



Judgment

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1

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

CRIMINAL APPEAL NO.124 OF 2012

Nimraj s/o Pandharinath Vispute,
aged about 53 years, occupation service,
r/o 9, Runwall Regency, Near
Maroti Temple, Kothrud, Pune. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
Through Police Station Officer,
Gadge Nagar Police Station,
Amravati. **Respondent.**

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Shri Ashish Fule, Counsel for the Appellant.
Shri V.A.Thakare, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 21/02/2024
PRONOUNCED ON : 05/03/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order dated 19.3.2012 passed by learned Additional Sessions Judge, Amravati (learned Judge of the trial court) in Special (ACB) Case No.04/2005.

2. By the said judgment impugned, the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer imprisonment for six months and to pay

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2

fine Rs.2000/-, in default, to suffer simple imprisonment for one month.

He is also convicted for offence punishable under Section 13(1)(d) read with 13(2) of the said Act and sentenced to suffer imprisonment for one year and to pay fine Rs.3000/-, in default, to suffer simple imprisonment for two months.

Brief facts of the prosecution emerge from recorded evidence and investigation papers are as follows:

Devidas Ugale (the complainant), was working as Secretary of "Devara Sewa Sahakari Sanstha Limited" (the society). The society used to advance loan to its members and agricultural labourers. Shri Vinod Deshmukh was Chairman of the society. In the year 2004, the society was having 302 members out of which loan was disbursed to 137 members of the society. The Deputy Registrar, Cooperative Societies was controlling authority. In the year 2004, the accused was working as the Deputy Registrar, Cooperative Societies, Amravati.

3. On 5.9.2003, the accused issued a Notice to the society and asked to comply the said notice. By the Notice,

3

the society was asked to reduce number of members. The said Notice was replied by the society. Prior to reply, another notice dated 1.1.2004 was issued to the society contending that directions issued are not complied by the society and why action should not be taken. The explanation of the society was called within two days and, therefore, the complainant visited the office of the accused on 3.1.2004 and requested for extension of time which was denied by the accused and informed that he would issue Notice for dissolution of the society. It is alleged that the accused asked the complainant to pay Rs.5000/- to avoid dissolution of the society. After negotiation, the amount was reduced to Rs.3000/-. As the complainant was not desiring to pay the amount, he approached Anti Corruption Bureau at Amravati and lodged report on 3.1.2004.

4. After receipt of the report, office of the bureau called two panchas. In presence of panchas, grievance of the complainant was verified from the complainant by perusing complaint. After following a due procedure, it was decided to conduct a raid and the complainant and panchas were called on 5.1.2004 in the office of the bureau. The complainant had produced four currencies of Rs.500/- denomination and 10

4

currencies of Rs.100/- denomination. The demonstration as to **phenolphthalein** powder and sodium carbonate solution was shown. The said solution was applied on the tainted amount and the amount was kept in right pocket of trouser of the complainant. The necessary instructions were given to the complainant and pancha Nos.1 and 2. As per instructions, the complainant was instructed to hand over the amount only on demand. Pancha No.1 asked to remain with the complainant and pancha No.2 was asked to remain along with the raiding party members. Accordingly, pre-trap panchanama was drawn.

5. After the pre-trap panchanama, the complainant along with panchas and raiding party members visited the office of the accused. On demand by the accused, the complainant handed over the said amount which is accepted by the accused. The raiding party members were informed by giving a signal. The tainted amount was seized from drawer of table of the accused. The hands of the accused were examined. The necessary documents were seized. Accordingly, post-trap panchanama was drawn. The officer of the bureau lodged report and after completion of investigation, chargesheet is filed.

5

6. During trial, the prosecution examined in all five witnesses, viz. Devidas Mahadevrao Ugale vide Exhibit-57 (PW1), the complainant; Sunil Jagannath Porwal vide Exhibit-74 (PW2), the sanctioning authority; Ramesh Jagtap vide Exhibit-86 (PW3), the shadow pancha; Santosh Hirde vide Exhibit-91 (PW4), pancha No.2, and Kiran Dhote vide Exhibit-100 (PW5), the trap officer.

