



Judgment

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1

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

**CRIMINAL APPEAL NO.164 OF 2006**

Ramesh Sadashiv Margamwar,  
r/o Kanhan, district Nagpur. .... **Appellant.**

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

State of Maharashtra,  
through Anti Corruption Bureau,  
Nagpur. .... **Respondent.**

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Shri Ghanshyam Dani, Counsel for the Appellant.  
Shri K.R.Lule, Additional Public Prosecutor for the  
Respondent/State.

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**CORAM : URMILA JOSHI-PHALKE, J.**  
**CLOSED ON : 06/09/2024**  
**PRONOUNCED ON : 07/10/2024**

**JUDGMENT**

1. By this appeal, the appellant (the accused) has challenged judgment and order dated 17.3.2006 passed by learned Judge, Special Court, Constituted under Prevention of Corruption Act (learned Judge of the Special Court) in Special Criminal Case No.3/1998.

2. By the said judgment impugned, the accused is convicted for offences punishable under Sections 7 and

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**2**

13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to undergo rigorous imprisonment for one year and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for three months.

3. Brief facts of the prosecution case are as under:

Laxman Bagde (the complainant), a resident of Bhiwapur, district Nagpur, was prosecuted by Bhiwapur Police Station in Criminal Case No.70/1990 for offences punishable under Sections 342, 365, and 506 of the Indian Penal Code and the same was pending in the court of learned Judicial Magistrate First Class at Pauni, district Bhandara. As the complainant was absent before learned Magistrate, a Non Bailable Warrant (NBW) was issued against him to secure his presence before learned Magistrate. The warrant was sent to the concerned police station and the same was forwarded to the accused, who was serving as Police Head Constable, for execution against the complainant. On 2.1.1997,

**3**

the accused met the complainant and informed him about issuance of NBW against him by Pauni Court and asked to come to the police station on the next day. Accordingly, on 3.1.1997, the complainant went to the police station and met the accused who allegedly made demand of Rs.1000/- for himself from the complainant for non execution of the warrant and for not arresting him. The accused asked him to come along with the amount by evening on the same day or the next day. The complainant, on the next date i.e. 3.1.1997, met his Advocate and applied for cancellation of the NBW. Accordingly, the NBW was cancelled. The complainant obtained Hamdast which was addressed to the Police Station, Bhiwapur. The complainant handed over the said Hamdast to Police Head Constable Gadekar on 5.1.1997. It is further alleged that on 8.1.1997, at Bhiwapur, the accused repeated his demand of Rs.1000/- from the complainant and accepted Rs.45/- against the said demand. He also asked the complainant to come along with the amount on

**4**

9.1.1997, otherwise, he threatened the complainant to arrest. As the complainant was not having a desire to pay the amount, he approached the office of the Anti Corruption Bureau (the bureau) at Nagpur on 9.1.1997 and lodged the report.

4. After receipt of the complaint, officials of the bureau called two panchas. The complaint was read over to panchas and they verified contents of the complaint. The complainant produced ten currency notes of Rs.100/- before officers of the bureau. The demonstration as to phenolphthalein powder and sodium carbonate was shown to the complainant and panchas. After applying the said solution, the amount was kept in right side of the shirt pocket of the complainant. The complainant was instructed not to hand over the amount unless there is a demand and also asked to give a signal on acceptance of the amount by using "dupatta" over his face. Shadow Pancha No.1 was also instructed to remain with the complainant and observe events. Pancha No.2 was instructed to remain

**5**

with raiding party members. Accordingly, pre-trap panchanama was drawn.

5. The complainant and the Shadow Pancha proceeded at Bhiwapur Police Station by walk and other raiding party members followed them. The complainant and Pancha No.1 entered into the police station where the accused was present. The accused took them at "Krishna Tea Stall". At "Krishna Tea Stall", the accused demanded the amount and asked the complainant to hand over the amount to the tea stall owner (accused No.2 who died during the pendency of the appeal and, therefore, his appeal is abated). The deceased accused accepted and kept the said amount in the cover of transistor and, thereafter, a pre-determined signal was given. The accused and the deceased accused were caught. The amount was recovered from the cover of the transistor. The hand wash of the deceased accused was collected. The transistor cover was also seized after sprinkling the solution on it. The amount was seized. During investigation, a sanction was obtained. After

**6**

completion of the investigation, chargesheet came to be filed against the accused.

