Judgment

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

CRIMINAL APPEAL NO.100 OF 2005

Pandurang s/o Ramchandra Kolhe,
aged about 62 years, occupation – retired government servant, government auditor, A.G.Office, Nagpur, resident of Ganeshpeth, behind Datta Temple, Nagpur.

Legal Heirs:

1. Shobha wd/o Pandurang Kolhe, aged about 72 years, occupation: household, r/o Near Datta Mandir, Ganesh Peth, Nagpur.

2. Sneha w/o Harshal Londe, aged about 34 years, occupation" household, r/o flat No.-G-01, VM Paradise Apartment, Deoghare Flat Scheme Near Shiv Temple, Narsala, Nagpur. …… **Appellants**.

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

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

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Shri R.M.Patwardhan, Counsel for the Appellant.
Shri V.A.Thakare, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 29/02/2024
PRONOUNCED ON : 13/03/2024

JUDGMENT

1. By this appeal, appellant Pandurang Kolhe (accused) has challenged judgment and order of

conviction and sentence dated 20.1.2005 rendered by learned Judge, Special Court, Nagpur (learned Judge of the trial court) in Special Case No.13/1995.

2. By the said judgment and order impugned, the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer simple imprisonment for six months and to pay fine Rs.1000/-, in default, to suffer further simple imprisonment for two months.

He is also convicted for offence punishable under Section 13(1)(d) read with 13(2) of the said Act and sentenced to suffer simple imprisonment for two years and to pay fine Rs.1500/-, in default, to suffer further simple imprisonment for four months.

3. During the pendency of the appeal, the accused expired and his legal heirs, wife and daughter, are permitted to proceed further with the appeal as per order passed by the court 3.10.2023.

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

The accused was serving as Government Auditor at the relevant time. Complainant Bhimrao Durgaji Bagde was President of MES Cooperative Society (the society) and Shri Vijay Manwatkar was Secretary of the Society. One Sundarlal Jagannath Bhargav was assisting the accused for audit of the society. The work of audit of the society was given to the accused for the year 1993-1994. The accused was conducting audit and it revealed that there was misappropriation of amount by members of the society. The society had taken loan from Shikshak Sahakari Bank and Aditya Finance. The amount of installments required to be deduced from salary of members of Garrison Engineering. The society has its branches at Ambazari Defence Factory, Fort Nagpur, and Kamptee.

5. As per allegations, while conducting audit of the society, the accused pointed out that the complainant, who is the President of the society, is liable to pay amount Rs.47,000/-. Whereas, Secretary

Shri Manwatkar is liable to pay amount Rs.12000/-. The complainant issued letters to the Registrar of the Cooperative Societies that the amount due against him shown in the audit is not due. In fact, amount Rs.18000/- was withdrawn by the Secretary and he is only liable to pay Rs.29,000/-. The audit notes were not finalized. At the relevant time, the complainant disputed the amount shown against him in audit and, therefore, he met the accused with a request to reduce the amount. As per allegation, the accused demanded amount Rs.3500/- for showing less amount in the audit report. As the complainant was not willing to pay the said amount, he approached the office of the Anti Corruption Bureau, Nagpur (the bureau) and lodged report.

6. After receipt of the report, the office of the bureau called two panchas on 13.4.1994 and 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 conduct a raid. The complainant produced 20 currencies of Rs.100/- denomination and number of

currencies were noted. The demonstration as to phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted amount notes. The said notes were kept in shirt pocket of the complainant. The instructions were given to pancha No.1 Khushal Rasekar and pancha No.2. Pancha NO.1 was asked to stay along with the complainant and pancha NO.2 was asked to remain with the raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn.

7. After the pre-trap panchanama, the complainant and panchas, along with raiding party members came near automatic xerox centre owned by the accused. As per allegations, the complainant was called by the accused at the said xerox centre. After reaching there, the complainant and pancha No.1 proceeded towards the xerox and the complainant communicated with the accused. The accused demanded the amount on which the complainant handed over the same. The accused accepted the said amount and kept in his wallet and, thereafter, the complainant gave a

signal. Immediately, the accused was caught and the amount was recovered. Accordingly, post-trap panchanama was drawn. Pancha No.1 disclosed as to the demand and acceptance. The officer of the bureau lodged report about the said incident, seized relevant documents, and obtained sanction to prosecute the accused. After completion of the investigation, chargesheet is filed.

