused, prosecution has to prove that demand was made and in compliance of the said demand, amount was handed over to the accused. These all aspects are absent in the present case.

32. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)**[3] held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression “accept”, referred the judgment in the case of **Subhash**

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Parbat Sonvane vs. State of Gujarat[4] 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 person any valuable thing or pecuniary advantage without any public interest.

4 (2002)5 SCC 86

While discussing the expression “accept”, the Honourable Apex Court observed that “accepts” means to take or receive with “consenting mind”. The ‘consent' can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to `acceptance' and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be `acceptance'. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Sections, the prosecution has to prove that the accused `obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the 1947 Act as it is available only in respect of offences under Section 5(1)(a) and (b) and not under Section 5(1)(c), (d) or (e) of the 1947 Act. According to this court, 'obtain' means to secure or gain (something) as the result of request or effort. In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1)(d) of the 1947 Act unlike an offence under Section 161 of the Indian Penal Code, which can be established by proof of either `acceptance' or 'obtainment'.

33. The evidence of complainant PW8 Ambawaraku is not corroborated by material particulars. Mere recovery of amount is not sufficient to constitute the demand as enjoined by the law.

While deciding issue involving the offence, evidence of complainant will have to be scrutinized meticulously. Testimony of such person requires careful scrutiny.

34. In the case of **M.O.Shamsudhin vs. State of Kerala**[5]**,** 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.

35. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[6], it has been held that the

5 (1995)3 SCC 351
6 1963 Mh.L.J. (SC) 273

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.”

36. Thus, it is repeatedly held that complainant himself is in the capacity of accomplice and his story *prima facie* suspects for which corroboration in material particulars is necessary. Mere possession and recovery of currency notes from the accused without proof of demand would not establish an offence under Section 5(1)(d) punishable under Section 5(2) of the Prevention of Corruption Act (Old Act).

37. It is held by the Honourable Apex Court in paragraph Nos.13 and 14 in the case of **Mukhtiar**

Singh (since deceased) through his LR vs. State of Punjab *supra* as follows:

> "13. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:
>
> > "7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extent to seven years and shall also be liable to 2 (2014) 5 SCC 103 3 (2016) 11 SCC 357 fine.

> 13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct,......
> (2)............"

> 14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A.Subair vs. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent."

38. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**[7], 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,

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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.

39. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**[8] 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

8 (1997)10 SCC 600

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

40. After appreciating the evidence on record, a fact that the accused demanded the amount and accepted the same is not proved and evidence of complainant PW8 Ambawaraku is not corroborated on 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.

41. As observed earlier, neither the prior demand nor the demand at the time of trap is proved by the prosecution. The previous demand is not verified by the investigating officer. A fact that prior to the demand the accused prepared the bill and forwarded to his superior for sanction and signatures on bill Exhibit-62 showing date on the bill as 7.12.1986, is much prior to the demand and the trap creates a doubt about genuineness of allegations. Sanctioning Authority PW10 Eknath Chaudhari has also not considered this aspect while according the sanction. The said witness is to exercise powers strictly keeping in mind all relevant facts and material and accord sanction. The sanction order nowhere discloses the said satisfaction which shows that the entire exercise carried out by the sanctioning authority is without application of mind. The demand so also acceptance is required to be proved which is *sine quo non* for establishing the charge.

42. In the light of the above, the appeal deserves to be allowed and, therefore, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 1.3.2006 passed by learned Special Judge, Gadchiroli in Special Case No.10/1990 convicting and sentencing the accused is hereby quashed and set aside.

(3) The accused is acquitted of offences for which he was charged and convicted.

The appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!