



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

CRIMINAL APPEAL NO. 148 OF 2006

Ramesh Tukaram Waghmare,
Aged about 43 years,
Occupation – Government Service,
R/o. Wardha.

.... **APPELLANT**

// VERSUS //

State of Maharashtra,
through A.C.B., Wardha.

.... **RESPONDENT**

Mr. R.M. Daga, Advocate for Appellant.
Mr. M.A. Barabde, Additional Public Prosecutor for Respondent.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 05.01.2024.

PRONOUNCED ON : 22.01.2024.

JUDGMENT.

1. By this appeal, the appellant (accused) has challenged the judgment and order of conviction and sentence dated 13.03.2006 passed by learned Judge, Special Court, designated under The Prevention of Corruption Act, 1988 (learned Judge of the trial court), Wardha in Special Case (ACB) No.5/1997. By the said judgment, the accused is convicted for the offences punishable under Section 7,

13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (the Act of 1988) and sentenced to suffer three years rigorous imprisonment and fine of Rs.2,000/- in default to undergo further rigorous imprisonment for a period of six months for the offence punishable under Section 7 of the Act of 1988 and he has also sentenced to suffer rigorous imprisonment for the period of five years and fine of Rs.2,000/- in default to undergo further rigorous imprisonment for the period of one year for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Act of 1988.

2. The brief facts of the prosecution's case as emerges from the evidences recorded before the trial Court are as under :

(i) The accused is serving as a District Social Welfare Officer, Zilla Parishad, Wardha. He was the sanctioning authority of grant-in-aid to the Hutatma Smarak Backward Classes Boys Hostel, Ashti. The State Government used to provide grant-in-aid at the rate of Rs.250/- per student to the said hostel through the District Social Welfare Officer. There were 180 students staying in the hostel and the hostel was getting messing grant of Rs.4.50 Lacks through the District Social Welfare Officer. On 25.08.1995, proposal for release of messing grant amount to Rs.4.50 Lacks was submitted by authorities of the said hostel to the office of the accused. On 30.10.1995, complainant Babarao Fuse, who was serving as a Superintendent of the said hostel

contacted the accused and enquired about the grants whether sanctioned or not. As per the allegations of the complainant, the accused told that unless amount of Rs.10,000/- is paid to him, the grants would not be sanctioned. Upon communicating with the accused, accused accepted to receive the amount in installments and asked the complainant Babarao Fuse to pay an amount of Rs.4,000/- when 50% grant would be sanctioned and to pay balance amount of Rs.6,000/- when remaining 50% of the grant would be sanctioned in the month of March-April. The complainant was called by the accused after seven to eight days. Thereafter, the complainant met the accused on 08.11.1995 and he was informed that 50% grant was sanctioned and the proposal along with the bill is sent to Cash and Finance Officer for preparing cheque amount of Rs.2.25 Lacks. The accused informed the complainant that the cheque will come to him by Friday and complainant should approach him on Friday at about 03.00 to 04.00 pm. with an amount of Rs.4,000/-. As the complainant was not willing to pay the amount to the accused, he approached the Office of the Anti-Corruption Bureau,(ACB) Nagpur and lodged report on 09.11.1995.

(ii) After receipt of report, office of the ACB called him on the next day and also called two panchas, the complainant narrated the incident, which was verified by panchas from the complaint. After

following due procedure, it was decided to conduct a raid. The complainant produced tainted amount 40 currency notes of Rs.100/- denomination and the numbers of the 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 the shirt pocket of the complainant. The instructions were given to the panch No.1 Ashok Bisen to stay along with the complainant and panch No.2 was asked to remain along with raiding party members. The complainant was further instructed to hand over the amount only on demand, accordingly Pre-trap panchnama was drawn.