8. During trial, the prosecution examined in all 12 witnesses namely:

Khushal Rasekar vide Exhibit14 (PW1), shadow pancha;

Mohan Shende vide Exhibit-22 (PW2), District Special Auditor, Cooperative Societies;

Sundarlal Bhargav vide Exhibit-26 (PW3), assistant of the accused;

Bhimrao Bhagde vide Exhibit-29 (PW4), the complainant;

Sudhakar Kate vide Exhibit-36 (PW5), Divisional Joint Registrar (Audit), sanctioning authority;

Shivshankar Gajbhiye vide Exhibit-39 (PW6);

Vijay Manwatkar vide Exhibit-41 (PW7);

Sadashiv Pande vide Exhibit-44 (PW8);retired head constable;

Devchand Patil vide Exhibit-46 (PW9), Ex President of the Society;

Vinayak Hiwre vide Exhibit-48 (PW10), the Trap Officer;

Laxman Yelonde vide Exhibit-71 (PW11), and

Tanaji Shende vide Exhibit-58 (PW12).

9. Besides the oral evidence, the prosecution placed reliance on pre-trap panchanama Exhibit-15, seizure memos Exhibits-16-18, post-trap panchanama Exhibit-19, map Exhibit-20, challans Exhibits-23 to 30, letter to the auditor by the complainant Exhibit-30, complaint Exhibit-31, sanction order Exhibit-37, seizure memo Exhibit-40, application by the complainant to the accused Exhibit-47, report Exhibit-52, seizure memos Exhibits-55 to 56, FIR Exhibit-59, audit report Exhibit-27, Chemical Analyzer’s Report Exhibit-74.

10. 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.

11. Heard learned counsel Shri R.M.Patwardhan for the accused and learned Additional Public Prosecutor Shri V.A.Thakare for the State. I have been taken through the entire evidence so also the judgment and order impugned in the appeal.

12. Learned counsel for the accused submitted that the Judgment and order impugned is erroneous and without appropriate reasoning. The evidence adduced by the prosecution nowhere shows that the amount was accepted towards remuneration or reward. In fact, the evidence of the witnesses shows that the amount was accepted by the accused to deposit the same as the audit fee. The witnesses categorically stated that the accused was appointed as auditor and amount of Rs.8610/- requires to be paid as an audit fee. The complainant being President paid the said amount to the accused to deposit the same as audit fee. Even the sanction to prosecute the accused as contemplated under Section 19 of the said Act is bad in law and, therefore, the conviction of the accused stood vitiated on that ground itself. He submitted that defence of the accused is supported by the cross

examination of witnesses. In view of that, the judgment and order impugned deserves to be quashed and set aside.

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

> **1. Kashinath Vikram Thorat vs. State of Maharashtra[1];**
>
> **2. The State of Maharashtra vs. Ramrao Marotrao Khawale[2];**
>
> **3. C.M.Girish Babu vs. CBI, Cochin, High of Kerala[3],and**
>
> **4. Mukhtiar Singh (since deceased) through his LR vs. State of Punjab[4].**

14. *Per contra*, learned Additional Public Prosecutor for the State submitted that the evidence of complainant PW4 Bhimrao Bhagde and shadow pancha PW1 Khushal Rasekar is corroborating on material particulars which proves the demand and acceptance. The defence of the accused, that the amount is accepted towards audit fees, is improbable and

1 2018 ALL MR (Cri) 2456
2 2017 ALL MR (Cri) 3269
3 (2009)3 SCC 779
4 2017(7) SCALE 702

unacceptable. The documents on record show that amount Rs.8610/- was the audit fee. Whereas, amount accepted is Rs.2000/-. There is no evidence on record to show that the society can deposit the audit fee in installments. Moreover, there is no reason for the accused to call the complainant at the xerox centre to accept the amount allegedly taken towards the audit fee. Looking to these circumstances, in the background that the amount is recovered from the accused and the evidence of the complainant and pancha as to demand and acceptance is consistent, no interference is called for in the judgment and order impugned.

15. Learned counsel for the accused raised an issue regarding validity of the sanction. Thus, validity of sanction is primary point required to be discussed. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

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. In view of the settled principles of law, sanctioning authority has to apply his/her own independent mind for generation of its satisfaction for sanction. The sanctioning authority is the best person to judge as to whether a pubic servant concerned should receive protection under the said Act by refusing to accord sanction for prosecution or not. Thus, the application of mind on the part of sanctioning authority is imperative. The orders granting sanction must demonstrate that he/she should apply his/her mind while according sanction.

