Judgment

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

CRIMINAL APPEAL NO.439 OF 2005

Ganesh s/o Madhaorao Uge,
aged about 36 years,
r/o Deoli, tahsil Deoli,
district Wardha. ….. Appellant.

:: V E R S U S ::

State of Maharashtra
Through ACB Wardha. ….. Respondent.

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Shri C.B.Dharmadhikari, Counsel for the Appellant.
Shri S.S.Hulke, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 05/12/2023
PRONOUNCED ON : 05/01/2024

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 16.8.2005 passed by learned Judge, Special Court, Wardha (learned Judge of the trial court) in Special Case No.12/2003 whereby learned Judge of the trial court convicted the accused for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced him to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to undergo further

rigorous imprisonment for six months. The accused is also convicted for offence punishable under Section 13(1)(d) read with 13(2) of the said Act and sentenced him to suffer rigorous imprisonment for three years and to pay fine Rs.1000, in default, to undergo further rigorous imprisonment for six months.

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

The accused at the material time was working as Gram Sewak of Gram Panchayat Akoli. Complainant Bhaskar Sontakke, is originally resident of village Akoli, tahsil Deoli, district Wardha. The father of the complainant died on 23.1.1996 and prior to his death, he had executed a registered "Will" dated 20.1.1996 bequeathing field property in the name of the complainant and house property No.74 of mouza Akoli. The complainant desired to mutate the said house in his name and, therefore, he submitted an application on 24.1.2003 to the accused who was Secretary of Gram Panchayat, Akoli. Though the complainant met the accused on several occasions for mutating his name in the agricultural property as well as the house property, the accused has not taken necessary steps in the matter. It is alleged that on 24.2.2003, the complainant met the accused and requested to complete his work and at that time, the accused demanded Rs.5000/- for effecting mutation of the house property in his name. The complainant expressed his inability to pay such amount and agreed to pay Rs.1000/- by installment. The complainant has paid amount Rs.2000/- and the accused asked him to come at his house at Deoli along with Rs.200/-. As the complainant was not willing to pay the said amount, he approached to the office of the Anti Corruption Bureau, Wardha (the Bureau) and lodged a report.

3. After receipt of the report, officers of the Bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the First Information Report. After following due procedure, it was decided to conduct a raid and panchas and the complainant were called in the office. The

complainant produced one currency of Rs.100/- and two currencies of Rs.50/- as tainted amount. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted amount and kept in shirt pocket of the complainant. Some instructions were given to pancha No.1 and pancha No.2. Pancha No.1 was asked to stay along with the complainant and pancha No.2 was asked to remain with the raiding party members. Chandrakant Pandurang Lokhande (PW2), who acted pancha No.1, was instructed to observe communications between the complainant and the accused. The complainant was instructed that on demand and acceptance, the amount is to be handed over and after the acceptance, he has to gave a signal by taking out a hanker chief from the pocket of his pant. Accordingly, a pre-trap panchanama was drawn.

4. After the pre-trap panchanama, the complainant along with panchas and raiding party members proceeded towards the house of the accused. The complainant and PW2 Chandrakant Lokhande reached the house of the

accused at about 9:15 am and at the relevant time, the accused was taking bath. Thereafter, the complainant asked the accused about his work and the accused told him that the work will be done. He further informed the accused that in the last meeting, the subject of mutating his name was not on agenda of meeting. In the next meeting of Gram Panchayat, the said subject would be put and work will be done. Thereafter, the accused asked about the money and the complainant handed over amount of Rs.200/-. However, the accused asked him to keep the amount on the chair of sofa set. Accordingly, the amount was kept on a chair of sofa set. The complainant went outside and gave a signal. The other raiding party members along with pancha No.2 entered the house of the accused. Both hands of the accused are caught. The hands of the complainant as well as the hands of the accused were examined. The amount was found on the chair of the sofa set which was seized. Accordingly, post trap panchanama was drawn. The officers of the Bureau lodged the report about the said incident, seized relevant documents and after obtaining a sanction, chargesheet was filed against the accused.

5. During the trial, the prosecution examined five witnesses; viz. Sayyed Humayoon Sayeed Afzal (PW1), vide Exhibit-13; police constable, who carried muddemal to Chemical Analyzer; PW2 Chandrakant Lokhande, shadow pancha vide Exhibit-17; complainant Bhaskar Narayanrao Sontakke (PW3), the complainant vide Exhibit-29; Ashokkumar Shukla (PW4) vide Exhibit-35, the sanctioning authority; and the Bureau Officer Suresh Pundlikrao Mahalle (PW5), vide Exhibit-41, who investigated the crime and filed the report.