(iii) After the Pre-trap panchnama, the complainant along with panchas and raiding party members reached at Wardha at about 03.00 p.m. The instructions were revised to the complainant and the shadow panch. Thereafter, the complainant and the shadow panch went to the office of the District Social Welfare, Zilla Parishad Wardha, however, the accused was not present, they approached to the concerned clerk Junghare, who informed him that cheque in respect of grant-in-aid is received and the same can be delivered on instructions from the accused. Then after ten minutes, the accused came and enquired with the complainant whether he has brought the amount therefore, the complainant has handed over the tainted notes

of Rs.4,000/- to the accused, which was accepted by the accused and kept in the right side full-pant pocket. After acceptance of the amount, the complainant has given pre-decided signal to the raiding party and the trap was led and the amount was recovered from the accused. Accordingly, Post-trap panchnama was drawn. The panch No.1 – Ashok Bisen disclosed as to the demand and the acceptance. The office of the ACB lodged the report about the incident, seized relevant documents and obtained sanction to prosecute the accused. After completion of the investigation, charge-sheet is filed.

3. During the trial, the prosecution has examined in all five witnesses namely P.W.-1 Jagannath Pandharinath Dange/Sanctioning authority Exhibit-42, P.W.-2 Prakash Pandharinath Tidke/Naik Police Constable Exhibit-47, P.W.-3 Babarao Raija Fuse/complainant Exhibit-53, P.W.-4 Ashok Sadashiv Bisen/shadow panch Exhibit-69, P.W.-5 Suresh Vinayakrao Kokate/Investigating Officer Exhibit-87, the accused has also examined defence witnesses D.W.-1 Ramkrushna Vishweshwar Appa Ganjiwale Exhibit-98 and D.W.-2 Ramdas Vistari Talanje Exhibit-105.

4. Besides the oral evidence, the prosecution placed reliance on following documents, proposal to obtain sanction Exhibit-43, sanction order Exhibit-44, letter to Superintendent of Police by sanctioning authority Exhibit-45, requisition letter Exhibit-48, First

Information Report Exhibit-49, report lodged by PW-5 Exhibit-50, complaint Exhibit-54, seizure memo Exhibit-57, cheque of grant Exhibit-58, order granting the grant Exhibit-59, seizure memo Exhibit-60, Authority Exhibit-61, letter to Hutatma Smarak Backward Class Boys/Girls Hostel Exhibit-64, pre-trap panchnama Exhibit-70, seizure memos Exhibit Nos.72, 73, 74, 76, 77, 78, 79 and 80 and post-trap panchnama Exhibit-83.

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

6. I have heard learned Counsel Mr. Daga for the appellant and Mr. Barabde learned APP 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 Counsel for the appellant submitted that the judgment and order of conviction impugned is erroneous and without appropriate reasoning. The learned Judge of the trial Court failed to appreciate inconsistencies came in the evidence and also failed to appreciate that 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 cross examination of the witnesses shows that the accused has visited the hostel on various occasions and noted the discrepancies and action was suggested against the authority who is running the hostel and, therefore, the accused is falsely implicated in the alleged offence. It is further submitted that the accused is exonerated from the departmental enquiry, for which the evidence of lessor degree is required. Here, to prove the charges against the accused, higher degree of proof is required. Thus, the entire evidence on record is not sufficient to prove the charges against the accused. Thus the entire prosecution fails in the light of the above evidence. For all the above reasons, the accused deserves to be acquitted.

8. In support of the contention, learned Counsel for the appellant placed reliance on the decisions of :

- (i) **Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr.**, reported in (2020) 9 SCC 636,
- (ii) **R. J. Singh Ahluwalia Vs. The State of Delhi**, reported in AIR 1971 SC 1552,

- (iii) **Radheshyam Kejriwal Vs. State of West Bengal and Another**, reported in (2011) 3 SCC 581, and decisions of this Court,
- (iv) **Criminal appeal No. 444/2014**, Prabhat Ram Ambhurkar Vs. State of Maharashtra along with **Criminal appeal No.448/2014**, Prashant Shankar Chatreshwar Vs. State of Maharashtra, decided on 09.10.2023 and
- (v) **Criminal Appeal No. 247/2005**, Wasudeo Nathuji Ukey Vs. The State of Maharashtra, decided on **05.10.2023**.

