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

CRIMINAL APPEAL NO.526 OF 2005

Ramchandra s/o Amrutrao Niwane (dead),
aged about 57 years, occupation service
as Talathi,
r/o Eklara, tahsil-Anjangaon,
district Amravati.

Through Legal Heirs :

1. Smt.Vasudhatai wd/o Ramchandra Niwane, aged about 55 years, occupation household.

2. Karuna d/o Ramchandra Niwane, aged about 21 years, occupation student.

Both r/o Sanghai plot, Anjangaon Surji, district Amravati. ….. **Appellants.**

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

State of Maharashtra,
anti Corruption Bureau, Amravati,
through PSO Rahimpur,
district Amravati. ….. **Respondent**.

=====================================

Shri Chaitanya Kulkarni, Counsel for Appellants.
Shri A.G.Mate, Additional Public Prosecutor for the State.

=====================================

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 09/07/2024
PRONOUNCED ON : 20/07/2024

JUDGMENT

1. By this appeal, appellant Ramchandra s/o Amrutrao Niwane (the accused) has challenged judgment and order of conviction and sentence dated 9.9.2005 passed by learned Special Judge, Achalpur (learned Judge of the trial court) in Special Case (ACB) No.23/1999 whereby he is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to undergo simple imprisonment for one month.

He is further convicted for offence punishable under Section 13(2) of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to undergo simple imprisonment for one month.

Learned Judge of the trial court directed that all sentences imposed upon the accused shall run concurrently and also he is given set-off under Section 428 of the Code of Criminal Procedure since he was in jail.

.....3/-

2. During pendency of the appeal, the accused died and his legal heirs were brought on record to proceed further with the appeal.

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

In the year 1999, the accused was serving as Talathi at village Eklara. Gajanan Bhimrao Kakde (the complainant) is villager of the said village and having land property survey No.173 at village Eklara admeasuring 9H 85R. The original owner of the said land was his great-grandfather. After death of grandfather in the year 1989, he was cultivating the land along with his grandmother Narmadabai. After the death of his grandfather, his grandmother Narmadabai intended to give the said field to her daughter Shalini Misal. She filed a civil suit against him in the court at Daryapur. Against the order of injunction, he preferred an appeal and, thereafter, in the year 1997-1998, the accused came to Eklara as Talathi. He had removed name of his mother from 7/12 extract and, therefore, he filed an application for correction of crop statement. He requested the accused to record the name of his mother to the crop statement as his mother is cultivating the land

.....4/-

and in possession of the land. However, the accused demanded amount Rs.5000/- for recording name of his mother in crop statement of the said field. On 4.1.1999, he met the accused and requested him to reduce the amount, but the accused was not ready for the same. The accused had taken amount Rs.1000/- from him and asked him to pay Rs.4000/-. As he was not willing to pay the amount, he approached the office of the Anti Corruption Bureau (the bureau) and lodged a report.

4. After receipt of the report, the office of the bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the complaint. After following a due procedure, it was decided to lay a trap. The office of the bureau obtained 40 currency notes of Rs.100/- from the complainant. Demonstration as to anthracene powder and ultra violet lamp was shown to them. The said powder was applied on tainted notes and kept with the complainant. The complainant, pancha No.1 Punjab Gondane and pancha No.2 Ashok More were instructed. As per instructions, pancha No.1 Panjabrao Gondane was to remain along with the complainant and

to observe events. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant and pancha No.1 Punjab Gondane proceeded towards the office of the accused. After reaching the office, the complainant came to know that the accused went to his house and, therefore, he went to the house of the accused. During communication with the accused, the accused demanded the amount and the complainant handed over the same and gave a predetermined signal to the raiding party. The amount was recovered from him. Accordingly, post-trap panchanama was drawn. Pancha No.1 Punjab Gondane disclosed as to the demand and acceptance. The officer of the bureau lodged report, seized relevant documents, and after obtaining a sanction, filed chargesheet against the accused.

5. During trial, the prosecution examined in all eight witnesses namely Gajanan Kakde vide Exhibit-18 (PW1), the complainant; Punjab Gondane vide Exhibit-22 (PW2), the Shadow Pancha; Ashok More vide Exhibit-32 (PW3), Pancha No.2; Dilip Swami vide Exhibit-40 (PW4), the Sanctioning Authority; Arvind Pande vide Exhibit-46 (PW5), the Trap Officer; Mahadeo Hole vide

Exhibit-53 (PW6); Ashok Gadekar vide Exhibit-54 (PW7); the Talathi, and Manohar Kadu vide Exhibit-56 (PW8), the Tahsildar.

