



Judgment

309 apeals176 and 177.06

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

**CRIMINAL APPEAL NO.176 OF 2006
WITH
CRIMINAL APPEAL NO.177 OF 2006**

CRIMINAL APPEAL NO.176 OF 2006

Shankar s/o Pilaji Ankushkar,
aged about 53 years, occupation PSI,
r/o Biloli, tahsil - Biloli,
district Nanded. **Appellant.**

:: V E R S U S ::

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

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Shri A.S.Mardikar, Senior Counsel assisted by Shri
Digvijay Singh, Advocate for the Appellant.
Shri U.R.Phasate, Additional Public Prosecutor for the
Respondent/State.

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CRIMINAL APPEAL NO.177 OF 2006

Rajesh Gangadhar Vazalwar,
aged about 53 years, occupation Manager/Partner,
Lake View Lodge,
r/o Ram Mandir Galli,
Mahal, Nagpur. **Appellant.**

:: V E R S U S ::

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

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Shri M.D.Samel, Counsel for the Appellant.
Shri U.R.Phasate, Additional Public Prosecutor for the
Respondent/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 17/10/2024
PRONOUNCED ON : 24/10/2024

COMMON JUDGMENT

1. By these appeals, appellant Shankar s/o Pilaji Ankushkar and appellant Rajesh Gangadhar Vazalwar (appellant Shankar and appellant Rajesh) have challenged judgment and order dated 4.3.2006 passed by learned Judge, Special Court for ACB, Nagpur (learned Judge of the trial court) in Special Case No.2/2001.

2. By the said judgment impugned, appellant Shankar is convicted for offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (the said Act).

Under Section 7, he is sentenced to undergo simple imprisonment for one year and to pay fine

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Rs.1000/-, in default, to undergo further simple imprisonment for two months.

Under Section 13(2) read with 13(1)(d), he is sentenced to undergo simple imprisonment for three years and to pay fine Rs.1500/-, in default, to undergo further simple imprisonment for four months.

Appellant Rajesh, is convicted for offence punishable under Section 12 of the said Act and sentenced to undergo simple imprisonment for one year and to pay fine Rs.1000/-, in default, to undergo further simple imprisonment for two months.

3. Brief facts of the prosecution run as under:

Appellant Shankar was serving as Police Sub Inspector with Ajani Police Station, Nagpur and appellant Rajesh was in a private service working as Manager in "Lake View Lodge". Ghanshyam Joshi (the complainant), allegedly, subjected a lady for sexual assault on the promise of marriage. As the

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complainant's family members were against their marriage, the complainant did not perform the marriage with her and, therefore, she lodged a report against the complainant on 25.4.2000. Investigation of the said complaint was handed to appellant Shankar. As the complainant came to know about the complaint and investigation with appellant Shankar, he met appellant Shankar on 2.5.2000 at Ajani Police Station. On intervention of Inspector Deshmukh, settlement took place between the victim and the complainant on 8.5.2000. It is alleged that when the complainant came out from the Ajani Police Station, appellant Shankar demanded amount Rs.10000/- from him on a pretext that he had settled the matter. The complainant shown his inability to pay the amount. After a negotiation, it was decided to pay Rs.5000/-. Appellant Shankar asked the complainant to hand over the amount by coming at "Lake View Lodge" where he was staying. As the complainant could not arrange the amount, on 9.5.2000, he had not visited appellant Shankar. A

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telephonic message was received by brother of the complainant from appellant Shankar. Again, on 10.5.2000, the complainant received a telephonic message from appellant Shankar to come along with the amount. As the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau at Nagpur and lodged a complaint.