6. To substantiate allegations, the prosecution examined as many as ten witnesses, as under:

7. Laxman Bagade vide Exhibit-10 (PW1), the complainant; Moreshwar Gedam vide Exhibit-16 (PW2), the Shadow Pancha; Madhukar Patil vide Exhibit-24 (PW3), the Head Constable (ACB); Prakash Tidke vide Exhibit-27 (PW4), the Carrier; Dilip Tiwari vide Exhibit-30 (PW5), the Carrier; Rashmi Shukla vide Exhibit-34 (PW6) the Sanctioning Authority; Shyamrao Baraskar vide Exhibit-41 (PW7), the Police Inspector; Tukaram Raut vide Exhibit-47 (PW8), who accompanied the complainant to the police station; Suresh Kokate vide Exhibit-48 (PW9), the Trap Officer; and Kishor Naik vide Exhibit-53 (PW10), the Trap Officer.

8. Besides the oral evidence, the prosecution relied upon penalty receipt Exhibit-11, complaint Exhibit-12, personal search of the complainant Exhibit-14; pre-trap

**7**

panchanama Exhibit-17, seizure memo Exhibit-18, map Exhibit-21, post-trap panchanama Exhibit-22, First Information Report Exhibit-26, letter to the Chemical Analyzer Exhibit-28, sanction order Exhibit-35, transfer order of the accused Exhibit-39, leave application by the accused Exhibit-42, letter to the accused calling his explanation Exhibit-43, explanation by the accused Exhibit-44, report Exhibit-50, seizure memo Exhibit-51, Chemical Analyzer's Report Exhibit-67.

9. After considering the evidence adduced during the trial, learned Judge of the Special Court held the accused guilty as the aforesaid.

10. Heard learned counsel Shri Ghanshyam Dani for the accused and learned Additional Public Prosecutor Shri K.R.Lule for the State. I have been taken through the entire evidence so also the judgment impugned in the appeal.

11. Learned counsel for the accused submitted that learned Judge of the Special Court erroneously

**8**

convicted the accused in absence of any cogent and reliable evidence as the demand and acceptance of the alleged gratification is not proved. The demand and acceptance of illegal gratification is *sine qua non* to attract provisions of the said Act. He submitted that there is no corroboration as far as the earlier demand is concerned. The sanction accorded by Sanctioning Authority PW6 Rashmi Shukla is without application of mind. The evidence as to the acceptance of the amount is doubtful.

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

**1. P.Satyanarayana Murthy vs. The District Inspector of Police and anr<sup>1</sup>;**

**2. Mukhtiar Singh (since deceased) through his LR vs. State of Punjab 362<sup>2</sup>;**

**3. The State of Maharashtra vs. Balwantsingh Routele<sup>3</sup>;**

**4. Gopal s/o Nagnathrao Gunjkar<sup>4</sup>, and**

1 2015 ALL SCR 3171

2 (2017)8 SCC 136

3 2015 ALL MR (Cri) 4180

4 2010 ALL MR (Cri) 2436

**5. State of Maharashtra vs. Baliram Vithoba Bhute<sup>5</sup>.**

13. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Laxman Bagade and Shadow Pancha PW2 Moreshwar Gedam is consistent and corroborated. The amount is seized from the deceased accused. The explanation given by the accused appears to be baseless. The prosecution has proved the demand and acceptance with the help of the complainant and other circumstantial evidence. The sanction accorded is also as per the law and, therefore, no interference is called for.

14. Since question of validity of the sanction has been raised as a primary point, an aspect of sanction requires to be discussed. The sanction order was challenged on ground that it was not accorded after application of mind.