9. Per contra, learned Additional Public Prosecutor Mr. Barabde for the State submitted that the evidence of the complainant PW.-3 Babarao Fuse is corroborated by shadow panch PW.-4 Ashok Bisen, who proves the demand and acceptance. The amount recovered from the pocket of full-pant of the accused is proved by the panch. The prosecution has also proved that the sanction is as per the law and valid and, therefore, no interference is called for in the judgment and order passed by the learned Judge of the trial Court.

10. Since the question of validity of sanction has been raised as a preliminary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on the ground that the sanction

order was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

11. On the point of valid sanction, it is submitted that the evidence of sanctioning authority P.W.-1 Jagannath Dange, who accorded the sanction to prosecute accused, nowhere shows the application of mind.

12. The evidence of sanctioning authority P.W.-1 Jagannath Dange shows that in the year 1997, he was working as a Secretary, Social Welfare Department, State of Maharashtra. The accused Ramesh Tukaram Waghmare was working as a Social Welfare Officer, Wardha. Power to appoint Social Welfare Officer are vested with the Government. The appointment order of such officer is required to be signed by the Secretary of that department. Under orders of Secretary, his sub-ordinate officer can also sign the order. The competent authority to remove the Social Welfare Officer is the State Government. His evidence further shows that on 18.03.1996, he received the communication from the Superintendent of Police, ACB, Mumbai along with the papers of investigation. Draft sanction order was also sent to him. He has personally seen those documents, it was comprising of panchnamas, complaint, statements of witnesses, report of the Investigating Officer and other relevant documents. He personally read those documents and come to the conclusion that

there is a *prima facie* case of corruption against the accused and accorded the sanction, which is at Exhibit-44. The cross-examination of this witness shows that the papers are sent to the Law Department as well as Home Department. The opinion of Law Department whether sanction is to be accorded or not was required. It further states that the State Government had issued the guidelines in respect of according the sanction. He further admitted that the Social Welfare Officer of the Zilla Parishad is a Class-II Gazetted Officer and approval of the Chief Minister or Deputy Chief Minister is required to be taken prior to according the sanction. His cross-examination further shows that it reveal to him that grant was provided as per the number of students and the incharge of that hostel is required to give periodical report of number of students. He further admitted that Social Welfare Officer does not prepare cheque in respect of sanction granted and work of preparation of bills lies with the Finance Department. He specifically admitted that in the present case, bills of grant-in-aid was approved by the accused prior to 20 days of the incident and it was for the amount of the bill of grant-in-aid. He further admits that sanction order Exhibit-44 is the same as per the draft sanction order. Thus, attempt is made by the defence to show that it was the Chief Minister or the Deputy Chief Minister through approval was required for according sanction. The opinion of Law

and Judiciary Department was also required and the papers were sent for obtaining the said opinion, which is not on record. Moreover, the admission specifically shows that the work for which demand is made is already completed prior to 20 days as the grant-in-aid was already sanctioned.

13. Perusal of the sanction order shows that in paragraph No.1 designation of accused is mentioned and from paragraph Nos.2 to 4, it is mentioned that the Government of Maharashtra, having fully examined the material placed before it and considered all facts and circumstances, was satisfied that there is a *prima facie* case made out against the accused and accorded the sanction.

14. Perusal of the sanction order nowhere discloses that P.W.-1 Jagannath Dange is the person, who has applied his mind while according the sanction. After going through the evidence of sanctioning authority P.W.-1 Jagannath Dange, though he stated that he applied his mind and perused the investigating papers, the sanction order nowhere discloses that it was he, who applied his mind by perusing the investigation papers. The wordings used in the sanction order are that the Government of Maharashtra, having fully examined material before it, was satisfied that there is a *prima facie* case made out against the accused and the sanction is accorded. Perusal of the sanction order shows that he has not disclosed on what