4. After receipt of the complaint, officers of the bureau called two panchas. In presence of panchas, the complainant narrated the incident, which was verified by panchas. After following a due procedure, it was decided to conduct a raid. The complainant produced ten currencies of Rs.500/-. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted notes and the same were kept in shirt pocket of the complainant. The complainant and pancha No.1 Rajendra Deshmukh were instructed. As per instructions, pancha No.1 was asked to remain with

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the complainant and pancha No.2 was asked to remain with raiding party members. The complainant was instructed to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant and pancha No.1 went to the "Lake View Lodge" and they were followed by other raiding party members. Appellant Shankar came on scooter after some time. During communication, appellant Shankar took them in his room. At the relevant time, Police Sub Inspector Nandanwar was also present in the room. It was alleged that, thereafter, appellant Shankar asked the complainant whether he brought the amount, on which the complainant replied in affirmative and appellant Rajesh was asked to accept the same. Accordingly, the complainant handed over the amount and gave a signal. Appellant Rajesh was caught and the amount was recovered from him. Appellant Shankar was also arrested. The hand wash of the complainant as well as appellant Rajesh was collected. The pant pocket of

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appellant Rajesh was also dipped into the solution and the solution was collected. The investigating officer obtained a sanction to launch the prosecution against appellant Shankar. After completion of the investigation, chargesheet was submitted.

5. During trial, the prosecution examined in all eight witnesses namely Tanaji Dinde vide Exhibit-19 (PW1), the officer of the bureau; Anil Dhanole vide Exhibit-21 (PW2), the Carrier; Ghanshyam Joshi vide Exhibit-23 (PW3), the complainant; Rajendra Deshmukh vide Exhibit-38 (PW4), the Shadow Pancha; Sudhir Mandanwar vide Exhibit-54 (PW5); Ranjit Singh Sharma vide Exhibit-66 (PW6), the Sanctioning Authority; Harsha Shende vide Exhibit-74 (PW7); and Diwakar Ingle vide Exhibit-75 (PW8), the Trap Officer.

6. Besides the oral evidence, the prosecution placed reliance on the First Information Report Exhibit-20, personal search of the complainant Exhibit-26, medical certificate of Harsha Shende Exhibit-28, notice to the

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complainant Exhibit-33, complaint Exhibit-34, notice to Harsha and the complainant Exhibit-35, complaint by Harsha Exhibit-37, pre-trap panchanama Exhibit-39, seizure memos Exhibits-40, 41, and 44, map Exhibit-52, post-trap panchanama Exhibit-53, Sanction Order Exhibit-69, report Exhibit-82, and Chemical Analyzer's Report Exhibit-86.

7. After considering the evidence adduced during the trial, learned Judge of the trial court held accused Shankar and accused Rajesh guilty and convicted and sentenced them as the aforesaid.

8. Heard learned Senior Counsel Shri A.S.Mardikar for appellant Shankar, learned counsel Shri M.D.Samel for appellant Rajesh, and learned Additional Public Prosecutor Shri U.R.Phasate for the State. I have been taken through the entire evidence on record so also the judgment impugned in appeals.

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9. Learned senior counsel submitted that the judgment impugned in appeals is entirely relied upon improved version of complainant PW3 Ghanshyam Joshi. In the entire deposition of the complainant, there are omissions. As far as the demand is concerned, the same was not proved. There is no corroboration as far as the earlier demand is concerned. There is no evidence to show that appellant Shankar made phone call to brother of the complainant on 9.5.2000 and to the complainant on 10.5.2000. On the contrary, evidence of PW7 Harsha Shende shows that the complainant did not attend the police station on 10.5.2000. There is no verification as to the demand is concerned. He further submitted the sanction accorded is also not after application of mind. For all above these grounds, the judgment impugned in appeals deserves to be quashed and set aside and appellant Shankar is to be acquitted of charges levelled against him.

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10. Learned counsel for appellant Rajesh submitted that as far as offence under section 12 of the said Act is concerned, the same relates to the abetment. The entire evidence on record nowhere shows that appellant Rajesh was knowing that the amount handed over to him was a bribe amount. There was no instigation or aiding on the part of appellant Rajesh to show abetment at his hands. In view of that, his conviction is liable to be set aside.