**10**

15. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW6 Rashmi Shukla, who testified that at the relevant time, she was serving as the Superintendent of Police (Rural) at Nagpur. On 29.11.1997, she received letter from the office of the bureau requesting for according sanction to prosecute the accused attached to the Bhiwapur Police Station. She examined all papers and satisfying herself, after studying papers, accorded the sanction. Her evidence shows that papers received by her were relating to the complainant from which it revealed to her that allegations were against the accused of demanding the gratification amount and accepting the same with the help of the deceased accused and she accorded the sanction. Her cross examination shows that draft sanction order was sent to her. Her cross examination also shows that she personally studied entire records and papers and accorded the sanction.

**11**

16. Undisputedly, the accused was serving as a Police Constable. As per allegations, for not executing the warrant, he demanded Rs.1000/- and accepted Rs.100/-. The sanction order Exhibit-39 shows that he was serving at Bhiwapur Police Station. Recital of the sanction order shows that Sanctioning Authority PW6 Rashmi Shukla reproduced the entire prosecution case and in second last paragraph, it is mentioned that, upon carefully reading papers of Crime No.4/1997 of Bhiwapur Police Station, she is satisfied that there is adequate evidence to prosecute the accused and after carefully evaluating the evidence, accorded the sanction.

Thus, the chief examination as well as the cross examination and recital of the sanction order show that after evaluating the material, the Sanctioning Authority accorded the sanction.

17. Whether sanction is valid or not and when sanction can be called as valid, the same is settled by

**12**

various decisions of the Hon'ble Apex Court as well as this court.

18. The Hon'ble Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**<sup>6</sup> 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.

19. In view of the settled principles of law, it is crystal clear that the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. The sanction order should

<sup>6</sup> 1979 AIR 677

**13**

speaks for itself. It is well settled that sanction order should not be so elaborate like an order of court containing detailed reasons, but it should be after application of mind. Ultimately, an object of grant of sanction should be able to consider evidence and material before it and the Sanctioning Authority shall come to a conclusion that whether the prosecution in the circumstances be permitted or forbidden. It is further well settled that sanction is solemn and sacrosanct act. The law does not require sanction to be in a particular form. The sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Section 19 of the said Act.

20. As observed earlier, sanction order is not required to be passed as of a court order.

21. In the light of the above well settled legal position, if the sanction order is perused Sanctioning Authority PW6 Rashmi Shukla specifically stated that

**14**

she received all investigation papers. On evaluating the evidence, she accorded the sanction. Her cross examination shows that after studying the entire record and papers, she accorded the sanction. In the sanction order, she specifically stated that upon carefully reading and evaluating the evidence, she is satisfied that there is adequate evidence to prosecute the accused and accorded the sanction.

22. Perusal of the sanction order shows that Sanctioning Authority PW6 Rashmi Shukla has not only gone through all papers of investigation but also evaluated the evidence and on her satisfaction, she accorded the sanction.

23. Thus, the issue of sanction cannot be put at such pedestal as it would make impossible for the prosecution to prove the same. The object and purpose of grant of sanction and protection contemplated thereby does not mean that technical and trivial objections to legality and validity of sanction to be

**15**

entertained. When all relevant materials placed before the Sanctioning Authority are found to be taken into consideration in correct perspective, the sanction accorded is by application of mind.

24. The sanction accorded in the present case is after application of mind and, therefore, the submission of learned counsel for the accused, that the sanction is not according to law, is not sustainable and liable to be discarded.

25. Besides the issue of the sanction, the prosecution claimed that the accused demanded gratification amount and accepted the same.

26. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Laxman Bagade and Shadow Pancha PW2 Moreshwar Gedam.

27. On the question of the demand and acceptance, it is necessary to see the evidence of complainant PW1 Laxman Bagade, who alleged that he was prosecuted

**16**

and criminal case bearing Crime No.70/1990 was pending against him of offences under Sections 345, 365, and 506 of the Indian Penal Code. As he remained absent, learned Magistrate at Pauni issued Non Bailable Warrant against him which was forwarded to the accused for execution of the warrant.

