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

CRIMINAL APPEAL NO.357 OF 2005

Prabhakar s/o Trimbakrao Kawadkar (dead),
aged about 67 years, occupation nil,
r/o Ramkrishna Nagar, Wardha,
district Wardha.

Through LRs
1A) Manoj Prabhakar Kawadkar,
aged about 46 years,
occupation : service,
r/o Gopal Nagar, Karla Road, Pipri
Wardha, district Wardha.

1B) Pravin Prabhakar Kawadkar,
aged about 48 years,
occupation : service,
r/o 505, Aparna Westside, Lanco
Hills Road, Manikonda, Hyderabad.

1C) Preeti Saket Mangrulkar,
aged about 40 years,
occupation : household,
r/o K-05, Vidhansabha Road,
Rajdhani Vihar, Sardhu, Raipur
(Chhattisgarh). ..... **Appellants.**

:: V E R S U S ::

State of Maharashtra,
through Police Inspector,
anti Corruption Bureau, Wardha. ..... **Respondent**.

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Shri R.M.Patwardhan, Counsel for Appellants.
Mrs.M.H.Deshmukh, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 13/02/2024
PRONOUNCED ON : 20/02/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order of conviction and sentence

dated 24.6.2005 passed by learned Judge, Special Court, Wardha (learned Judge of the trial court) in Special Case No.7/2000 whereby the accused is convicted of offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (the said Act).

For offence under Section 7 of the said Act, he is sentenced to suffer rigorous imprisonment for six months and to pay fine Rs.500/-, in default, to undergo further rigorous imprisonment for two months.

For offence under Section 13(1)(d) read with 13(2) of the said Act, he is sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.500, in default, to undergo further rigorous imprisonment for 2 months.

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

3. Brief facts of the prosecution case which emerges from police papers and recorded evidence are as under:

The accused was working as senior clerk with G.S.College of Commerce, Wardha in the month of February 2000. He was entrusted with work of distribution of scholarship to students of the said college upon being sanction by the Tribal Development Project Officer. The amount of scholarship sanctioned to all students belonging to the Scheduled Tribes requires to be credited in bank account of the college. After deducting college dues, net amount was payable to such students. Complainant Narendra Meshram, student of the college and admitted in Part-II of Bachelor of Commerce, applied for the scholarship. He opened saving bank account and the scholarship was sanctioned to him. On enquiring by him, the accused informed him that amount Rs.2110/- is sanctioned and after deducting the college dues, he is entitled to receive Rs.1070/-. The complainant requested to credit the said amount to his bank account and it is alleged that for crediting the said amount the accused demanded Rs.70/- from the complainant. As the complainant was not desiring to pay the said amount, he approached the office of the Anti Corruption Bureau at Wardha (the bureau) and lodged report on 22.2.2000.

4. After receipt of the report, officials of the bureau called two panchas. In the presence of panchas, the complainant narrated the incident which was verified by panchas from the complainant. After following due procedure, it was decided to conduct a raid. The complainant produced seven notes of Rs.10/- denomination. The demonstration as to

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phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted notes and kept in a shirt pocket of the complainant. The instructions were given to the complainant so also panchas Nos.1 and 2. The complainant was further instructed not to hand over the amount unless there is demand. Accordingly, pre-trap panchanama was drawn.

5. After the pre- trap panchanama, the complainant along with pancha No.1 proceeded towards the office of the accused. By gesture, the accused demanded the amount and the complainant handed over the same and gave a signal to the raiding party members. The accused was caught. After catching the accused, his personal search was carried out and the tainted notes were recovered from drawer of the table. Accordingly, post-trap panchanama was drawn. Pancha No.1 Thakare disclosed as to the demand and acceptance. The officials of the bureau lodged report about the incident, seized relevant documents, obtained sanction to prosecute the accused, and after completion of investigation, submitted chargesheet.

6. During the trial, the prosecution examined in all five witnesses, as follows:

Sanjay Panduranji Gaikwad vide Exhibit-20 (PW1), carrier;

Shivdev Devkinandan Shukla vide Exhibit-27 (PW2), sanctioning authority;

Madhurkar Thakare vide Exhibit-35 (PW3), shadow pancha;

Narendra Meshram vide Exhibit-52 (PW4), the complainant, and

Mohd.Shabbir Sk.Ismail Rizvi vide Exhibit-55 (PW5), the trap officer.

7. Besides the oral evidence, the prosecution placed reliance on Chemical Analyzer's Report (Exhibit-25), the sanction order (Exhibit-29), pre-trap panchanama (Exhibit-37), seizure memo (Exhibits-40 to 44), post-trap panchanama (Exhibit-45), complaint (Exhibit-53), report (Exhibit-57), FIR (Exhibit-58), account extract of the complainant (Exhibit-67).

