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

CRIMINAL APPEAL NO.632 OF 2005

Shriram s/o Tanbaji Dhamane, aged
49 years, occupation : service, r/o Pande-Layout
Khamala Road, Nagpur. ..... **Appellant.**

:: V E R S U S ::

Government of India
(through CBI Nagpur.). ..... **Respondent**.

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Shri S.Taywade, Advocate h/f Shri Aniruddha Jaltare, Counsel for the Appellant.
Shri P.Sathianathan, Special Public Prosecutor for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 05/08/2024

PRONOUNCED ON : 21/08/2024

JUDGMENT

1. The judgment and order dated 16.11.2005 passed by learned Judge, Special Court Designated under Prevention of Corruption Act for CBI, Nagpur (learned Trial Judge) in Special Case No.14/1994 is the subject-matter of challenge in the present appeal by the appellant (the accused).

2. By the judgment impugned in the appeal, the accused is convicted for offence punishable under Section 7 of the

Prevention of Corruption Act, 1988 (the said Act) and sentenced to undergo simple imprisonment for one year and to pay fine Rs.500/-, in default, to undergo simple imprisonment for three months.

He is further convicted for offence punishable under Section 13(1)(d) read with 13(2) of the said Act and sentenced to undergo simple imprisonment for two years and to pay fine Rs.1000/-, in default, to undergo simple imprisonment for four months.

3. Facts, in a nut shell, giving rise to the appeal are as given below:

4. In March 1994, the accused was working as "Upper Division Clerk" in the office of the Regional Labour Commissioner (Central), at CGO Complex, Seminary Hills, Nagpur (the RLC). At the relevant time, Shri M.T.Rughani was Assistant Labour Commissioner, Nagpur. Gautam C.Nagdevte (the complainant), was carrying business of stone quarry at Borgaon Pahari, district Wardha and was granted lease for the quarry. The complainant was to submit Annual Return to the office of the RLC. The Labour Commissioner inspected the

factory of the complainant and noticed some illegalities and irregularities and, therefore, the complainant along with his friend Shri Padamsingh went to the office of the RLC for submitting Annual Return and submitted the same with the concerned clerk. He also met the Labour Commissioner and it was informed to him that he had not paid amount to labourers, which is to be paid as per the law. It is further alleged that the Assistant Labour Commissioner demanded amount Rs.2400/- from him and he was asked to meet the accused. However, the complainant did not meet the accused and returned back to Wardha. On 18.3.1994, the complainant received a registered notice from the Assistant Labour Commissioner. After receipt of the notice, the complainant again along with his friend visited the office of the RLC on 21.3.1994. The said Labour Commissioner demanded Rs.1800/- from the complainant. Thereafter, the Labour Commissioner called the accused and asked him to prepare compliance report and the complainant was directed to get it done from the accused. The accused demanded Rs.200/- from the complainant and accepted Rs.100/- on the same day and asked to pay the balance amount Rs.100/- subsequently. As the complainant was not willing to pay the amount, he approached the office of The Central Bureau of Investigation (the CBI) and lodged a complaint.

5. After receipt of the complaint, the CBI officer Dy.Superintendent of Police called two panchas from a bank. The complainant was introduced with panchas. The complaint was read over to panchas and panchas also obtained information from the complainant. The complainant was asked to pay the amount, which is to be used in the trap. The complainant produced a note of Rs.100/- denomination. A demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown to the complainant and panchas. After applying the solution of the phenolphthalein powder and sodium carbonate on the tainted note, the said note was handed over to the complainant and the complainant kept the said note in his right side pocket of his kurta. The complainant was directed not to pay the amount unless it is demanded. Pancha No.1 was instructed to stay along with the complainant and observe communication and pancha no.2 was directed to remain with other raiding party members. Accordingly, a pre-trap pancha was drawn.