6. Besides the oral evidence, the prosecution placed reliance on complaint Exhibit-19, seizure memo Exhibit-20, pre-trap panchanama Exhibit-23, seizure memo Exhibit-24, post-trap pancha Exhibit-27, seizure memo Exhibits-28 to 30, Sanction Order Exhibit-42, 7/12 extract Exhibit-48, map Exhibit-49, and report Exhibit-50.

7. On the basis of the evidence adduced, learned Judge of the trial court held the accused guilty and sentenced him as the aforesaid.

8. I have heard learned counsel Shri Chaitanya Kulkarni for the accused and learned Additional Public Prosecutor Shri A.G.Mate for the State. I have been taken through the entire evidence so also the judgment impugned in the appeal.

9. Learned counsel for the accused pointing out towards the evidence of complainant PW1 Gajanan Kakde and Shadow Pancha PW2 Punjab Gondane submitted that from the evidence of both

witnesses it reveals that there was no demand. He submitted that the evidence of the complainant shows that at the relevant time, his brother-in-law Sham Kukde was along with him who is not examined by the prosecution. Thus, as far as the first demand is concerned, the same is not corroborated. As to the subsequent demand, the only evidence of the complainant is that the accused enquired about him whether he arranged the amount and he handed over the said amount. The evidence of the Shadow Pancha is not corroborating. Thus, in absence of corroboration, mere seizure of the amount is not sufficient to prove the guilt of the accused. Thus, the demand and acceptance is not proved by the prosecution. He further submitted that as far as the seizure of the amount is concerned, the same itself is not sufficient to convict the accused in absence of the demand. Thus, the prosecution failed to prove the demand as well as the acceptance. He also invited my attention towards the cross examination and submitted that the complainant has admitted that at the relevant time, raiding party was not there. He met raiding party on the way. The cross examination further shows that the complainant has not paid land revenue of that year which was demanded and, therefore, the

.....8/-

accused is falsely implicated. He submitted that the sanction is not proper and valid and, therefore, on that ground also, the appeal deserves to be allowed.

10. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Dilip Jagannath Puri vs. State of Maharashtra**[1]**.**

11. *Per contra,* learned Additional Public Prosecutor for the State supported the judgment impugned in the appeal and submitted that the evidence adduced by the prosecution is sufficient to show that Sanctioning Authority PW4 Dilip Swami had considered material collected during the investigation and accorded the sanction. The evidence of the prosecution witnesses categorically states about the demand and acceptance. The prosecution has also examined PW6 Mahadeo Hole and Tahsildar PW8 Manohar Kadu, whose evidence shows that work of the complainant was pending with the accused. Thus, the demand and acceptance is proved by the prosecution. The sanction

1 2023 DGLS (Bom.) 1877

accorded is valid sanction. Thus, the appeal is devoid of merits and, therefore, no interference is called for.

12. As question of validity of sanction is raised by the defence, it is necessary to discuss an aspect of sanction. The sanction order was challenged on ground that it was not accorded after application of mind and it is accorded mechanically and, therefore, it is not a valid sanction.

13. In order to prove the sanction, the prosecution examined Sanctioning Authority PW4 Dilip Swami, who testified that he is working as the Sub Divisional Officer at Daryapur from 5.12.1998 to June 2001. He was appointing and dismissing authority. He received communication from the office of the bureau at Nagpur along with documents. He also received a draft sanction order. He verified documents and satisfied that a case is made out against the accused and accorded the sanction. The sanction order is at Exhibit-42. His cross examination shows that the appointment of Talathis is made as per the Maharashtra Land Revenue Code and Talathi Recruitment Rules. An attempt was made to show that PW4 is not competent authority to accord the sanction. Moreover,

there was no application of mind while according the sanction and, therefore, it is not a valid sanction.

14. Perusal of the sanction order reveals that its initial paragraphs describe about the prosecution case and last two paragraphs describe about according of sanction in which it is only mentioned that after carefully reading of the case of investigation and evaluation of the evidence available, he came to conclusion that there was a sufficient material for filing prosecution case and accorded the sanction.

15. Learned counsel for the applicant submitted that it is settled principles of law that the Sanctioning Authority has to apply his/her independent mind for generation of his/her satisfaction for sanction and an order of sanction is an idle formality. Purpose for which an order of sanction is required, is to be borne in mind. The Sanctioning Authority is the best person to judge as to whether a public servant concerned should receive protection under the said Act for his prosecution or not.

16. The Honourable Apex Court, in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[2], 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.

17. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[3]**,** 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

2 1979 AIR 677
3 2014 Cri.L.J.930

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.