7. Besides the oral evidence, the prosecution placed reliance on Notice (Exhibits-58 and 59) issued by the Sub Registrar Cooperative, letter to the Sub Registrar Cooperative (Exhibit-60), complaint (Exhibit-61), letter to Sub Registrar Cooperative (Exhibit-62), seizure memo (Exhibit-63), sanction order (Exhibit-75), pre-trap panchanama (Exhibit-86), post-trap panchanama (Exhibit-88), seizure memo (Exhibits-89 and 90), requisition letters (Exhibits-101 and 102), report (Exhibit-104), and FIR (Exhibit-105).

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

6

9. I have heard learned counsel Shri Ashish Fule for the accused and learned Additional Public Prosecutor Shri V.A.Thakare for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

10. Learned counsel for the accused submitted that while passing the judgment impugned, learned Judge of the trial court had not considered that sanction is not proper and in absence of proper sanction, the trial vitiates. Learned Judge of the trial court failed to appreciate evidence of shadow pancha PW3 Ramesh Jagtap who specifically admitted that there was no demand by the accused. The material witness Vinod Deshmukh, President of the Society is not examined. The cross examination of complainant PW1 Devidas Ugale shows that various flaws were noted by the accused under whose control the society was working and, therefore, the Notice was issued. Complainant PW1 Devidas Ugale and other office bearers of the society were apprehending that the society may be dissolved and, therefore, by thrusting the amount in drawer of table of the accused, the accused is falsely implicated. The sanction accorded contemplated under Section 19 of the said Act is bad in law and, therefore,

7

the conviction of the present accused deserves to be set aside.

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

1. Criminal Appeal Nos.509 and 510/2009 decided by this court at Aurangabad Bench on 19.4.2010 (Gopal s/o Nagnathrao Gunjekar vs. The State of Maharashtra and Dnyaneshwar s/o Rambhau Khokle vs. The State of Maharashtra);

2. Sopan vs. State of Maharashtra, through Anti Corruption Bureau¹;

3. Mohd.Iqbal Ahmed vs State of Andhra Pradesh²;

4. Onkar Tukaram Ramteke vs. State of Maharashtra³;

5. Narendra vs. State of Maharashtra, through Anti Corruption Bureau, Nagpur⁴, and

6. Raghbir Singh vs. State of Punjab⁵.

12. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Devidas Ugale sufficiently shows that there was a demand and the amount is accepted as gratification amount. The

1 2023 SCC OnLine Bom 1904

2 (1979)4 SCC 172

3 2022 SCC OnLine Bom 685

4 2014 SCC OnLine Bom 1996

5 (1976)1 SCC 145

8

evidence of the complainant is corroborated on material particulars. The sanction accorded is valid sanction. Mere errors or omissions or irregularities are not fatal. Hence, no interference is called for in the judgment and order of conviction and sentence and the appeal deserves to be dismissed.

13. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

- 1. Ram Sagar Pandit vs. State of Bihar⁶;**
- 2. State, through Inspector of Police, A.P. vs. K.Narasimhachary⁷;**
- 3. State of Madhya Pradesh vs. Harishankar Bhagwan Prasad Tripathi⁸;**
- 4. Central Bureau Investigation vs. V.K.Sehgal and anr⁹;**
- 5. State of Maharashtra, through CBI vs. Mahesh G.Jain¹⁰, and**
- 6. CBI vs. Ashok Kumar Aggarwal¹¹.**

6 1963 Supp (2) SCR 652

7 (2005)8 SCC 364

8 (2010)8 SCC 655

9 (1999)8 SCC 501

10 (2013)8 SCC 119

11 (2014)14 SCC 295

9

14. Since question of validity of the sanction has been raised as a primary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