basis he came to conclusion that the sanction has to be accorded. The sanction order only shows that the Government of Maharashtra applied its mind and accorded the sanction. It further discloses that the papers were sent to the Law and Judiciary Department as well as Home Ministry, however, there is no reference of these activities in the sanction order. The sanction order discloses that the material was examined by the Government of Maharashtra and satisfaction for according of sanction was also arrived at by the Government of Maharashtra. The sanction order does not specifically mention name of any officer who had actually undertaken the exercise of examining the material and recording subjective satisfaction in this regard on behalf of the Government of Maharashtra. It is not known as to who applied his/her mind and by what process exactly an opinion was formed that a *prima facie* case was made out for according the sanction. The opinion of the Law and Judiciary Department was not produced in the evidence by the prosecution. If it would have been produced, sufficient light perhaps could have been thrown on the exercise undertaken for according of sanction of the accused by the Government of Maharashtra. Admittedly, grant of sanction is a serious exercise of powers by the competent authority. It has to be apprised of all the relevant materials and on such materials, the authority has to take a conscious decision as to whether the facts

would show the commission of the offence under the relevant provisions. No doubt, elaborate discussion is not required, however, the decision making on relevant materials should be reflected in the order. Whether sanction is valid or not and when sanction can be called as a valid, the same is settled by the various decisions of the Hon'ble Apex Court as well as this Court.

15. On the point of valid sanction, the settled law is to be taken into consideration. The Hon'ble Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**, reported in **1979 AIR 677** has held that what the Court has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

16. The Hon'ble Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**, reported in **2014 Cri.L.J. 930** has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which

affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Hon'ble Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the

sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

17. The Hon'ble Apex Court in the case of **State of Karnataka vs. Ameerjan** reported in (2007)11 SCC 273, held that it is true that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

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

19. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**, reported in 2016 ALL MR (Cri) 3697 observed that absence of description of documents referred by

sanctioning authority and only considering the grievances made by Complainant would show lack of application of mind by competent authority while according sanction. The documents other than complaint were taken into consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

20. 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 mind of the sanctioning authority should not be under pressure and the said authority has to apply his own independent mind on the basis of the evidence which came before it. 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.

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

22. After going through the evidence of sanctioning authority P.W.-1 Jagannath Dange, admittedly, the sanction order nowhere reflects who has applied mind and which documents are considered by the sanctioning authority and what was the basis to come to conclusion that the sanction is to be accorded to launch prosecution against the accused.

23. Besides the issue of sanction, the prosecution claimed that the accused person has demanded gratification amount and accepted the same. In order to prove the demand and acceptance, the prosecution mainly place reliance on the evidence of complainant P.W.-3 Babarao Fuse and shadow panch P.W.-4 Ashok Bisen. The prosecution has also adduced the evidence of P.W.-5 Suresh Kokate who has investigated the matter.

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 bribe by a public servant and its acceptance by him is a *sine quo non* for establishing the offences under the Act of 1988.

25. 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 **PSatyanarayana 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.”

26. To prove the offence under Sections 7 and 13(1)(d) of the Act of 1988, following are ingredients of the said Sections, which require to be prove:

under Section 7: (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptance 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.

27. In the light of the well settled law, if the evidence of the prosecution is appreciated, it would show that the prosecution has placed reliance on the evidence of complainant PW-3 Babarao Fuse. As per his oral evidence, the accused who is serving as a District Social Welfare Officer and a Sanctioning Authority to sanction the grants. The complainant was working as a Superintendent at the Hutatma Smarak Backward Class Boys Hostel, Ashti and the hostel is entitled for the messing grant of Rs.250/- per student from the State Government through the District Social Welfare officer. Thus, the hostel was getting messing grant of Rs.4.50 Lacks for ten months. He had submitted the proposal for release the messing grant and therefore, he approached to the accused on 30.10.1995. His evidence further shows that when he enquired with the accused whether the grant is sanctioned, at the relevant time, accused has demanded the amount of Rs.10,000/- and told him that unless the amount is paid, he would not get the cheque of the grant. After negotiation, it was decided that after sanction of the grant of 50%, he has to pay Rs.4,000/- and when the remaining 50% grant will be sanctioned he

has to pay Rs.6,000/-. As the complainant was not willing to pay the amount, he approached to the ACB office and lodged the complaint. He narrated the entire procedure laid down by the Bureau for conducting the raid. Thus, as per his evidence, when he approached the accused, the accused again demanded the amount and accepted the amount. He further stated that he gave a signal as instructed by the Officers of Bureau and the accused was caught and amount was seized from him.