6. After the pre-trap panchanama, the complainant, panchas, and raiding party members proceeded in a car. They reached near the office of the accused. The complainant and pancha No.1 approached the accused. The accused asked the complainant whether he brought the amount. The compliance report was prepared and was handed over the same to a lady clerk. After acceptance of the amount, the complainant gave a pre-determined signal and the accused was caught. The tainted amount of Rs.100/- was seized from the accused. The hand wash of the accused as well as the complainant was collected. After obtaining a sanction, chargesheet was filed against the accused.

7. To substantiate allegations, the prosecution examined in all four witnesses namely, Ramnath Daulatnath Parankar vide Exhibit-22 (PW1), the Shadow Pancha; Gautam Sahadeo Nagdeve vide Exhibit-32 (PW2), the complainant; Sameshersingh Rajaram Pasi vide Exhibit-42 (PW3), the Trap Officer; and Nandkumar Prasad Shivnarayan Sahu vide Exhibit-47 (PW4), the Sanctioning Authority.

8. Besides the oral evidence, the prosecution placed reliance on pre-trap panchanama Exhibit-24, post-trap

panchanama Exhibit-25, seizure memos Exhibits-26 to 29, map Exhibit-30, complaint Exhibit-34, communication by the complainant to the Assistant Labour Commissioner Exhibit-35, First Information Report Exhibit-43, Sanction Order Exhibit-48, and the Chemical Analyzer's Report Exhibit-55.

9. After considering the evidence adduced during the trial, learned Trial Judge held the accused guilty as the aforesaid.

10. Heard Advocate Shri S.Taywade h/f learned counsel Shri Aniruddha Jaltare for the accused and learned Special Public Prosecutor Shri P.Sathianathan for the respondent. I have been taken through the entire evidence so also the judgment impugned in the appeal.

11. Learned counsel for the accused submitted that learned Trial Judge has not considered that the amount paid was for preparation of reply, which was not the official work. Thus, it cannot be treated as gratification amount. The evidence on record sufficiently shows that the amount was not paid towards official work, but the complainant has to submit reply to the notice issued by the Labour Commissioner. The

said reply was prepared by the accused to help the complainant and towards the said work, the alleged amount was paid. The sanction accorded is without application of mind. The demand and acceptance of gratification is *sine qua non* to attract provisions of the said Act. Thus, the judgment impugned in the appeal is on the basis of surmises and conjectures.

12. *Per contra*, learned Special Public Prosecutor for the State submitted that the evidence of complainant PW2 Gautam and Shadow Pancha PW1 Ramnath is consistent as to the demand and acceptance. As far as defence of the accused is concerned, there is no evidence to show that the amount was paid towards the reply prepared by the accused. The evidence of witnesses shows that the Assistant Labour Commissioner asked the accused to prepare compliance report and for preparing the said compliance report, the demand was made. The sanction is after application of mind and, therefore, no interference is called for in the judgment impugned in the appeal.

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

1. Tarsem Lal vs. State of Haryana[1];

2. State of M.P. and ors vs. Shri Ram Singh[2], and

3. State of A.P. vs. Vasudeva Rao[3].

14. The validity of the sanction was questioned by the accused and it was challenged on ground that the sanction was accorded without application of mind.

15. In order to prove the sanction, the prosecution examined Sanctioning Authority PW4 Nandkumar. The sum and substance of his evidence is that at the relevant time, he was working as Regional Labour Commissioner at Nagpur. The post of “Upper Division Clerk” was Group-C and non-gazetted. He was the appointing authority for the said post and the appointing authority had powers of termination to the said category employee. The office of RLC falls under the Ministry of the Government of India for Labour and Employment. He accorded the sanction to prosecute the accused after going through investigation papers. He had received copy of the First Information Report from the Superintendent of Police, CBI. He perused all those documents and found merits in the

1 AIR 1987 SC 806
2 2000 CRI LJ SC 1401
3 2004 CRI LJ 620

prosecution allegation. Accordingly, he accorded the sanction, which is at Exhibit-48. During cross examination, it is brought on record that he had received format for sanction from the CBI. As far as the reply is concerned, he admitted that the said reply is to be given by employer or with the help of other person knowing law. As far as the non-application of mind is concerned, the said witness is not at all cross examined on the same.