6. Besides the oral evidence, the prosecution relied upon written order issued to PW1 (Exhibit-14), letter to Forensic Science Laboratory (Exhibit-15), invoice challan (Exhibit-16), pre-trap panchanama (Exhibit-19), seizure memos (Exhibits-20 to 22), personal search panchanama of complainant (Exhibit-23), personal search panchanama of the accused (Exhibit-24), post-trap panchanama (Exhibit-

25), sanction order (Exhibit-36), report by the Bureau Officer PW5 Suresh Mahalle (Exhibit-44), and the First Information Report (Exhibit-36).

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

8. I have heard learned counsel Shri C.B.Dharmadhikari for the accused and learned Additional Public Prosecutor Shri S.S.Hulke 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.

9. Learned counsel for the accused submitted that the judgment and order of conviction impugned is not in accordance with the law. There was no valid sanction and the prosecution has failed to prove the demand and acceptance of bribe. He submitted that as a matter of fact, even the sanction to prosecute the accused as contemplated under Section 19 of the said Act is bad in law and the conviction of the accused stood vitiated on that ground

itself. He further submitted that elected members of the Gram Panchayat have to take decision on application of the complainant regarding mutating his name. The accused is not the authority to take decision on the application of the accused. As far as previous demand is concerned, evidence of the complainant is not supported with independent corroboration. The cross examination of pancha No.1 PW2 Chandrakant Lokhande shows that the subsequent demand was not in his presence. Thus, the evidence as to the demand and acceptance is not supported by any cogent and reliable evidence. He further submitted that PW4 Ashokkumar Shukla admitted that he has received draft sanction order and it reveals that on the basis of the draft sanction order, the sanction was accorded. Thus, the prosecution has not proved either the demand or acceptance and, therefore, the prosecution fails and the accused is to be acquitted of the charges levelled against him.

10. In support of his contentions, learned counsel for the accused placed reliance on decisions of the Honourable Apex Court in cases of **Neerja Dutta vs. State (Government**

of NCT of Delhi)[1] and **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[2]**.**

11. *Per contra*, learned Additional Public Prosecutor for the State submitted that not only the evidence of complainant PW3 Bhaskar Sontakke but also the evidence of shadow pancha PW2 Chandrakant Lokhande proves the demand and in pursuance of the said demand, the amount was accepted. Thus, the prosecution has proved the demand as well as acceptance. He further submitted that the sanction is according to the law after application of mind and, therefore, no interference is called for in the judgment and order of conviction passed by learned Judge of the trial court.

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

1 **(2023) 4 SCC 731**
2 2017 SCC ONLine SC 742

13. In order to prove the sanction order, the prosecution placed reliance on the evidence of sanctioning authority PW4 Ashokkumar Shukla, examined vide Exhibit-35. As per his evidence, he was working as Additional Chief Executive Officer. He was also holding charge of the Chief Executive Officer, Zilla Parishad, Wardha. The accused was working as Secretary/Gram Sewak of Gram Panchayat, Akoli. The Chief Executive Officer of Zilla Parishad is an appointing authority as well as removing authority of Gram Sewak/the Secretary of the village. He received a letter of Shri Gavai, DCPACB, Nagpur along with entire papers of investigation of Crime No.3044/2003 and read all those documents and forwarded the same to the concerned branch and, thereafter, those documents were put up before him and he studied the same and accorded the sanction, which is at Exhibit-36. During cross examination, he admitted that he received 70-80 papers of the investigation. He also admitted that he had received draft sanction order. He further specifically admitted that as he found the draft

sanction order fit, he instructed to type it as it is. He had not seen confidential report of the accused.

14. On the basis of the above evidence, the prosecution claimed that the prosecution has proved the sanction order.

15. Perusal of the sanction order reveals that in its first paragraph, allegation against the accused is mentioned. In third paragraph, it is mentioned that upon carefully reading papers of investigation and after carefully evaluating evidence, it is satisfied that there is an adequate evidence and the sanction is accorded.

16. Thus, the entire sanction order only shows that the sanctioning authority perused documents and accorded the sanction.

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

18. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[3] has held that what the Court has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

19. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[4] 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

3 1979 AIR 677
4 2014 Cri.L.J.930

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 basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

20. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[5], as relied upon by learned Senior Counsel for the accused, 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

5 (2007)11 SCC 273

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.

21. 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**[6]**.**

22. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**[7] observed that absence of description of documents referred by sanctioning authority and only considering the grievances made by Complainant would show lack of application of mind by competent authority while according sanction. The documents other than complaint were taken into consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

6 2021 SCC OnLine Bom 237
7 2016 ALL MR (Cri) 3697

23. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his own independent mind for generation of its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his own independent mind on the basis of the evidence which came before it. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

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

25. After going through the evidence of sanctioning authority PW4 Ashokkumar Shukla, it reveals that though he

stated that he had applied his mind and perused investigation papers, his cross examination itself shows that as he found the draft sanction order as fit, he instructed to type it as it is. He had also not considered confidential reports of the accused. The sanctioning authority does not specially disclose that what material he has taken into consideration while according the sanction. Admittedly, grant of sanction is a serious exercise of power by the competent authority. It has to be apprised of all relevant materials and on such materials, the authority has to take a conscious decision as to whether facts would show commission of offence under relevant provisions. No doubt, elaborate discussion is not required, however, decision making on relevant materials should be reflected in order.