18. To prove the sanction, the prosecution examined Sanctioning Authority PW5 Sudhakar Kate serving as the Divisional Joint Registrar (Audit). His evidence shows that the accused was working as auditor under him. His office had received papers from the office of the bureau and he was appointing and removing

authority of the accused. After going through papers, *prima facie* he found that the case is made out case against the accused and accorded the sanction which is at Exhibit-37. Though this witness is cross examined at length, he has no powers of appointment or removal or promotion of auditors. Rest of cross examination is in denial form. Perusal of the sanction order reveals that he considered the prosecution case as well as various events which took place between the accused and complainant PW4 Bhimrao Bhagde and mentioned that upon reading papers of investigation into the crime registered at Ganeshpeth Police Station, he is of opinion that the accused should be prosecuted for the offence constituted by Acts. Thus, while according the sanction, he narrated previous history, facts of trap, successful completion thereof, and various events happened between the complainant and the accused. The object of sanction to protect government servants from frivolous and fictitious prosecution and, therefore, depends upon the material placed before the sanctioning authority and consideration of all material facts and evidence by the sanctioning authority. The order of sanction *ex facie* must disclose that the sanctioning authority had considered such materials.

19. In the present case, Sanctioning Authority PW5 Sudhakar Kate, while according the sanction, considered previous history disclosed in the complaint, fact of the trap, successful completion of trap, demand by the accused, and seizure of currencies.

20. It is well settled that sanction is solemn and sacrosanct act. It is also well settled that the law does not require the sanction to be given in a particular form. Th sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Sections 6 and 19 of the Act.

21. In the present case, all facts constituting offence of misconduct with which the accused was charged were placed before Sanctioning Authority PW5 Sudhakar Kate. The sanctioning authority considered

material placed before him. The sanction speak for itself and satisfaction of the sanctioning authority is apparent.

22. It is also settled that sanction order is not required to be passed as of court order.

23. Sub section (4) of Section 19 of the said Act states that in determining under Sub Section (3) whether there is any absence, error, omission or irregularity in sanction. The issue of sanction should not be put at such pedestal as would make it impossible for the prosecution and the court to prosecute a publisher. The object and purpose of grant of sanction and protection contemplated thereby does not mean that technical and trivial objections to legality and validity of sanction to be entertained. When all relevant materials placed before the sanction authority are found to be taken into consideration in correct perspective. The sanction accorded is by application of mind. Merely because there are some irregularities the same would

not lead to conclusion that there was non-application of mind by the sanctioning authority.

24. By applying these principles in the instant case, the evidence of Sanctioning Authority PW5 Sudhakar Kate sufficiently shows that the sanctioning authority considered the material evidence, various documents, various events, the pre-trap panchanama, post trap panchanama and, thereafter, accorded the sanction and, therefore contention of learned counsel for the accused that the sanction is not a valid sanction is not sustainable and liable to be discarded.

25. Besides the sanction order, the prosecution claimed that the accused demanded gratification amount and accepted the same.

26. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW4 Bhimrao Bhagde and shadow pancha PW1 Khushal Rasekar. The prosecution has also examined PW3 Sundarlal Bhargav, who is assistant of the accused; PW2 Mohan Shende who is District Special

Auditor of Cooperative Societies; PW7 Vijay Manwatkar; PW9 Devchand Patil, and PW11 Laxman Yelonde.

27. On the question of demand and payment of bribe for performance of public duty or forbearance to perform such duty, it is necessary to see testimony of complainant PW4 Bhimrao Bhagde and shadow pancha PW1 Khushal Rasekar. The evidence of the complainant shows that he was chairman of the society during the period of 1987-1989. The society was of employees of Military Engineering services which is also called as Garrison Engineering. The society advances finances to employees to purchase two-wheeler vehicles. There was misappropriation of the amount of the society. PW7 Vijay Manwatkar was secretary. The record of the society was not properly maintained and, therefore, the Assistant Registrar, Cooperative appointed the accused as auditor of the society. While conducting the audit, the accused shown amount Rs.47,556/- due against the complainant and, therefore, the complainant filed an application with the Assistant Registrar stating that amount Rs.29000/- is only due

from him. He also filed an application in the office of the accused stating that the amount shown in the audit is not correct amount and amount Rs.16222/- is only outstanding against him. However, the accused called him and told him that amount Rs.47556/- is shown against him and if he wants to reduce the amount, he has to pay Rs.3500/-. As per the evidence of the complainant, on 25.3.1994, the first demand was made and he was called by the accused at automatic xerox centre at Mahal. On that day, he could not pay the amount and, therefore, he told the accused that he would send the amount on 13.4.1994, but as he was not willing to pay the said amount, he approached the office of the bureau and lodged the report. On lodging of the report, officers of the bureau called two panchas. He narrated the procedure laid down by the bureau for conducting the raid. Thus, as per his evidence, on 13.4.1994, he along with shadow pancha PW1 Khushal Rasekar approached the accused at automatic xerox centre and enquired about reducing of the amount which is shown in the audit report. The accused demanded the amount and he handed over amount Rs.2000/- to the accused. The accused was caught red-handed and amount was recovered from him.