15. In order to prove the sanction order, the prosecution placed reliance on the evidence of sanctioning authority PW2 Sunil Porwal. The evidence of the said witness shows that in the year 2005, he was working as Secretary of the Government Maharashtra, Cooperation Marketing and Textiles, Mumbai. The Deputy Registrar Cooperative Societies was his subordinate. The authority to appoint and remove the Deputy Registrars is with the Chief Minister, the Government of Maharashtra and he was disciplinary authority. The power to remove the Deputy Registrars is delegated to the Secretary. His evidence further shows that he received papers which are forwarded for according sanction. The department perused and scrutinized those papers and came to conclusion that there was a *prima facie* case to accord the sanction and the sanction was accorded. During his cross examination, it came on record that powers of appointing and removing the Deputy Registrars, Cooperative Societies is with the

10

Government. He had not given documents showing that powers were delegated to him to remove the Deputy Registrars to the office of the bureau. The Home Department and the Department of Cooperation both scrutinized papers. The sanction order which is placed on record shows that in first paragraph designation of the accused is mentioned. In paragraph No.3, it is mentioned that the Government of Maharashtra having fully examined the material before it and considering all facts and circumstances disclosed therein, it is satisfied that there is a *prima facie* case made out against the accused and the sanction is accorded.

16. Learned counsel for the accused submitted that the sanction order nowhere discloses that it is sanctioning authority PW2 Sunil Porwal who accorded the sanction. The sanction order also nowhere discloses that the said witness has applied his mind and, thereafter, accorded the sanction. The recital of the sanction order shows that it is the Government of Maharashtra who examined material and accorded the sanction. He submitted that this court in Criminal Appeal Nos.509 and 510/2009 *supra* held that under Secretary was not competent authority to issue sanction order. It is the Principal Secretary who could have

11

taken such decision. He further submitted that the Honourable Apex Court in the case of **Mohd.Iqbal Ahmed vs State of Andhra Pradesh** *supra* held that court has to see is whether or not sanctioning authority at the time of giving sanction was aware of facts constituting of the offence and applied its mind for the same. 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.

17. On the other hand, learned Additional Public Prosecutor for the State vehemently submitted that burden of proving requisite sanction rests on the prosecution which is discharged in the present case. He submitted that mere omission or irregularity is not sufficient to discard the sanction. He submitted that this aspect is dealt with by the Honourable Apex Court in the case of **State of Madhya Pradesh vs. Harishankar Bhagwan Prasad Tripathi** *supra* wherein it is held that while granting sanction, officer

12

concerned is not required to indicate that he has personally scrutinized file and arrived at satisfaction for granting sanction. He submitted that the similar view is taken by the Honourable Apex Court in the case of **Central Bureau Investigation vs. V.K.Sehgal and anr** *supra* and, therefore, mere error or omission is not sufficient to discard evidence of sanctioning authority.

18. Perusal of the sanction order reveals that the Government of Maharashtra perused material and considering all facts and circumstances accorded the sanction. The sanction order nowhere states that it was sanctioning authority PW2 Sunil Porwal who applied his mind and accorded the sanction.

19. Whether the sanction is valid or not and when the sanction can be called as valid, the same is settled by the various decisions of the Honourable Apex Court as well as this court.

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

13

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.

21. The Honourable Apex Court, in another decision, in thea. case of **CBI vs. Ashok Kumar Aggarwal** *supra* relied by *Id. A.P.P* 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

14

Honourable 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.

15

22. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**¹², 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.

23. 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**¹³.

24. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**¹⁴ observed

¹² (2007)11 SCC 273

¹³ 2021 SCC OnLine Bom 237

¹⁴ 2016 ALL MR (Cri) 3697

16

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.