26. After going through the evidence of sanctioning authority PW4 Ashokkumar Shukla, admittedly, the sanction order nowhere reflects who has applied mind and which documents are considered by the sanctioning authority and on what basis the sanctioning authority came to conclusion that the sanction is to be accorded to launch prosecution

against the accused. There is no finding by learned Judge of the trial court as to the validity of the sanction.

27. Besides the issue of the sanction, the prosecution claimed that the accused demanded gratification amount of Rs.5000/- for mutating name of the complainant in respect of the house property. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of shadow pancha No.1 PW2 Chandrakant Lokhande, examined vide Exhibit-17; complainant PW3 Bhaskar Sontakke, examined vide Exhibit-29, and Bureau Officer PW5 Suresh Mahalle (Exhibit-44), examined vide Exhibit-41.

The evidence of complainant PW3 Bhaskar Sontakke reflects that he is resident of Akoli having ancestral landed property as well as house property. The accused was working as Gram Sewak at village Akoli. As per allegations, his father executed a "Will" and bequeathed five acres of land and house in his favour and, therefore, he approached the Gram Panchayat, Akoli for mutating his name in respect of house property. He filed an application addressing the Sarpanch which was accepted by the accused. As per the allegation, the accused demanded Rs.5000/- to mutate his name and he agreed to pay Rs.1000/- in installment. Accordingly, he paid Rs.200/- and the accused called him at his house at Deoli along with Rs.200/-. As he was not willing to pay the amount, he approached the office of the Bureau and lodged the report. He further stated about the procedure laid down by the officers of the Bureau and stated that he narrated the incident to panchas and accordingly pre-tap panchanama is drawn. He further deposed that he visited the house of the accused along with the tainted amount and as the accused demanded the amount, he handed over the same. He specifically stated that the accused asked him to put the amount on sofa set. Accordingly, he put the said amount on the sofa set.

During cross-examination, he admitted that the house was recorded in the name of his father. He further admitted that the accused informed him that he has no power to pass order for mutation and his application requires to be decided in monthly meeting of Gram Panchayat. He further admitted that the Sarpanch told him on each occasion that his application would be placed on the next monthly meeting. He specifically admitted that the accused told him that the application of one Pramilabai is also received for mutating her name and, therefore, he is unable to effect the mutation. He specifically admitted that the accused has not taken money in his hand.

Thus on the basis of the above cross-examination, it is attempted to bring on record that there was neither demand nor acceptance by the accused. In fact, the accused was not the authority who has to take action on the application of the complainant. The members of the Gram Panchayat has to take the decision.

28. To corroborate the above version by complainant PW3 Bhaskar Sontakke, shadow pancha No.1 PW2 Chandrakant Lokhande is examined.

The evidence of shadow pancha No.1 PW2 Chandrakant Lokhande, as to the pre-trap panchanama, shows that as per the direction of his superior, he acted as a pancha. He read the complaint and also heard oral narration of the complainant. The officer of the Bureau explained procedure and shown them demonstration and, thereafter, the tainted amount was obtained and after applying phenolphthalein powder, the same was kept in shirt pocket. Accordingly, the pre-trap panchanama was drawn. He further stated that after the pre-trap panchanama, they went near the house of the accused. He went along with the complainant and other raiding party members followed them. In his presence, the accused asked about the money and, thereafter, the amount was put on chair of sofa set.

The said witness, during cross-examination, admitted that they sat in a drawing room in the house of the accused for fifteen minutes. During the said period, he went for urination and returned back after five minutes. He further admitted that when he returned from urination, the complainant and the accused were talking. He further admitted that when he returned, talk between them was over and he had seen only keeping money at that place by the complainant. The currency notes were kept on chair of sofa set.

29. Learned counsel for the accused pointed out that these admissions itself are sufficient to show that when the communication between the accused and the complainant was going on shadow pancha No.1 PW2 Chandrakant Lokhande was not present. Nothing was demanded and accepted in his presence. In clear terms, it is admitted by the witness that when he returned from urination, the talk between the complainant and the accused was over and the tainted amount was lying on the sofa set. He submitted that the demand and acceptance requires to be proved by the prosecution to prove charges.

30. The Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his legal representative vs. State of Punjab** *supra* has held that 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. It is further held that in absence of any proof of demand for illegal gratification, accused cannot be held guilty.