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

1. Wasudeo Nathuji Ukey vs. State of Maharashtra¹;

2. State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede²;

3. Ghanshyam Hari Pagare vs. State of Maharashtra³, and

4. Jayprakash Digambar Tagde and ors vs. State of Maharashtra⁴.

¹ 2024 CRI LJ 1411

² (2009)15 SCC 200

³ AIR OnLine 2023 Bom 125

⁴ AIR OnLine 2023 Bom 796

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12. *Per contra*, learned Additional Public Prosecutor for the State submitted that no prejudice is caused to appellant Shankar due to the sanction by incompetent authority. There is a bar under Section 19(3) of the said Act to raise issue regarding validity of sanction on ground of incompetency. He further submitted that the evidence of complainant PW3 Ghanshyam Joshi and Shadow Pancha PW4 Rajendra Deshmukh is consistent and corroborating as far as the demand and acceptance is concerned. Thus, there is no merit in appeals and appeals are liable to be dismissed.

13. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on decision of the Delhi High Court in the case of **Mahipal Singh vs. State**⁵.

14. Since question of validity of the sanction has been raised as primary point, it is necessary to discuss an aspect of sanction.

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15. The sanction order was challenged on two grounds that the sanction was accorded without application of mind and PW6 Ranjit Singh Sharma was not the Sanctioning Authority to accord the sanction.

16. In order to prove the sanction order, the prosecution examined Sanctioning Authority PW6 Ranjit Singh Sharma. As per his evidence, from November 2000 to May 2001, he was working as Commissioner of Police of Nagpur. On 29.12.2000, he received a communication from the office of the bureau at Nagpur along with with documents. He read papers received and came to conclusion that it was a fit case for granting sanction. Accordingly, he accorded the sanction (Exhibit-69). His cross examination shows that he is unable to recollect how many complaint were filed by Harsha. He is also unable to tell whether the complaint was against complainant PW3 Ghanshyam Joshi alone or some other persons. The cross examination further shows that he had dictated sanction

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order to his Personal Assistant, on the basis of draft sanction order received by him. As far as his competency is concerned, he denied that Additional Director General of Police is competent person to grant sanction for prosecution to cadre of the Assistant Sub Inspectors.

Thus, the cross examination of the said witness shows that he prepared the sanction order on the basis of the draft sanction order.

17. Perusal of the sanction order reveals that Sanctioning Authority PW6 Ranjit Singh Sharma reproduced the entire prosecution story in the sanction order and it is mentioned that upon carefully reading papers of investigation, he was satisfied that there is an adequate evidence to prosecute appellant Shankar and he accorded the sanction.

18. Perusal of the sanction order nowhere discloses that which papers Sanctioning Authority PW6 Ranjit

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Singh Sharma had considered while according the sanction.

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

20. The Honourable Apex in the case of **Mohd. Iqbal Ahmad vs. State of Andhra Pradesh**⁶ 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

6 1979 AIR 677

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prosecution can be launched against the public servant concerned.

21. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**⁷, has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the

⁷ 2014 Cri.L.J.930

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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.

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22. The Honourable Apex Court, in the case of **State of Karnataka vs. Ameerjan**⁸, 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

8 (2007)11 SCC 273

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court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**⁹.

24. Learned Additional Public Prosecutor for the State submitted that a combined reading of sub-sections (3) and (4) of Section 19 of the said Act makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.

25. Thus, in view of Section 19(3) of the said Act, ground of validity of sanction on incompetency is not available to appellant Shankar.

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26. Here, in the present case, the sanction order was not only challenged on ground of incompetency but also it was challenged on ground of non-application of mind.

27. In view of settled principles of law, it is crystal clear that the Sanctioning Authority has to apply his/her own independent mind for generation of its satisfaction for sanction. 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 said Act by refusing to accord sanction for his prosecution or not.

28. Thus, the application of mind on the part of the Sanctioning Authority is imperative. The orders granting sanction must demonstrate that he/she has applied his/her mind while according sanction.

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29. Admittedly, grant of sanction is a serious exercise of power 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.

30. After going through the evidence of Sanctioning Authority PW6 Ranjit Singh Sharma, admittedly, the Sanction Order nowhere reflects application of mind and which documents were considered by the Sanctioning Authority and on what basis he came to conclusion that the sanction is to be accorded to launch the prosecution against appellant Shankar.

31. Besides the issue of the sanction, the prosecution claimed that appellant Shankar demanded gratification amount and accepted the same.