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

26. After going through the evidence of sanctioning authority PW2 Sunil Porwal, though he stated that he applied his mind, the sanction order nowhere discloses that it was he who applied mind by perusing investigating papers. The wording used in the sanction order is that the Government of Maharashtra having fully examined material before it, is 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

17

sanction order only shows that the Government of Maharashtra has applied his mind and accorded the sanction. The evidence further shows that the Ministry of Cooperative Societies and Home Ministry perused the record. However, there is no reference who actually carried out the said exercise. The sanction order discloses that the material was examined by the Government of Maharashtra without specifically mentioning name of any officer who actually undertook the exercise and recorded subjective satisfaction in this regard on behalf of the Government of Maharashtra. Admittedly, grant of sanction is serious exercise of powers by 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.

27. After going through the evidence, the sanction order nowhere reflects who has applied mind and which documents are considered by sanctioning authority PW2 Sunil Porwal and

18

on what basis the he came to conclusion that the sanction is to be accorded to launch the prosecution against the accused.

28. Besides the issue of the sanction, learned Additional Public Prosecutor for the State submitted that the demand and acceptance is proved by the prosecution.

29. Learned counsel for the accused submitted that the burden to prove accusations against the accused for offence punishable under Sections 7 and 13(1)(b) of the said Act with regard to the acceptance of illegal gratification lies on the prosecution. It is submitted that the prosecution has not examined the President of the Society. He has drawn attention towards evidence of complainant PW1 Devidas Ugale and shadow pancha PW3 Ramesh Jagtap. He submitted that the evidence of the complainant shows that the notice was issued by the accused noting flaws in the day to day working of the society and an explanation was called. The notice Exhibit-58 shows that the society was asked to comply with directions and the society was further asked to restrict members and list of members. The complainant working as Secretary was requesting to extend time to answer the notice which is not accepted and, therefore, the accused is

19

implicated. He invited my attention towards cross examination which shows that the complainant admitted during cross examination that for the purpose of voting members who have obtained loan are considered as members only. The accused gave directions to all cooperative societies to maintain list of members. The accused further directed that in view of Section 22 of the Maharashtra Cooperative Societies Act to prepare list of members. The accused gave directions to the society that only one person in family would be member of the society. The complainant further admitted that if directions and suggestions of the accused would have been accepted, numbers of members would have been reduced. Till the date of trap, list of voters was not submitted. The accused issued a show cause notice that why the society should not be dissolved and two days' time was given to give explanation. The evidence further shows that on the day of the trap, the accused first asked whether he has complied with directions. Learned counsel for the accused submitted that this cross examination itself is sufficient to show that as there was no compliance of directions, the Notice was issued why the society should not to be dissolved and, therefore, this false report is lodged. He submitted that the evidence of the

20

complainant is to be appreciated in the light of cross examination of shadow pancha PW3 Ramesh Jagtap who specifically admitted that the accused has not demanded money to the complainant. Whatever money was found was in the drawer. The money was found in an envelope. The evidence of pancha No.2 PW4 Santosh Hirde also shows that money is seized from the drawer. The evidence of Investigation Officer also supports contentions that the money is seized from drawer of the table.

30. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW1 Devidas Ugale sufficiently shows that there was a demand for not taking the action and the amount is accepted as gratification amount.

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

21

32. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**¹⁵ referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**¹⁶ 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 Honourable 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

15 2022 LiveLaw (SC) 192

16 (2015)10 SCC 152

22

of the offence under Section 7 or 13 of the Act would not entail his conviction.”

33. 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 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

23

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.