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

9. Heard learned counsel Shri R.M.Patwardhan for the accused and learned Additional Public Prosecutor Mrs.M.H.Deshmukh 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.

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10. Learned counsel for the accused submitted that the entire judgment and order of conviction impugned is erroneous. Sanction to prosecute the accused is bad in law and, therefore, the conviction imposed upon him stands vitiated on that ground. The evidence of shadow pancha PW3 Madhurkar Thakare and complainant PW4 Narendra Meshram is not corroborating. The amount was accepted towards dues of the college. There is no evidence as to the demand and acceptance. The proof of demand and acceptance is *sine quo non*. For all the above reasons, the accused deserves to be acquitted.

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

1. Mukhtiar Singh (since deceased) through his Legal Representative vs. State of Punjab[1];

2. The State of Mah. vs. Dr.Anil Kacharu Shinde[2];

3. Hanmantappa Murtyappa Vijapure (since deceased by Lrs) vs. State of Maharashtra[3], and

4. Shivchalappa Gurumortyappa Loni vs. State of Maharashtra[4].

1 (2017)8 SCC 136
2 2023 ALL MR (Cri) 3428
3 2004 CRI LJ 3001
4 1993(1) Mh.L.J. 573

12. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of shadow pancha PW3 Madhurkar Thakare and complainant PW4 Narendra Meshram proves the demand and acceptance. The amount is recovered from the accused. The prosecution has also proved that the sanction is valid. Thus, the appeal is devoid of merits and liable to be dismissed.

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

> **1. C.M.Sharma vs. State of Andhra Pradesh, thr.Inspector of Police[5], and**
>
> **2. State of A.P. vs. C.Uma Maheswara Rao and anr[6].**

14. Question of validity of the sanction has been raised which is required to be addressed first.

15. The sanction order is challenged on the ground that it is accorded without application of mind and mechanically and it is not by appropriate authority.

16. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW2 Shivdev Shukla, who testified that at the relevant time he was

5 (2020)155 SCC
6 (2004)4 SCC 399

officiating principal of G.S.College of Commerce, Wardha. The accused was working as senior clerk. He received the letter of the bureau along with documents. Those papers of investigation were put before the local managing committee. The local managing committee held in the meeting that sanction is to be accorded. Accordingly, he accorded the sanction. His evidence further shows that the Principal of the college is appointing authority of senior clerks with approval of governing body. The Principal of the college with approval of the governing body is competent to terminate employees holding post of senior clerks. The sanction order is at Exhibit-29.

His further evidence during cross examination shows that officiating principal is secretary of local managing committee. The appointment and removal of senior clerks were used to be with approval of local managing committee. He further admitted that he handed over draft sanction order to his clerk and his clerk typed it and he signed on it. It further came in evidence that minutes of the meeting are not maintained. The resolution was passed and the sanction was accorded. Thus, his evidence shows that on the basis of resolution passed, the sanction was accorded.

17. Perusal of the sanction order reveals that in first paragraph of the said sanction order designation of the accused is mentioned. From second paragraph, the entire prosecution case is reproduced and in the last portion of the sanction order it is mentioned that, "whereas the managing committee has given its approval for prosecution of Shri Kawadkar as required by Section 19(1)(c) of the PC Act 1988. Upon carefully reading papers, he is satisfied that there is adequate evidence to prosecute the accused and accorded the sanction. The copy of the resolution is also placed on record which only suggests that the bureau sought permission for prosecuting the accused. The Principal apprised minutes of the meeting and unanimously resolved to grant permission for prosecuting the accused in the court of law. The Principal was authorized to take further action in the matter.

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

19. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[7] has held that what the Court has to see is whether or not the sanctioning

7 1979 AIR 677

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.

20. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[8] 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

8 2014 Cri.L.J.930

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.

21. The Honourable Apex Court in the case of **State of Karnataka vs. Ameerjan**[9], held that it is true that an order of sanction should not be construed in a pedantic manner.

9 (2007)11 SCC 273

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.

22. The view in the case of **State of Karnataka vs. Ameerjan**[10] is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**[11].

23. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**[12] 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

10 (2007)11 SCC 273
11 2021 SCC OnLine Bom 237
12 2016 ALL MR (Cri) 3697

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.