28. To corroborate his version, the prosecution has also examined shadow panch PW.-4 Ashok Bisen, who has also narrated that he along with the another panch was called in the office of the Bureau. In their presence, complainant narrated his grievance and they have verified the same. Thereafter, it was decided to conduct the raid and narrated the entire procedure carried out by the officials of the Bureau during pre-trap and post-trap panchnamas. As per his evidence, he went along with the complainant at the office of the present accused, accused demanded the amount and the complainant has handed over the same. Thereafter, the accused was caught and the amount was recovered from the full-pant pocket of the accused. Thus, evidence of PW.-3 Babarao Fuse shows that the accused has demanded the amount and accepted the same.

29. Now, it has to be seen, whether the evidence of complainant P.W.-3 Babarao Fuse and P.W.-4 Ashok Bisen is corroborating to each other on every particulars.

During cross examination of the complainant P.W.-3, it came on record that the accused used to visit the hostel and noted down some discrepancies. He has admitted that the accused has also taken the entry in the Visit Book. Prior to 1993, the hostel was under the administration of Block Development Officer, thereafter, an order was passed to the effect that Social Welfare Officer, Block Development Officer and the Superintendent should manage the affairs of the hostel. It further came in his cross examination that in the year 1994, the accused requested the Joint Charity Commissioner and accordingly, the management of the hostel was entrusted to the Society. The discrepancies found were noted by the accused in the Visit Book. He further admitted that the sanction strength of hostel was reduced to 150. Attendant Register was verified by the accused and gave his remarks on the Visit Book, while noting the discrepancies in the hostel. The cross-examination further shows that on 15.09.1995, the office bearer of the Zilla Parishad visited the hostel and noted discrepancies in the Visit Book and also passed remarks to cancel recognition of the hostel and subsequently, the discrepancies were rectified. It was also noted by the Officers of the

Social Welfare Department that an amount of Rs.60,000/- and Rs.10,000/- from the account of the hostel was given to the other work and accordingly, remarks were given. It further came in his evidence that he was required to rectify the discrepancies mentioned in the Visit Book, he was also under obligation to submit his report to Zilla Parishad on every year. The amount of grant was dependent upon the number of students. Fine was also imposed on noticing irregularity and the amount of fine was decided to be deducted from the amount of grant. Thus, the cross-examination of P.W.-3 shows that there were so-many discrepancies, which are noted by the present accused and also intimated to the Zilla Parishad and it was intimated that if the discrepancies are not rectified, the permission granted to the hostel can be cancelled. He has specifically admitted that while inspecting the hostel by the accused, he has reported that there are less students and recommended the less grant. Thus, from the cross-examination, it reveals that it was the accused, who has noted various discrepancies and also deducted the grant as there were less students. The cross-examination of P.W.-1, who is the sanctioning authority shows that bill in grant-in-aid was approved by the accused prior to 20 days and the cheque was already issued, whereas the complaint was filed on 09.11.1995.

30. In the light of above cross-examination, if the evidence of P.W.-4 Ashok Bisen who is the shadow panch is appreciated, his cross-examination shows that departmental enquiry was initiated against the accused and he appeared as a witness in the said departmental enquiry. P.W.-4 has admitted that by issuing summons, he was called before the departmental enquiry. The Officer while recording his evidence whatever stated by him was recorded in writing. He had stated the events as took place before him. He has stated that events taking place in the Chamber of Waghmare were not visible from the place where the clerk Junghare used to sit. He also stated that on the day of raid, initially they have visited the table of one Junghare and only the complainant went to the office of accused to make an enquiry whether cheque in respect of grant is ready or not. Thus, the cross-examination of P.W.-4 shows that on day of raid, they initially went at the clerk Junghare and it was the complainant who alone went at the office of the accused. Thus, it shows that neither the demand nor the acceptance was made in presence of the P.W.-4.