28. To prove aspect of fact that the accused was assigned with duties to execute the warrant, the prosecution examined Police Inspector PW7 Shyamrao Baraskar attached to the Bhiwapur Police Station. His evidence shows that on 16.12.1996, learned Magistrate at Pauni had issued Non Bailable Warrant, in Criminal Case No.96/1996, against complainant PW1 Laxman Bagade, which was received by the police station by post on 22.12.1996, that the Non Bailable Warrant was entrusted with the accused for execution. On 3.1.1997, the accused had given an application for casual leave for five days. In the meantime, on 5.1.1997, he received a letter from Pauni Court directing them to return the Non Bailable Warrant issued against the

**17**

complainant unserved. The said letter was handed over to Head Constable having Buckle No.633 asking him to return back the Non Bailable Warrant without executing the same as the accused was proceeded on leave. As per the order passed on the leave application, the accused was directed to attend his duty before 12:00 noon on 8.1.1997, but he did not join his duties. On 9.1.1997, he learnt that the accused was arrested by the bureau. His evidence further shows that the accused did not return back the NBW as per directions of the court and, therefore, explanation was called. As per the explanation of the accused, he met with an accident and the warrant which was in his shirt pocket was lost and, therefore, he could not produce the same or return back. Though this witness is cross examined, nothing incriminating is brought on record. His evidence further shows that the accused was assigned with duty to execute the warrant against the complainant.

**18**

29. Now, turning to the evidence of complainant PW1 Laxman Bagade, which shows that the accused informed him that the warrant is issued against him on 2.1.1997 and asked him to come to the police station on 3.1.1997. When he visited the police station along with his friend Raju Raut, the accused informed that the NBW was issued against him and he has to arrest him. The accused demanded Rs.1000/- for not to arrest him and asked him to come along with the money. However, the complainant approached his counsel and filed an application before the court for cancellation of the warrant. His warrant was cancelled on penalty of Rs.45/- and receipt of the same is at Exhibit-11. He obtained Hamdast and delivered the same to Constable at the Bhiwapur Police Station on 5.1.1997. But, the accused approached him on 8.1.1997 and demanded amount of Rs.1000/- and asked him to come on 9.1.1997 and, therefore, he approached the office of the bureau and lodged the report. His evidence further discloses about procedure carried out by officers of the

**19**

bureau during the pre-trap panchanama. As to the demand on the day of the trap, the evidence shows that he along with Shadow Pancha PW2 Moreshwar Gedam approached the accused at the police station. The accused was absent and, therefore, they approached the accused at his house. The wife of the accused disclosed that he is at the pan stall and, therefore, he went there. The accused was not present there, but tea stall owner called the accused. After the accused came at the tea stall, there was a communication and during the communication, the accused demanded the amount and asked to hand over the amount to the tea stall owner. The complainant disclosed that he is having Rs.800/-, which was accepted by the deceased accused and kept the same in the cover of transistor. Thereafter, a signal was given. Both the accused were caught. The amount was seized. Hand wash of the deceased accused was collected. The transistor cover was also seized so also the bribe amount. Accordingly, the post-trap panchanama was drawn.

**20**

30. To corroborate the version of complainant PW1 Laxman Bagade, the prosecution also examined PW8 Tukaram Raut, who was allegedly with the complainant on 2.1.1997, whose evidence shows that the complainant informed that the accused came to serve the warrant against him issued by the Pauni court. He along with the complainant visited the police station. In his presence, the accused demanded the amount. He and the complainant told the accused that they would settle the matter and ready to pay amount Rs.100/- to Rs.200/-, but the accused demanded Rs.1000/- and, thereafter, they approached an Advocate of the complainant who applied to the court for cancellation of the warrant and the warrant was cancelled on the penalty of Rs.100/-. They obtained Hamdast and handed over the same to the police on 5.1.1997. On 8.1.1997, the complainant, the accused, and a police constable came to his house. The complainant asked Rs.1000/- from him to hand over to the accused, but at that time, the complainant had given only Rs.45/-. The accused

**21**

asked them to come along with Rs.1000/- on the next day, but the complainant lodged the complaint.