24. After going through the evidence of Sanctioning Authority PW2 Shivdev Shukla, though he stated that he applied his mind and perused investigating papers, the sanction order shows that in view of the resolution passed by the committee, the sanction was accorded. The wording used in the sanction order is that "whereas managing committee has given its approval for prosecution of Shri Kawadkar, sanction is accorded". Perusal of the sanction order shows that he has not disclosed on what basis he came to conclusion that the sanction has to be accorded. The sanction order only shows that he has read papers and satisfied that there is an adequate evidence and accorded the sanction, but there is no reference of activities carried out by Sanctioning Authority PW2 Shivdev Shukla and what material he has examined and on what basis he came to conclusion that the sanction is to be accorded.

25. Admittedly, grant of sanction is a serious exercise of powers 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, the decision making on relevant materials should be reflected in the order.

26. After going through the evidence of Sanctioning Authority PW2 Shivdev Shukla, admittedly, the sanction order nowhere reflects that which documents are considered by him and on what basis he came to conclusion that the sanction has to be accorded to launch prosecution against the accused.

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

28. In order to prove the demand and acceptance, the prosecution mainly placed reliance on shadow pancha PW3 Madhurkar Thakare and complainant PW4 Narendra Meshram.

29. Before referring the evidence of shadow pancha PW3 Madhurkar Thakare, it would be relevant to refer the evidence of complainant PW4 Narendra Meshram.

30. As per evidence of complainant PW4 Narendra Meshram, he applied for scholarship which was sanctioned to him. He approached the accused with a request to transfer

the amount of the scholarship in his bank account and the accused disclosed him that after deducting college dues, the amount can be credited to his account. It is alleged that for crediting the amount, after deducting college dues, the accused demanded amount Rs.70/- to which the complainant has not agreed and approached the bureau.

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

32. In the present case, if the evidence of the prosecution is appreciated, it would show that the prosecution placed reliance on the evidence of complainant PW4 Narendra Meshram who stated that for crediting amount of scholarship, the accused had demanded Rs.70/- by gesture by calling him near window which normally is used in the college for accepting applications and cash amount. He narrated about procedure carried by the bureau during pre-trap panchanama. As far as the subsequent demand is concerned, he testified that he along with shadow pancha PW3 Madhurkar Thakare

went in the office of the accused and the other raiding party members were in the premises of the college. The accused took out three registers, made some entries in those registers, and showed those entries to Thakare. After deducting Rs.1040/-, balance amount Rs.1070/- is required to be transferred. He pasted revenue stamp against the said entry and, thereafter, issued a receipt and called him near the window from outside. He made gesture by his hand suggesting what happened about money and he handed over the amount and gave a signal to the raiding party members. As per the evidence of complainant PW4 Narendra Meshram, the accused has accepted the money and kept in hip pocket of his full pant. His evidence during cross examination further reveals that he has stated to the bureau officials while recording his statement that the accused had demanded Rs.70/-, but he cannot assign any reason why the said fact is not recorded. His evidence further shows that on 23.2.2000 he approached the accused who made entries in the payment register and other two registers and kept the registers before him for his signatures. The accused had also issued him receipts which he accepted. It further came in evidence that gestures of the accused by his right hand are after finishing the official work.

To corroborate the version of complainant PW4 Narendra Meshram, the prosecution examined shadow pancha PW3 Madhurkar Thakare. As regards the demand, his evidence is that he along with complainant PW4 Narendra Meshram went in the office of the accused. The complainant enquired about his scholarship. The accused took out three registers and obtained signatures of the complainant and also shown entry to the effect that amount Rs.2110/- was sanctioned as scholarship. Amount Rs.1040/- is to be deducted and balance amount Rs.1070/- is to be transferred in the bank account of the complainant. It further came in his evidence that receipt was also issued by the accused and, thereafter, they were called near window and the accused demanded the amount by gesture. He further stated that the accused told the complainant that amount Rs.70/- cannot be deducted from the scholarship amount, don't you understand and, thereafter, the complainant handed over the same amount and signal was given and the accused was caught. His cross examination shows that the window is meant for accepting the cash and it does not open outside the building. He further admitted that if there has to be any cash transaction, it was to be performed at the table of the accused. It further came in the evidence that after completing the work, the complainant was called near the window. He specifically admitted that after the trap, the money was not seized from the pocket of the full pant of the accused. The evidence further shows that Rs.70/- was seized from the drawer of the table of the accused. Thus, the evidence of the complainant shows that the amount was accepted by the accused and kept in a hip pocket whereas the amount was recovered from the drawer of the table of the accused.

33. The evidence of Trap Officer PW5 Mohd.Shabbir Sk.Ismail Rizvi is also relevant. As per his evidence, it transpired to him during investigation that from entering the office of the accused, till the complainant and pancha No.1 went to varandah, after completion of the work, the accused did not make them any demand. He further admitted that during investigation, it was transpired to him that the accused is blind by left eye.