31. Learned Counsel for the appellant invited my attention towards the certified copy of deposition of P.W.-4 before the enquiry officer. The evidence of P.W.-4 before the enquiry officer shows that he and the complainant went to Shri Waghmare however, he asked them to enquire about the cheque with Shri Junghare, hence they

went to Shri Junghare and enquired about the cheque of grant. Shri Junghare informed them that the cheque was signed, then Fuse gave acknowledgment receipt of the cheque and signed the register and received the cheque. Then Shri Fuse went to meet delinquent Shri Waghmare, at that time he was sitting with Junghare Saheb. He further stated that after receiving the cheque, Shri Fuse went to Waghmare Saheb and later returned and informed him that he had given him the money and then both came out and the Fuse gave signal to the trap officers and thereafter, the accused was caught and amount was recovered. Thus, the evidence of the P.W.-4 before the enquiry officer shows that it was the only complainant who approached to the present accused and neither the demand nor the acceptance was made in presence of the P.W.-4.

32. Considering the evidence of P.W.-3 and P.W.-4, which is not corroborating to each other, as far as the events and the sequence of the events which happened. It is pertinent to note that as per the evidence of P.W.-3 Babarao Fuse, he and panch immediately approached to the accused by visiting his office. During evidence before the Court, P.W.-4 has also narrated the same, but his evidence before the enquiry officer is contradictory, which shows that though they approached to the accused, but accused asked them to enquire with Shri Junghare, they obtained the cheque and, therefore, by

asking him to sit in the cabin of Shri Junghare, only complainant approached to the accused and thereafter informed to the shadow panch that he has handed over the amount to the accused. Thus, the evidence of the panch witness before the enquiry officer and before the Court is contradictory to each other. The events narrated by the shadow panch before the enquiry officer requires to be appreciated in the light of admission of P.W.-1 sanctioning authority, who has admitted during his cross-examination that bill in grant-in-aid was approved by the accused prior to 20 days and it was for the amount of bill of grant-in-aid. If this admission is taken into consideration, then admittedly, no work was pending with the accused on the day when the trap was led. The Investigating Officer is also examined as P.W.-5, who has narrated about the post-trap panchnama. He has also admitted that he has adduced the evidence in the departmental enquiry initiated against the accused in respect of this incident. He has not collected any documentary evidence to show that the complainant had come to Wardha on 30.10.1995. He further admitted that prior to the demand dated 08.11.1995, there was a prior demand on 30.10.1995. He has not collected any evidence regarding the said prior demand. He shown his ignorance about the fact that accused has visited the hostel and noted the irregularities and mismanagement of the hostel. He also admitted that during

investigation it was transpired to him that prior to 20 days of the incident, the accused has sent the papers after necessary sanction for preparing cheque in respect of the amount of grant. His cross-examination further shows that the work of preparing the cheque was not under the control of the accused, it was to the Cash and Finance Department. He admitted that cheque for the amount of the grant was received by the office of the accused from the office of the Cash and Finance Department, Account Officer on the day of the trap itself. Thus, the Investigating Officer also shows that on the day of the trap, no work was pending with the accused.

33. To support the defence, the accused has examined two defence witnesses one Ramkrushna Ganjiwale who was President of the Trust named as Hutatma Smarak Simiti. As per his evidence, the accused who was Social Welfare Officer was frequently inspected the hostel and pointed out some discrepancies in the Visit Book. The another defence witness examined is the Ramdas Talanje, who was working as a Regional Special Officer, Departmental Inquiry, Nagpur Division, Nagpur, who stated that after recording the evidence and after hearing the delinquent as well as the Presenting Officer, he has exonerated the accused from the departmental enquiry. He stated that he has recorded the evidence of witness Ashok Sadashiv Bisen in departmental enquiry and stated that his evidence is recorded as per

stated by the said witness. He admitted that said witness Ashok Bisen was not declared hostile by the Presenting Officer in the said departmental enquiry.