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32. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW3 Ghanshyam Joshi and Shadow Pancha PW4 Rajendra Deshmukh.

As regards the complainant, his evidence shows that PW7 Harsha Shende filed the complaint against him and the investigation of the said complaint was with appellant Shankar. He had been to the police station on 2.5.2000 as he was called by appellant Shankar. Before him, he disclosed that there was no intention to cheat the victim. On 8.5.2000, dispute was settled between him and PW7 Harsha Shende and when he came out from the police station, appellant Shankar demanded Rs.10000/- from him. On a negotiation, appellant Shankar agreed to accept amount Rs.5000/-. He further stated that on 9.5.2000, he received a telephone call of appellant Shankar at his residence. At the relevant time, he had been to the District Court, Nagpur whereat an Advocate asked him to sign on blank papers for

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which he denied. On the next day, he received a phone call of appellant Shankar and appellant Shankar asked him to come at "Lake View Lodge" along with the amount and, therefore, he lodged the complaint. He narrated about all events took place during the pre-trap panchanama. As to the demand, on the day of the trap, he stated that he along with pancha No.1 went at "Lake View Lodge." Appellant Shankar came there on scooter and he took them in a room and enquired with him why he did not come to the police station and, thereafter, appellant Shankar changed his uniform. Appellant Shankar asked him to hand over the amount to one Raju. Accordingly, he handed over the amount and gave a signal.

As regards the Shadow Pancha, his evidence shows that he was called to act as pancha. When he reached the office of the bureau, he along with another pancha verified contents of the complaint and, thereafter, he narrated about events took place during

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pre-trap panchanama. As to the demand acceptance, he stated that he along with complainant PW3 Ghanshyam Joshi went to "Lake View Lodge" whereat appellant Shankar was waiting. One person came there and demanded the bribe amount. The complainant shown the said person to him and, thereafter, they were taken in a room and enquired with him why the complainant had not come on earlier date. He was also asked why he has not signed on papers. He specifically stated that bribe amount was not demanded at that time. Appellant Shankar had called the complainant out of the room. They went in gallery. Appellant Shankar asked the complainant about him and, thereafter, appellant Shankar told the complainant to give the amount at counter. The evidence of the pancha witness shows that appellant Shankar asked to give the amount at counter when complainant informed him that he brought the said amount. Accordingly, the amount was handed over and signal was given. Appellant Shankar was caught. The hand wash of appellant Rajesh and

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the complainant was collected. Accordingly, post-trap panchanama was drawn.

33. It is not disputed that PW7 Harsha Shende filed the complaint against complainant PW3 Ghanshyam Joshi and investigation was handed over to appellant Shankar. With intervention of another police officer, the matter was settled.

As far as allegation of the complainant, that on 8.5.2000 the demand was made, when they came out of the police station, the same is not substantiated by PW7 Harsha Shende. The rest of the chief examination, that on demand, he told appellant Shankar that he has not committed any illegal work and, therefore, why he should pay the amount, on that, appellant Shankar asked him to pay the amount, is the omission. Further part of the chief examination shows that an Advocate met him at the Nagpur District Court and asked him to sign on blank papers. He received a telephonic call of

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appellant Shankar and he also received a telephonic call on 10.5.2000, the entire is the omission.

34. The cross examination of complainant PW3 Ghanshyam Joshi shows that all omissions are admitted by him. So, these are proved omissions. He specifically admitted that in the office of the bureau, except introduction with panchas, no other communication took place between him and panchas. He has not stated before the officer of the bureau that he asked appellant Shankar why he should pay the amount. The cross examination shows that he did not inform the officer of the bureau that he asked appellant Rajesh to keep the amount. He further admitted that appellant Rajesh had not come leaving his counter.

35. The cross examination of Shadow Pancha PW4 Rajendra Deshmukh shows that complainant PW3 Ghanshyam Joshi was not accompanied by anybody. He did not talk with him about his marriage. As to surroundings of "Lake View Lodge", it came on record

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that it is a crowded place as several shops are situated there. The evidence of the Shadow Pancha specifically shows that the complainant informed appellant Shankar that he brought the amount, on which appellant Shankar asked him to pay the same to appellant Rajesh. It further came in his evidence that counter of appellant Rajesh was not visible from the gallery. It further came in his cross examination that in several cases, he acted as pancha.