31. The prosecution also examined Bureau Officer PW5 Suresh Mahalle, who conducted the pre-trap panchanama and post-trap panchanama and also lodged the report after the investigation. Admittedly, his evidence nowhere discloses that at any point of time, he verified about genuineness of demand. It is submitted that initial demand as well as the demand at the time of trap is not proved as shadow pancha No.1 PW2 Chandrakant Lokhande was not present when the communication was going on between the accused and the complainant. The admission given by the PW2 Lokhande clarifies the same. The complainant also admitted that work of taking mutation was not with the accused, but member of Gram Panchayat has to decide the same. The investigating officer also admitted that the amount is recovered from the chair of the sofa set.

32. It is well settled by the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**[8] that there could be no doubt that evidence of complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, 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 complainant regarding conversation between him and 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.

8 (1979)4 SCC 526

33. While deciding the issue involving the offence under the said Act, a fact required to be considered is that the evidence of complainant PW3 Bhaskar Sontakke will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

34. In the case of **M.O.Shamsudhin vs. State of Kerala**[9]**,** 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.

9 (1995)3 SCC 351

35. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[10] 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."

36. 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.

37. In the present case, learned counsel for the accused rightly pointed out that the evidence of shadow pancha No.1 PW2 Chandrakant Lokhande sufficiently shows that when the communication between the complainant and

10 1963 Mh.L.J. (SC) 273

the accused was going on, he was not present and when he returned, the amount was already lying on the sofa set and the communication was over. Thus, there is no corroboration by shadow pancha No.1 PW2 Chandrakant Lokhande to the fact of demand and acceptance by the accused.

38. 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.

39. 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:
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> > "7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts

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

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

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

40. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing and since proof of demand is a *sine qua non* for convicting the accused in such cases, in the present case, it cannot be said the prosecution has been successful in proving its case beyond reasonable doubt.

41. After appreciating the evidence on record, it reveals that as per the prosecution case, the accused demanded the amount for mutating the name of the complainant to the house property which was bequeathed to him in view of "Will" executed by his father. The evidence shows that the accused was not the authority to take the action of mutation as it requires approval of members of the Gram Panchayat. It was the Gram Panchayat who has to take the issue on the agenda of meeting and obtain approval.

42. As far as the previous demand is concerned, it is not corroborated by any evidence. The subsequent demand

is also not proved as shadow pancha No.1 PW2 Chandrakant Lokhande specifically admitted that when the communication was going on between the complainant and the accused, he was not present.

43. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**[11] this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the reason being that the complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to bye-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. Whereas, burden on

11 2017 ALL MR (Cri) 3269

accused is only to show 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**[12] 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

12 (1997)10 SCC 600

presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

45. In the case of **State of Maharashtra vs. Rashid B.Mulani**[13] 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 , 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.

13 (2006)1 SCC 407

46. In the instant case, upon careful consideration of the prosecution evidence, particularly the evidence of complainant PW3 Bhaskar Sontakke as well as shadow pancha No.1 PW2 Chandrakant Lokhande, I find that the prosecution could not establish beyond reasonable doubt the prior demand that the gratification was demanded by the accused. The evidence of the complainant and the shadow pancha is not corroborative on material particulars which requires to be corroborated in view of the decision of the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra** *supra*.

47. It is well settled that while deciding the offence under said Act, complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of complainant should be corroborated in material particulars. The complainant cannot be placed on any better footings than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

48. As far as the applicability of presumption is concerned, learned Additional Public Prosecutor for the State placed reliance on the decision of the constitution bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi**) *surpa* wherein it has been 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. It is further held that insofar 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.

49. As observed earlier, the prior demand by the accused as well as the subsequent demand in presence of shadow pancha No.1 PW2 Chandrakant Lokhande is not proved. It is already observed that principles for according sanctions are not taken into consideration.

50. As it has been already observed that it is well settled that granting of sanction is a solemn sacrosanct act which affords protection to the government servants against frivolous prosecutions, 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 sanctioning authority to exercise powers strictly keeping in mind all relevant facts and material and accord sanctions.

51. Here in the present case, the sanction order accorded by sanctioning authority PW4 Ashokkumar Shukla

does not specifically mention about the application of mind and documents referred. On the contrary, admissions given by the sanctioning authority show that he accorded the sanction as it is as per the draft sanction order sent by the investigating agency. Thus, the entire exercise carried out, as far as the sanction is concerned, is not as per the law and it is without application of mind.

52. Thus, on the ground of sanction also the prosecution in the present case fails. The evidence as to the demand is not satisfactory and proof of demand is *sine qua non* to prove the charge. As such, as the appeal deserves to be allowed, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 16.8.2005 passed by learned Judge, Special Court, Wardha in Special Case No.12/2003 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 !!