34. Before appreciating the evidence, it is necessary to see the settled law regarding proof of demand and acceptance.

35. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**[13] referring the judgment in the case of **P.Satyanarayana Murthy vs.**

13 2022 LiveLaw (SC) 192

District Inspector of Police, State of Andhra Pradesh and anr[14] held that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not entail his conviction thereunder. The Honourable Apex Court has reproduced paragraph No.23 of its decision in the case of **P.Satyanarayana Murthy** *supra,* which reads thus:

> "The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction."

36. To prove offences under Sections 7 and 13(1)(d) of the said Act, following are ingredients of the said Sections, which require to be prove:

14 (2015)10 SCC 152

<u>under Section 7</u>: (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

<u>under Section 13(1)(d)</u>: (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptable of any valuable thing or pecuniary advantage is not an offence under this provision; (6) to make out an offence under this provision, there has to be actual obtainment, and (7) since the legislature has used two different expressions namely “obtains” or “accepts”, the difference between these two have to be taken into consideration.

37. Admittedly, the investigating officer has not verified regarding previous demand and has not ascertained genuineness of the said demand. As far as the demand is concerned, the evidence of both witnesses, that the accused demanded the amount by gesture, shows that they have not stated regarding exact gesture of the accused. The evidence further shows that there was no demand, till the work is completed. As per the evidence of shadow pancha PW3 Madhurkar Thakare and complainant PW4 Narendra Meshram, the amount was accepted and kept in pant pocket. Whereas, the amount is recovered from the drawer of the table of the accused. The defence of the accused is that the amount was thrusted in the drawer of the table. It is also defence of the accused that as dues of the college are deducted, the complainant got annoyed and implicated him in the alleged offence by thrusting the amount in the drawer of the table. The evidence on record, regarding the demand and acceptance, shows that the demand was by gesture. As

observed earlier, there is no evidence as to what was exact gesture.

38. It is well settled that unless demand and acceptance are proved beyond reasonable doubt, presumption would not attract. Mere recovery of currency notes is not sufficient to constitute offence unless it is proved beyond all reasonable doubts that accused voluntarily accepted amount knowing it to be bribe.

39. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)**[15] 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

15 2022 LiveLaw (SC) 1029
16 (2002)5 SCC 86

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

40. In the light of the above settled legal position, if the evidence on record is appreciated, there is no dispute as to fact that the prosecution is under obligation to prove the demand as well as acceptance. The evidence of shadow pancha PW3 Madhurkar Thakare and complainant PW4

Narendra Meshram appears to be not consistent as the shadow pancha stated about the communication that the accused told that amount Rs.70/- cannot be deducted from scholarship amount and also said “it cannot be done so, don’t you understand” which is not narrated by the complainant. The evidence of the complainant only shows that the accused demanded the amount by gesture. The evidence regarding the exact gesture is not adduced.

41. It is well settled that the evidence of complainant should be corroborated in material particulars.

42. Here, there is inconsistency in evidence regarding the demand and acceptance. There is no evidence as to the previous demand and the investigating officer has not verified the fact about the demand. Thus, there is no evidence whether allegation of the demand is genuine one or not.

43. After appreciating the evidence on record, it reveals that the evidence of complainant PW4 Narendra Meshram is not consistent with the evidence of shadow pancha PW3 Madhurkar Thakare. 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.

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44. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)** *supra* held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof.

45. Here, in the present case, during pendency of the appeal, the accused died.

46. Learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Hanmantappa Murtyappa Vijapure (since deceased by Lrs) vs. State of Maharashtra** *supra* in which it is held that amount being very trivial in nature and fact that appeal is being prosecuted by dependents of the accused in order to enable them to get released provident fund and gratuity and other retiral benefits of the deceased. The conviction of the accused is aside.

47. Considering the decision of the Honourable Apex Court in the case of **Hanmantappa Murtyappa Vijapure (since deceased by Lrs) vs. State of Maharashtra** *supra,* the

present appeal is being prosecuted by legal heirs of the accused in order to enable them to get provident fund and gratuity and other benefits and also the sanctioning authority has not considered the entire material and without application of mind the sanction is accorded.

48. The evidence as to the recovery of tainted notes also creates a doubt regarding acceptance of the amount. The evidence on record shows that the amount was accepted and put it in the hip pocket. Whereas, the amount is recovered from the drawer of the table. There is no evidence that it was the accused who kept the said amount in the drawer.

49. In the light of the above evidence, benefit of doubt will go to the accused. As such, the appeal deserves to be allowed, as per order below:

<u>ORDER</u>

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

(2) The judgment and order of conviction and sentence dated 24.6.2005 passed by learned Judge, Special Court, Wardha in Special Case No.7/2000 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 !!