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

17. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[4] 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

4 1979 AIR 677

servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

18. In view of the settled principles of law, it is crystal clear that the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. The sanction order should speak for itself. It is well settled that sanction order should not be so elaborate like an order of court containing detailed reasons, but it should be after application of mind. Ultimately, an object of grant of sanction should be able to consider evidence and material before it and the Sanctioning Authority shall come to a conclusion that whether the prosecution in the circumstances be permitted or forbidden. It is further well settled that sanction is solemn and sacrosanct act. The law does not require sanction to be in a particular form. The sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Section 19 of the said Act.

19. In the light of the well settled legal position, if the Sanction Order is perused, Sanctioning Authority PW4

Nandkumar stated that he received all investigation papers. He went through all papers, formed his opinion, and accorded the sanction. Insofar as his cross examination is concerned, the evidence of the said witness is not shattered. In the Sanction Order, the entire prosecution case is reproduced and in second last para it is specifically mentioned that after carefully examining material before him, regarding said allegations and circumstances of the case, the sanction is accorded.

20. Thus, the evidence of Sanctioning Authority PW4 Nandkumar shows that not only the said witness has gone through papers of investigation but also formed his opinion and on his satisfaction he accorded the sanction.

21. Thus, the issue of sanction cannot be put at such pedestal as it would make impossible for the prosecution to prove the same. The object and purpose of grant of sanction and protection contemplated thereby do not mean that technical and trivial objections to legality and validity of sanction to be entertained. When all relevant materials placed before the Sanctioning Authority are found to be taken

into consideration in correct perspective, the sanction accorded is by application of mind.

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

23. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW2 Gautam and Shadow Pancha PW1 Ramnath.

24. On the question of demand and payment of the bribe amount for performance of public duty, it is necessary to see testimony of complainant PW2 Gautam. As per his evidence, he is running business of stone quarry. In March 1994, the Assistant Labour Commissioner had visited his quarry for inspection. During the inspection, he prepared inspection report and intended to take some action against him. The said Commissioner called him in his office on 18.3.1994. On attending the office, the Assistant Labour Commissioner demanded Rs.2400/- from him and informed him that he would prepare report and initiate proceeding against him. He was not having money and, therefore, he left the office.

Again, he visited the office on 21.3.1994. The Assistant Labour Commissioner handed over some documents to him and asked him to pay the amount on the next day. He also asked to hand over papers to the accused. The accused was asked to prepare some papers and for that purpose, the accused demanded Rs.200/-. He paid Rs.100/- and remaining Rs.100/- to be paid on the next day. Therefore, he approached the office of the bureau and lodged the complaint. He narrated about the pre-trap panchanama. As to the demand, his evidence is that on 22.3.1994 he along with Shadow Pancha PW1 Ramnath approached the accused. The accused demanded the amount for preparation of the compliance report. Accordingly, he handed over the same. The accused prepared the compliance report and handed over the same to a lady clerk. He gave a predetermined signal and the accused was caught. The amount was recovered from drawer of table of the accused. The hand wash of the accused so also his hand wash was collected.

25. To corroborate the version of complainant PW2 Gautam, the prosecution examined Shadow Pancha PW1 Ramnath who narrated about events took place during the

pre-trap panchanama. As per the evidence of Shadow Pancha PW1 Ramnath, on complainant PW2 Gautam approaching the accused, the accused demanded the amount. The accused also prepared some documents and handed over the same to a lady clerk. On demand by the accused, the complainant took out the amount from his kurta pocket and handed over the same to the accused. After getting a signal, the accused was caught and the amount was recovered from his drawer of table. The hand wash of the accused was also collected.

26. Both witnesses complainant PW2 Gautam and Shadow Pancha PW1 Ramnath are cross examined. During cross examination, it came on record that a notice was issued to the complainant as to non-compliance in his factory and to comply objections, he had been called to the office of the accused. The accused was asked to prepare the compliance report and to prepare the said compliance report, demand of Rs.100/- was made. An attempt was made to show that the reply has to be prepared to the notice and the accused prepared the said reply. Though the complainant admitted the same in his examination, the shadow pancha has denied the same during the cross examination. The cross examination of the shadow

pancha specifically shows that the complainant was called upon to give compliance and the said report was prepared by the accused and for preparing the said report, the demand was made.