34. Thus, after appreciating the evidence, it reveals that on the day of raid, no work was pending with the accused. It is alleged by the complainant that he was told by the accused that unless and until amount is paid, the cheque of the grant will not be issued to him. In fact, the entire evidence shows that prior to 20 days of the incident, i.e. prior to the first demand dated 30.10.1995, the work was completed by the accused. The evidence of P.W.-1 and P.W.-5 who specifically admitted that prior to 20 days itself, the accused has granted the sanction for the grant-in-aid and the work of preparing the cheque was not with the accused. This evidence is to be appreciated in the light of the evidence of panch witness who before the enquiry officer stated that after meeting to the accused, the accused asked to meet the clerk Shri Junghare, said Junghare has handed over them cheque, thereafter, only the complainant went to meet the accused and informed that he has handed over the amount of Rs.4,000/- to the accused. Thus, neither demand nor acceptance was before the P.W.-4, as per his evidence before the enquiry officer. Admittedly, before the Court, he has given the contrary statement.

35. The learned Counsel Mr. Daga submitted that when the accused is exonerated from the departmental enquiry, the criminal prosecution on the same set of facts and circumstances, cannot be allowed to continue on underline principle that higher standard of proof is required in criminal cases. In support of his contention, he placed reliance on **Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI** (*cited supra*), wherein the Hon'ble Apex Court in paragraph No.8 held that, a number of judgments have been held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceedings where the case has to be proved beyond reasonable doubt. By referring the judgment of **Prabhu Saran Rajya Vs. State of Bihar**, reported in (1996) 9 SCC 1, by reproducing the paragraph no.3 therein which is as follows :

“3. The short question that arises for our consideration in this appeal whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of the report submitted by the

Central Vigilance Commission and concurred by the Union of Public Service Commission.”

The Hon’ble Apex Court held that the ratio which can be culled out from these decisions can broadly be stated as follows :

- (i) Adjudication proceeding and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

- (vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

Thus, the Hon'ble Apex Court held that criminal prosecution on the same set of facts and circumstances cannot be allowed to continue.

36. The learned Counsel for the appellant further placed reliance on **Radheshyam Kejriwal Vs. State of West Bengal** (cited supra), wherein also the Hon'ble Apex Court held that, exoneration in related adjudication proceedings of civil nature under the relevant statute, in case of exoneration on merits in such adjudication proceedings, where the allegations are found to be not sustainable at all and person concerned is held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, underlying principle being the higher standard of proof in criminal cases. The Hon'ble Apex Court further held that, adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case entire

burden to prove beyond all reasonable doubt lies on the prosecution. The standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case therefore, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. It is further held by the Hon'ble Apex Court that there may appear to be some conflict between the views taken by the Hon'ble Supreme Court of India in the cases of **Standard Chartered Bank(1) Vs. Directorate of Enforcement**, reported in (2006) 4 SCC 278 and **Collector of Customs Vs. L.R. Melwani**, reported in AIR 1970 SC 962 on the one hand holding that adjudication proceedings and criminal proceedings are two independent proceedings and both can go on simultaneously and the finding in the adjudication proceedings is not binding on the criminal proceedings and on the other hand the judgments in **Uttam Chand Vs. ITO**, reported in (1982) 2 SCC 543, **G.L. Didwania Vs. ITO**, reported in 1995 Supp (2) SCC 724 and **K.C. Builders Vs. CIT**, reported in (2004) 2 SCC 731, wherein the Supreme Court had taken a view that when there is categorical finding in the adjudication proceedings exonerating the person which is binding and conclusive, the prosecution cannot be allowed to stand. The

judgments of the Supreme Court are not to be read as a statue and when viewed from that angle there does not seem any conflict between the two sets of decisions.