31. Shadow Pancha PW2 Moreshwar Gedam, has also deposed before the court as to the demand and acceptance. His evidence is that as per directions of his superior, he acted as pancha. He narrated about events took place during the pre-trap panchanama and also deposed that characteristics of phenolphthalein powder and sodium carbonate were explained to him. The amount was obtained from complainant PW1 Laxman Bagade and solution was applied. The tainted amount was kept in shirt pocket of the complainant and necessary instructions were given to them and, thereafter, he along with the complainant went to the police station. The accused was not present there and, therefore, they went at the house of the accused. The wife of the accused informed that he is at pan stall and, therefore, they went at the pan stall whereat the accused demanded the amount asked the deceased accused, who is pan stall owner, to accept the amount.

**22**

The deceased accused accepted the amount and kept in cover of transistor. On receiving the signal, both accused were caught and amount was recovered from the transistor cover, which was seized. The hand wash of the deceased accused was collected as well as the transistor cover was verified by sprinkling solution and it was also seized.

32. The cross examination of complainant PW1 Laxman Bagade shows that he admitted that a criminal complaint was filed against him and his son with the Bhiwapur Police Station. There was another criminal complaint filed against him. It is further brought on record that on the day, when he obtained the order from the court for cancellation of the warrant, he went to the police station, but as the accused was not present in the police station, he has not handed over the Hamdast. On 4.1.1997, he handed over the Hamdast to police constable Gadekar, who was incharge of the station diary. The cross examination further shows that after cancellation of the warrant, it was informed to him by

**23**

his counsel that now he should not apprehend his arrest and he was sure that no arrest would be there at the hands of the police. The attempt was made that the entire incident of the trap was at the tea stall whereat crowd of people gather, which is admitted by the complainant. As far as the demand and acceptance is concerned, the evidence of the complainant was not shattered.

PW8 Tukaram Raut, allegedly with the complainant, was also cross examined as to the demand in his presence. His cross examination shows that he obtained hand loan from the complainant of Rs.1000/-. His cross examination further shows that on 5.1.1997, they went to the police station and handed over the Hamdast.

Thus, cross examination of this witness also shows that in his presence the accused demanded the amount.

**24**

Thus, as far as corroboration is concerned, the evidence of PW8 corroborates the version of the complainant as to the earlier demand. The evidence of PW8 as to the earlier demand is also not disturbed during the cross examination.

33. As far as the corroboration on the day of the demand is concerned, the evidence of Shadow Pancha PW2 Moreshwar Gedam shows that in his presence the accused has demanded the amount and asked the deceased accused to accept the same. The deceased accused accepted the same and kept in the transistor cover, which was seized by raiding party members. The hand wash of the deceased accused was collected. The solution was sprinkled on the cover of the transistor and purple colour was seen on it. The cross examination of PW2 shows that in his presence, the demand was made. As far as evidence as to the demand and acceptance is concerned, the same remained intact though he is cross examined at length.

**25**

34. Besides the evidence of these witnesses, the prosecution examined Head Constable PW3 Madhukar Patil serving with the office of the bureau. The evidence of the said witness is only to the extent that he has carried out the report of the trap officer to the Bhiwapur Police Station and the crime was registered.

35. PW4 Prakash Tidke and PW5 Dilip Tiwari are Police Constables at the office of the bureau who carried articles to the Chemical Analyzer.

36. PW9 Suresh Kokate and PW10 Kishor Naik are Trap Officers. Admittedly, they are not witnesses on the demand and acceptance. Their evidence is as to the recovery of the amount after the trap and the procedure followed by them during the post-trap and pre-trap panchanamas.

The cross examination PW9 shows that during investigation, it revealed to him that the accused was on leave from 3.1.1997 to 7.1.1997. He denied that though the complaint was false, he proceeded with the

**26**

trap. Thus, his cross examination is also not helpful to the accused to discharge the burden.

The evidence of PW10 is to the extent that he received papers of investigation and, thereafter, he forwarded papers for obtaining sanction. He denied that only draft sanction order was sent to the Sanctioning Authority.

37. Learned counsel for the accused submitted that the demand and acceptance is not proved. However, as observed earlier, the evidence of complainant PW1 Laxman Bagade and Shadow Pancha PW2 Moreshwar Gedam and PW8 Tukaram Raut, who accompanied the complainant when he visited the police station and met the accused, corroborates the version of the complainant as to the demand on material particulars.

38. It is well settled that besides the direct evidence, demand and acceptance can be proved on the basis of circumstantial evidence.