18. Thus, it is now well settled that according sanction is a sacrosanct act and it is to be accorded after apprising of all relevant materials and taking conscious decision as to whether facts show commission of offence under relevant provisions. No doubt, elaborate discussion is not required, however, the decision making on relevant materials should be reflected in the order. Admittedly, the grant of sanction is a serious exercise of powers by the competent authority.

19. Perusal of the evidence of Sanctioning Authority PW4 Dilip Swami shows that he was satisfied, he accorded the sanction. However, he nowhere stated that on what basis he satisfied himself and came to conclusion that the sanction is to be accorded to launch prosecution.

20. Learned Additional Public Prosecutor for the State placed reliance on the decision of this court in Criminal Appeal No.1261/2004 (**Appasaheb Narayan Jadhav vs. The State of Maharashtra, thr. the Anti Corruption Bureau, Sangli**) decided on 23.12.2013 wherein it is held that controversy in relation to sanction also needs to be seen from the conspectus of Section 19(1) and 19(3) of the said Act. It is further held that, considering legal position informed in Section 19 Sub-section (3) and Explanation, the term "Error" includes competency of the authority to grant sanction, hence competency to grant sanction would not be open to be questioned. That apart, it was for the appellant to demonstrate what prejudice he has suffered.

21. Here, in the present case, the sanction is not only challenged on the ground of incompetency of Sanctioning Authority PW4 Dilip Swami but also on the ground of non-application of mind. Perusal of the sanction order shows that the Sanctioning Authority has not clarified that on what basis he came to conclusion that the sanction is to be accorded. As observed earlier, the sanction of the Sanctioning Authority should be after

application of mind. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied his mind to all 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. Perusal of the evidence of Sanctioning Authority PW4 Dilip Swami and the sanction order nowhere reflects material that on which basis he came to conclusion that the sanction is to be accorded. Thus, the sanction granted is not a valid sanction.

22. Besides the issue of the sanction, the prosecution claimed that the accused demanded the amount of gratification and accepted the same. In order to prove that the work of taking crop entry was with the accused, the prosecution examined PW6 Mahadeo Hole. According to the said witness, in the year 1999 the accused was Talathi at Eklara. His evidence shows that the dispute between complainant PW1 Gajanan Kakde and his

grandmother was on account of taking crop entry in the name of mother of the complainant. He deposed that he requested the accused to add the name of his mother, but the accused disclosed that the crop statement was already submitted to the Tahsildar and, therefore, the accused shown his inability to enter the name of the mother of the complainant. The cross examination shows that in the crop statement for the year 1997-1998, names of Narmadabai and others are mentioned.

23. As per evidence of Talathi PW7 Ashok Gadekar, after the death of grandfather of the complainant, names of legal heirs were recorded. As far as the application of the complainant is concerned, some objections were raised. He further deposed that the field was in possession of Narmadabai and Nirmalabai. Hence, their names are shown in the crop statement of the field. His cross examination shows that during his tenure as Talathi, names of Narmadabai and Nirmalabai were recorded in the crop statement of the field. He further admitted Talathi cannot change entry in column of cultivation of 7/12 extract.

24. Tahsildar PW8 Manohar Kadu, deposed that the dispute as to the crop entry regarding field survey No.173 was before him. An appeal was preferred by the complainant which was allowed. He also deposed that without taking order of the Tahsildar and the Sub Divisional Officer, names of legal representatives recorded to the field cannot be deleted or added.

25. In the light of the above evidence, it is necessary to look into the evidence of complainant PW1 Gajanan Kakde. As per the evidence of the complainant, he categorically stated that he filed an application before the Tahsildar for correction of crop statement. The statement is pending. His grandmother had filed a suit against him and also filed an application to the Talathi that name of Nirmalabai should not be entered in 7/12 extract. He met the accused in that respect and informed that the application for correction of crop entry is pending before the Tahsildar. He requested the accused that he cultivates the land, therefore, the crop entry is to be recorded in his name and in the name of his mother. However, the accused demanded Rs.5000/- from him and accepted Rs.1000 on 4.1.1999 and called him with balance amount

Rs.4000 on 5.1.1999. His evidence further shows that at the relevant time his brother in law Sham Kukde was along with him. As to the demand, on the day of the trap, he deposed that he along with pancha No.1 visited the office of the accused. The accused was not present in the office. He came to know that the accused went at his house. He immediately along with a pancha proceeded towards the house of the accused. At the house, the accused asked him whether he arranged the money and he handed over the same amount. The accused accepted the same and kept in the front pocket of his shirt and, thereafter, he was caught.