36. The prosecution has also examined PW5 Sudhir Nandanwar, who was allegedly present in the room when complainant PW3 Ghanshyam Joshi had been to the room of appellant Shankar. The evidence of PW5 Sudhir Nandanwar shows that appellant Shankar took him to bathroom and, thereafter, he changed clothes. Appellant Shankar was talking with the complainant and one person and appellant Shankar was asking the complainant that why he had not gone to the court. He got ready and immediately came out of the room. Till

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then, those persons had gone away. When he came downstairs along with appellant Shankar, crowd was gathered at the counter.

Thus, as to the demand by appellant Shankar, the evidence of PW5 Sudhir Nandanwar is completely silent.

The cross examination shows that appellant Shankar had called the complainant and gave message to send him at Ajani Police Station. His cross examination further shows that appellant Shankar was saying to the complainant that he had not done good thing by not coming to the police station. Except this cross examination, nothing is brought on record.

37. AS per allegations, a settlement took place between PW7 Harsha Shende and complainant PW3 Ghanshyam Joshi on 8.5.2000. Harsha Shende narrated about her complaint and grievance. Her cross examination shows that on 10.5.2000, appellant Shankar called the complainant by making a telephonic

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call. On that day, accused Shankar had not talked with the complainant. On 10.5.2000, though he was waiting for the complainant in the police station, the complainant had not come. She specifically stated that on 8.5.2000, after a settlement, she along with the complainant came out of the police station and appellant Shankar and Inspector Deshmukh were sitting in the police station. She has not stated that the complainant was followed by appellant Shankar and any demand was made by appellant Shankar.

38. Trap Officer PW8 Diwakar Ingle, narrated about the trap arranged by him. Admittedly, he is not witness as to the demand and acceptance. His evidence is only to the extent that the amount is recovered from appellant Rajesh. During his cross examination, the entire omissions are brought on record, which show that complainant PW3 Ghanshyam Joshi has not informed to him while recording his statement that appellant Shankar has demanded his telephone number. The

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complainant did not inform during his statement that he told to appellant Shankar that he had not committed any wrong and, therefore, why he should pay the amount. The complainant also not informed that appellant Shankar called him at 4:00 pm.. He also not informed that appellant Shankar telephonically directed him to attend 7th floor of the District Court. The complainant also not stated that an Advocate met him and asked him to sign on blank papers.

39. Thus, the entire omission are proved during the cross examination.

The omissions as to Shadow Pancha PW4 Rajendra Deshmukh are also brought on record.

As regards appellant Rajesh, he admitted there were no complaints against him initially.

40. PW1 Tanaji Dinde and PW2 Anil Dhanole are formal witnesses.

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41. Thus, on appreciating the evidence of complainant PW3 Ghanshyam Joshi, he has improved his version during the evidence before the court and the entire evidence is in the nature of omissions. As per his allegations, on 8.5.2000, when he came out of the police station, after settlement, appellant Shankar approached him outside the police station and demanded amount from him. At the relevant time, PW7 Harsha Shende was also along with him. She has not supported the alleged allegation. She specifically stated that when she along the complainant came out of the police station, appellant Shankar and Inspector Deshmukh were sitting in the Police Station.

42. Thus, as far as initial demand is concerned, there is no corroboration to the said demand. As to phone call by appellant Shankar, at the house of complainant PW3 Ghanshyam Joshi, which was received by his brother, is also not supported as the brother of the complainant was not examined.

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43. In the case of **Panalal Damodar Rathi vs. State of Maharashtra**¹⁰, the Hon'ble apex Court observed that a 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 conversation between him and accused is not corroborated by anybody.

44. In the case of **M.O.Shamsudhin vs. State of Kerala**¹¹, 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

¹⁰ (1979)4 SCC 526

¹¹ (1995)3 SCC 351

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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.

45. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**¹² wherein 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.”