**27**

39. The Constitution Bench of the Hon'ble Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**<sup>7</sup> held that for recording conviction under Sections 7 and 13 (1)(d)(i) (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence in the absence of direct or oral evidence. It further held that under Section 7 of the said Act in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1) (d) and (i) and (ii) of the said Act.

40. It is well settled that offences under the said Act relating to public servants taking bribe require demand

<sup>7</sup> 2023 4 SCC 731

**28**

of illegal gratification and acceptance thereof. The proof of demand of bribe by public servants and its acceptance by him is *sine qua non* for establishing offences under the said Act.

41. The Hon'ble Apex Court in the case of **K.Shanthamma vs. The State of Telangana**<sup>8</sup> referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**<sup>9</sup> 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 said Act. 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 said Act 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:

<sup>8</sup> 2022 LiveLaw (SC) 192

<sup>9</sup> (2015)10 SCC 152

**29**

“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”.

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

**30**

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 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

**31**

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.

43. The Constitution Bench of the Hon’ble Apex Court in the case of Neeraj **Dutta vs. State (Govt.of NCT of Delhi)** *supra* 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**<sup>10</sup> observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Section and 13(1)

<sup>10</sup> (2002)5 SCC 86

**32**

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.

44. 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

**33**

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

**34**

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'.

45. Learned counsel for the accused placed reliance on the decision in the case of **Mukhtiar Singh** *supra*, wherein it is observed that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under two Sections. There is no dispute as far as the settled law is concerned that mere possession and recovery of currency notes from accused without proof of demand would not establish offences under Sections 7 and 13(1)(d)(i)(ii) read with 13(2) of the said Act.

**35**

46. In the present case, not only the evidence of complainant PW1 Laxman Bagade but also the evidence of Shadow Pancha PW2 Moreshwar Gedam and PW8 Tukaram Raut sufficiently shows that there was a demand and in pursuance of the said demand, the amount was accepted. The aspect of the demand is not only corroborated by the oral evidence but also the evidence of Police Inspector PW7 Shyamrao Baraskar shows that work of execution of the warrant was assigned to the accused. His evidence further shows that letter from learned Magistrate at Pauni was received in the police station on 5.1.1997 asking to return the NBW without serving it. However, despite of the said letter and directions issued by the police officer of the concerned police station, the accused approached the complainant on 8.1.1997 and demanded the amount and in pursuance of the same, accepted the amount through the deceased accused on 9.1.1997.

47. Thus, the evidence as to demand and acceptance is consistent and corroborative and, therefore, there is

**36**

no hesitation to hold that the demand and acceptance is proved.

48. The statutory presumption under Section 20 of the said Act comes into play when evidence either direct or circumstantial shows that money was accepted other than for motive or reward under Section 7 of the said Act. The standard required for rebutting presumption is tested on the touchstone of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubts.

49. In the case in hand, a condition precedent to draw such legal presumption, that the accused has demanded the amount and accepted the same, has been proved and established. The evidence of the trap officer shows that after acceptance of the amount, the hand wash of the accused was collected and sent for chemical analysis and the Chemical Analyzer's Report shows contents of the phenolphthalein powder and

**37**

sodium carbonate, which sufficiently show involvement of the accused.

50. Insofar as the defence of the accused of total denial is concerned and cross examination which fails to rebut the presumption, the Hon'ble Apex Court, in the case of **C.M.Girish Babu vs. CBI Cochi, High of Kerala<sup>11</sup>**, held that it is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it

<sup>11</sup> (2009)3 SCC 779

**38**

either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

51. Thus, as observed earlier, the accused fails to rebut the presumption under section 20 of the said Act.

52. Thus, in the present case, a primary condition for acting on the legal presumption, that the prosecution should have proved that whatever received by accused was gratification, is proved by the prosecution. 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

**39**

by proof, the presumption created by the provision cannot be said to be rebutted. Learned Judge of the Special Court has rightly considered the same and convicted and sentenced the accused. The sanction accorded is also after application of mind and, therefore, no interference is called for.

53. In the light of the above, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

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

!! BrWankhede !!