The Hon'ble Apex Court further held that the ratio which can be culled out from the said decisions can broadly be stated as follows :

- (i) Adjudication proceeding and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in

adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

- (vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

Thus, the Hon'ble Apex Court held that in a case of exoneration on merit, in such adjudication proceedings, where allegations are found to be not sustainable at all and person concerned to held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle of being the higher standard of proof in criminal cases.

37. In this Case, though the defence witnesses are cross-examined at length, nothing incriminating came on record to disbelieve them. Moreover, their evidence is also corroborated by the circumstances that the evidence of P.W.-4 shows that neither demand nor acceptance was in his presence, which was stated by him before the enquiry officer. The said incriminating portion was put to him

during the cross-examination, but no probable explanation was given by him regarding the said evidence.

38. 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'.

39. 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 namely Babarao Fuse and shadow panch P.W.-4 Ashok Bisen appears to be not consistent. As per the complaint, the demand was made in his presence whereas, the evidence of shadow panch was impeached during the cross-examination by showing his earlier statement/evidence before the inquiry Officer. Thus, the evidence adduced by the shadow panch is not inspiring the confidence. If the evidence of complainant is appreciated in the light of the fact that the accused has already sanctioned grant prior to 20 days i.e. prior to the first demand, the accused has visited the hostel at various occasions and noted the discrepancies and also noted that there were less students shown by

the complainant and therefore, the amount of grant was reduced by him. If the entire evidence is appreciated, there is a reason for the complainant to implicate the accused falsely. Considering the entire evidence, the possibility of implicating the accused falsely in the alleged incident cannot be ruled out.

40. It is well settled that the evidence of complainant should be corroborated in material particulars.

41. 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.

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.

42. While deciding the issue involving the offence under the Act of 1988, a fact required to be considered is that the evidence of complainant PW.3 Babarao Fuse 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**, 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.

44. 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.”

45. 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.

46. It is well settled that mere possession and recovery of currency notes from accused without proof of demand would not

establish an offence under Section 7 as well as Section 13(1)(d)(i)(ii) of the Act of 1988.

47. It is held by the Hon'ble 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 extend 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.”

48. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**, reported in **2017 ALL MR (Cri) 3269**, this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the reason being that the complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to bye-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against

accused. Whereas, burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt.

49. The Hon'ble Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**, reported in (1997)10 SCC 600, held that the primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that 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 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.

50. 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.

51. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing and since the proof of demand is a *sine quo non* for convicting the accused in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt. The another circumstance is that the accused is exonerated from the charges in a departmental enquiry. In view of the ratio laid down by the Hon'ble Apex Court wherein it is held that the standard of proof in a criminal case is much higher than the standard of proof in departmental

proceedings. When the accused is exonerated in the departmental enquiry, then on an identical charges the prosecution cannot be allowed to continue. In the present case also the accused is already exonerated by the adjudication of the said enquiry.

52. After appreciating the evidence on record the fact that accused has demanded the amount for sanctioning the grant is not substantiated by the material evidence. It is also well settled that while deciding the offence under the Act of 1988, the complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. The complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

53. As far as applicability of presumption is concerned, the Hon'ble Apex Court in the case of **Neerja 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 interference 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.

54. In the instant 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 no work was pending with the accused on the date of trap. The evidence of the shadow panch before the enquiry officer and before the Court is not consistent. The accused is exonerated from the charges in departmental enquiry after due adjudication. The sanctioning authority has not exercised the power strictly keeping in mind all the relevant facts and material and not accorded the sanction accordingly. The sanction order nowhere discloses that who has applied its mind to accord the sanction. Thus, the entire exercise carried out by the sanctioning authority is without application of mind. The evidence as to the demand and acceptance is also not satisfactory. 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 13.03.2006 passed by learned Judge, Special Court, Wardha in Special (ACB) Case No.5/1997 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.)