The cross examination of this witness shows that he had not given any application for deleting the name of his grandmother or aunt. He specifically stated that his brother-in-law Sham Kukde was along with him to the office of the bureau. As to the demand, his evidence is to the extent that the officers of the bureau have not seized currency notes in his presence. The shirt of the accused was also not seized in his presence. He has not paid land revenue of the relevant year.

.....19/-

26. To corroborate the version of complainant PW1 Gajanan Kakde, the prosecution examined Shadow Pancha PW2 Punjab Gondane. Though he stated that he communicated with the complainant and the complainant narrated the incident to him, the evidence of the complainant nowhere corroborates the same. As to the demand on the day of the trap, the evidence of the Shadow Pancha shows that the complainant asked the accused regarding his work. The accused promised to do the same work within 1 or 2 day. Thereafter, the accused asked whether his work is done and the complainant told him that his work is done and handed over the amount which the accused kept in his shirt pocket.

27. Insofar as pancha No.2 PW3 Ashok More and Trap Officer PW5 Arvind Pande are concerned, they have not witnessed as to the demand and acceptance.

As far as Trap Officer PW5 Arvind Pande is concerned, neither he recorded the statement of brother-in-law of the complainant namely Sham Kukde, who was along with the complainant at the time of the demand by the accused, nor said Sham Kukde is examined before the court. Trap Officer PW5

Arvind Pande has not verified as to genuineness of allegation that the accused demanded the amount.

28. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**[4] has held that there could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of the complainant has been corroborated. The

4 (1979)4 SCC 526

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

29. In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[5] also it is held that the statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

30. In the case of **M.O.Shamsudhin vs. State of Kerala**[6]**,** 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

5 2017 SCC ONLine SC 742
6 (1995)3 SCC 351

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.

31. In the light of the above well settled legal position, if the evidence adduced is appreciated, there is no dispute as to that the prosecution is under obligation to prove the demand as well as the acceptance.

The evidence of complainant PW1 Gajanan Kakde and Shadow Pancha PW2 Punjab Gondane is not consistent with each other.

As per the evidence of the complainant, the accused asked him whether he arranged the money and the complainant answered in affirmative.

As per the evidence of the shadow pancha, the complainant asked the accused whether his work is done and the accused has also asked him whether he has done the work.

32. The Honourable Apex Court, in the case of **Mukhtiar Singh** *supra***,** held that the statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

33. Here, in the present case, the evidence of complainant PW1 Gajanan Kakde and Shadow Pancha PW2 Punjab Gondane is to the effect that the complainant has arranged the money. Such a stray query is not sufficient to prove the demand. The prosecution has not examined Sham Kukde who was along with the complainant at the time of initial demand. The Trap Officer has also not verified genuineness of allegations made by the complainant.

34. 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.

35. The Honourable Apex Court, in the case of **Jagtar Singh vs. State of Punjab**[7] also, by considering the judgment of the Constitution Bench in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**[8] summarized discussion and reproduced paragraph No.74, which is as under:

> "74. What emerges from the aforesaid discussion is summarised 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 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

7 2023 SCC OnLine SC 320
8 2023 SCC OnLine SC 280

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 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 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.

(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."

36. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)** *supra* held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression "accept", referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**[9] 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

9 (2002)5 SCC 86

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 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 `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,

.....30/-

which can be established by proof of either `acceptance' or ‘obtainment'.

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

38. In the instant case, as observed earlier, prior demand by the accused is not proved by the prosecution. Independent witness Sham Kukde, who was present with complainant PW1 Gajanan Kakde, is not examined. mere possession of the gratification amount is not sufficient to hold the accused guilty. The witnesses have admitted that Talathi has no power to delete

entry in 7/12 extract. The accused, who was working as Talathi, was not competent to delete the entry. The cross examination of Talathi PW7 Ashok Gadekar shows that on his request, the accused disclosed that he has already forwarded the crop statement and, therefore, he is unable to consider the requisition of the complainant. As the accused denied to consider the request of the complainant, in absence of order of the Tahsildar, it can be the reason for the complainant to lodge the report. The evidence of the complainant itself shows that his application for entering the name of his mother in crop statement was pending before the Tahsildar. Thus, the defence of the accused, that, as the application was pending and in absence of the order of the Tahsildar, he is not empowered to delete or add entry, appears to be more probable.

39. Since proof of demand is *sine qua non* for convicting accused in such cases, it cannot be said that the 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.

40. In the light of the above discussion, the appeal succeeds and deserves to be allowed and, therefore, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 9.9.2005 passed by learned Special Judge, Achalpur in Special Case (ACB) No.23/1999 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 !!