46. Insofar as the demand on the day of trap is concerned, it is also not corroborated by Shadow Pancha PW4 Rajendra Deshmukh who specifically stated in the

¹² 1963 Mh.L.J. (SC) 273

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chief examination itself that it was complainant PW3 Ghanshyam Joshi who informed appellant Shankar that he brought the amount, on which appellant Shankar asked him to give it to appellant Rajesh.

47. Thus, the demand on the day of the trap is also not corroborated by Shadow Pancha PW4 Rajendra Deshmukh.

48. It is well settled that proof of demand is *sine qua non* to prove charge. A stray statement in absence of any other cogent evidence will not amount to demand to constitute an offence.

49. In the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**¹³, it is held that 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

¹³ 2017 SCC ONLine SC 742

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

50. Thus, the evidence of complainant PW3 Ghanshyam Joshi and Shadow Pancha PW4 Rajendra Deshmukh, on aspect of the demand, on the day of the trap, is not corroborated. The evidence as to the earlier demand, which according to the complainant, on 8.5.2000, when he along with PW7 Harsha Shende came out of the police station, made by appellant Shankar, is also not corroborated PW7 Harsha Shende as her evidence specifically shows that at the relevant time appellant Shankar was inside the police station.

51. Before laying the trap, the Investigating Officer has not verified genuineness of allegations as to the demand by appellant Shankar.

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52. The evidence of complainant PW3 Ghanshyam Joshi is entirely in the nature of improvement and these omissions are proved by the defence.

53. When a person is charged with an offence of abetting commission of offence, burden is upon prosecution to prove the same intention of the abettor as the main accused was having. The evidence is absolutely lacking in this case. What is apparent is that a person who is accused of abetment of commission of offence may accept something for and on behalf of the main accused in good faith without having an apprehension that the amount accepting is really a bribe amount and, therefore, it is necessary for the prosecution to establish that the abettor has shared the same intention as the main accused, which is absent here.

54. It is well settled that mere possession and recovery of currency notes from appellant Rajesh would

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not establish an offence under Section 12 of the said Act.

55. As observed earlier, the evidence of demand by appellant Shankar is not corroborated.

56. The Hon'ble Apex Court, in the case of **Jagtar Singh vs. State of Punjab**¹⁴ also, by considering the judgment of the Constitution Bench in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**¹⁵ summarized discussion and reproduced paragraph No.74, which is as under:

“74. What emerges from the aforesaid discussion is summarized as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the

14 2023 SCC OnLine SC 320

15 2023 SCC OnLine SC 280

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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.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of Criminal Appeal No.1669 of 2009 illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public

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servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the 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 Criminal Appeal No.1669 of 2009 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 Act.

(e) The 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

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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.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said Criminal Appeal No.1669 of 2009 presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d) (i) and (ii) of the Act.

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(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.”

57. The Constitution Bench of the Hon’ble Apex Court in the case of **Neeraj Dutta** *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 Honourable Apex Court, while discussing expression “accept”, referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**¹⁶ 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

¹⁶ (2002)5 SCC 86

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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 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

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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

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(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'.

58. Thus, it is well settled that to prove offences under Sections 7 and 13(1)(d) of the said Act, proof of demand is *sine qua non*. As far as applicability of presumption is concerned, it would be attracted 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

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or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

59. In the instant case, as observed earlier, prior demand by appellant Shankar is not proved by the prosecution. There is no independent corroboration as to the proof of demand. Since proof of demand is *sine qua non* for convicting accused in such case, it cannot be said that prosecution has been successful in proving its case beyond reasonable doubt. The sanction accorded is without application of mind and, therefore, it is not a valid sanction. The evidence as to the abetment by appellant Rajesh is also not satisfactory to hold him guilty.

60. In the light of the above discussion, both appeals succeed and deserve to be allowed, as per order below:

ORDER

(1) The Criminal Appeals are **allowed**.

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(2) The judgment and order dated 4.3.2006 passed by learned Judge, Special Court for ACB, Nagpur in Special Case No.2/2001 is hereby quashed and set aside.

(3) Appellant Shankar and appellant Rajesh are acquitted of offences for which they were convicted and sentenced.

Appeals stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!