34. In the light of the well settled law, if the evidence of the prosecution is appreciated, it shows that the prosecution placed reliance on the evidence of complainant PW1 Devidas Ugale which shows that the Notice was issued to the society and directions were given to comply and to reduce members. The society was further asked to prepare list of members. As per the evidence of the complainant, the entire events and communications are disclosed to the President of the society who is not examined by the prosecution. If the evidence of

24

the complainant is appreciated, in the light of the admission given by shadow pancha PW3 Ramesh Jagtap, it shows that the action was taken by the accused against the society by issuing show cause notice and the society was asked to comply within two days. The extension asked by the complainant was not granted. The evidence of the said shadow pancha who was along with the complainant shows there was no demand by the accused in his presence. The evidence of the investigating officer and pancha witnesses shows that hands of the accused are verified and hand wash was obtained which was not forwarded to Chemical Analyzer as no Chemical Analyzer's Report is before the court. The defence of the accused is that the amount was thrust in the drawer. An independent corroboration is not there as far as the demand and acceptance is concerned as shadow pancha PW3 Ramesh Jagtap has not supported the contention that the amount is demanded and accepted. As per the prosecution evidence, the amount was not found in the drawer on plastic cover. The said plastic cover was also not forwarded to the Chemical Analyzer to ascertain whether solution is appearing on the said plastic cover. Admittedly, before the trap, the genuineness of the demand is not verified

25

by the investigating agency. Usually, investigating agency seeks to verify allegation with respect to demand of bribe taking steps to lay a trap. In this case, it was not done and no justification has been offered in this regard.

35. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)**¹⁷ held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression “accept”, referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**¹⁸ observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Sections and 13(1) and (b) of the said Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13

¹⁷ 2022 LiveLaw (SC) 1029

¹⁸ (2002)5 SCC 86

26

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 Honourable Apex Court observed that "accepts" means to take or receive with "consenting mind". The 'consent' can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to 'acceptance' and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be

27

`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'.

36. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**¹⁹ has held that there could be no doubt that the evidence of the complainant

¹⁹ (1979)4 SCC 526

28

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

In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**²⁰ 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

²⁰ 2017 SCC ONLine SC 742

29

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.

37. In the case of **M.O.Shamsudhin vs. State of Kerala**²¹, it has been held that word "accomplice" is not defined in the Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in crime. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.

38. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**²², it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

21 (1995)3 SCC 351

22 1963 Mh.L.J. (SC) 273

30

“According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.”

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

40. In the present case, learned counsel for the accused rightly pointed out that shadow pancha PW3 Ramesh Jagtap nowhere corroborated the evidence of complainant PW1 Devidas Ugale as to the demand. The proof of demand is *sine quo non*.

41. 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 said Act.

42. It is held by the Honourable Apex Court in paragraph Nos.13 and 14 in the case of **Mukhtiar Singh (since**

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

“13. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:

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

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

14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now

32

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.”

43. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**²³, 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 bypass 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

23 2017 ALL MR (Cri) 3269

33

probability and he is not required to prove facts beyond reasonable doubt.

44. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**²⁴ 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

²⁴ (1997)10 SCC 600

34

presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

45. In the case of **State of Maharashtra vs. Rashid B.Mulani**²⁵, 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.

46. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing. While deciding the offence under the said Act,

²⁵ (2006)1 SCC 407

35

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.

47. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt. of NCT of Delhi)** *supra* held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

36

48. As observed earlier, that prior demand by the accused is not verified and proved by the prosecution, the subsequent demand is concerned, the evidence of complainant PW1 Devidas Ugale is not corroborated shadow pancha PW3 Ramesh Jagtap. The circumstantial evidence as to the acceptance that the hand wash collected of the accused is not forwarded to the Chemical Analyzer and the chemical Analyzer Report is not placed on record. The independent corroboration by examining Vinod Deshmukh is also fatal to the prosecution. The sanction is also not a valid sanction. In absence of the valid sanction, the entire trial vitiates. The evidence as to the demand and acceptance is not inspiring confidence. The demand and acceptance require to be proved which is a *sine quo non* for establishing the charge.

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

ORDER

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

(2) The judgment and order of conviction and sentence dated 19.3.2012 passed by learned Additional Sessions Judge,

37

Amravati in Special (ACB) Case No.04/2005 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!