27. Thus from the cross examination of both witnesses complainant PW2 Gautam and Shadow Pancha PW1 Ramnath it reveals that the demand was made for preparing the compliance report. Thus, the demand was for carrying out official work. Even, the cross examination of Trap Officer PW3 Sameshersingh shows that the complainant had received show cause notice from the office of the RLC. During investigation, it was disclosed that the said compliance report as to the show cause notice was drafted in the office of the RLC and, thereafter, it was handed over.

28. Recital of the complaint, cross examination of Shadow Pancha PW1 Ramnath and recital of the post-trap panchanama wherein communication was reproduced also show that the accused asked to hand over the compliance report to the concerned clerk after preparing the same also, he asked to obtain receipt and demanded amount Rs.100/-. Insofar as defence of the accused is concerned, the same is not

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substantiated by any material to show that the amount was paid towards the reply prepared by the accused. On the contrary, it reveals that the show cause notice was issued to the complainant and the Assistant Labour Commissioner asked the accused to prepare the compliance report and to prepare the said compliance report, the demand was made. The defence of the accused is not supported by any evidence or by the cross examination of both witnesses.

29. Thus, as far as demand and acceptance is concerned, the evidence adduced sufficiently shows that for discharging officials duty, the demand was made and the amount was accepted.

30. The Chemical Analyzer’s Report, which is circumstantial evidence, also shows that the hand wash of the accused as well as complainant PW2 Gautam was forwarded to the Chemical Analyzer.

31. It is well settled that besides the direct evidence, demand and acceptance can be proved on the basis of circumstantial evidence.

32. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi**)[5] held that for recording conviction under Sections 7 and 13 (1)(d)(i) (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence in the absence of direct or oral evidence. It further held that under Section 7 of the said, 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 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 said Act.

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

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34. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**[6] referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**[7] 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

6 2022 LiveLaw (SC) 192
7 (2015)10 SCC 152

person accused of the offence under Section 7 or 13 of the Act would not entail his conviction".

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

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

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage 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.

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**[8] 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 Section 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.

37. 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

8 (2002)5 SCC 86

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

38. In the light of the above well settled legal position, if the evidence adduced is appreciated, there is no dispute as to fact that the prosecution is under obligation to prove the demand as well as the acceptance. The statutory presumption under Section 20 of the said Act comes into play when evidence either direct or circumstantial shows that money was accepted other than for motive or reward under Section 7 of the said Act. The standard required for rebutting presumption is tested on the touchstone of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubts.

39. The Honourable Apex Court, in the case of **Tarsem Lal vs. State of Haryana** *supra***,** as relied upon by learned Special Public Prosecutor for the State, held that money is recovered from the person of the accused and no explanation is given by him. Subsequent, explanation is after thought.

40. The Honourable Apex Court, in the case of **State of M.P. and ors vs. Shri Ram Singh** *supra*, as relied upon by

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learned Special Public Prosecutor for the State, held that the said Act is a social legislation which is designed to curb illegal activities of public servants. The Act was intended to make effective provisions for the prevention of bribe and corruption and it is to be liberally construed so as to advance its objects.

41. In the case in hand, a condition precedent to draw such legal presumption, that the accused demanded the amount and accepted the same, has been proved and established. The evidence of Trap Officer PW3 Sameshersingh shows that after acceptance of the amount, hands of the accused were examined and in view of the Chemical Analyzer's Report, the hand wash of the accused was tested positive and the same remained unchallenged during cross examination.

42. Thus, a primary condition for acting on the legal presumption, that the prosecution should have proved that whatever received by accused was gratification, is proved by the prosecution. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the

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presumption created by the provision cannot be said to be rebutted. Learned Trial Judge has rightly considered the same and convicted and sentenced the accused.

43. In the light of the above, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!