28. To corroborate the version of complainant PW4 Bhimrao Bhagde, the prosecution examined shadow pancha PW1 Khushal Rasekar, who has also narrated that he along with another pancha was called in the office of the bureau. In their presence, the complainant narrated his grievances and they verified the same and, thereafter, it was decided to conduct a raid. He has also narrated the entire procedure carried out by officials of the bureau during the pre-trap and post-trap panchanamas. As per his evidence, he along with the complainant approached the accused at automatic xerox centre. There was a communication between the complainant and the accused. The accused demanded the amount and the complainant handed over Rs.2000/- to the accused. The accused was caught red-handed. As per his evidence, after accepting the amount, the accused kept it in his wallet. The amount was recovered from

his wallet. The hand wash of the accused was obtained.

29. Now, it has to be seen whether the evidence of complainant PW4 Bhimrao Bhagde and shadow pancha PW1 Khushal Rasekar is corroborating and consistent on the demand and acceptance. As far as cross examination of the shadow pancha is concerned, it is only in denial form. He specifically denied that except this case, he has not acted as a pancha in other case. During the cross examination of the complainant, an attempt was made that the society has to pay the amount towards audit fee and the accused accepted the amount towards installment of the said audit fee. Thus, defence of the accused is that challans Exhibits-23 to 25 are required to be deposited to pay the audit fees. The complainant shown his inability to pay the total amount of the said audit fee of Rs.8610/- and requested him to accept amount Rs.2000/- towards installments and, therefore, he accepted the amount. The cross examination further shows that the complainant has not enquired whether audit fee was deposited or not.

He denied that three challans were handed over to him. His cross examination further shows that only amount Rs.2000/- was due against him. Thus, sum and substance of his evidence is that the amount was demanded to reduce the amount due against him and shown in the audit report. Whereas, defence of the accused is that Rs.2000/- is accepted by him as installment towards audit fee which the society was required to deposit.

30. Regarding the demand, the prosecution also placed reliance on recital of the post-trap panchanama wherein communication between the accused and complainant PW4 Bhimrao Bhagde is recorded. Reproduction of the said communication in the post-trap panchanama shows that after approaching, the complainant has greeted the accused. The said communication shows that the accused demanded amount Rs.3500/-. Relevant communication is reproduced for the purpose of reference, thus:

> “Complainant : Saheb, whether an amount Rs.18222/- would be reduced from the amount of Rs.47556/- which is due from me.

Shri Kolhe : It will be reduced. You do work as per the instructions what was that amount against which the settlement was done with Shri Bhargav Babu.

Complainant : The settlement was done with you for amount Rs.3500/- out of which amount Rs.2000/- was to be paid first. It was the same talk which took place with Bhargav babu in your presence.

Shri Kolhe : Only because of Bhargav Babu less amount is demanded from you. It is OK. Have you brought the money.

Complainant : Yes, Saheb I have brought the amount of Rs.2000/-.

Shri Kole : Give me that amount of Rs.2000/- and tell Bhargav Babu that an amount of Rs.1000/- only is given”.

31. It is submitted by learned Additional Public Prosecutor for the State that the above said communication itself is sufficient to corroborate the oral evidence of complainant PW4 Bhimrao Bhagde and shadow pancha PW1 Khushal Rasekar. Moreover, the defence of the accused is not probable as the accused is not authority to accept the amount towards audit fee. The audit fee is to be paid by depositing the challan in the reserve bank.

32. The prosecution further placed reliance on the evidence of District Special Auditor, Cooperative Societies PW2 Mohan Shende who corroborated on the fact that the accused audited accounts of the society. He is the authority who approved program of audit. He further stated that Exhibits-23 to 25 are challans about audit charges. The audit charges are to be deposited in RBI. Three challans are prepared for depositing the amount. The challans were given to the society. It came in the cross examination that amount under challan is deposited in treasury by the society. He further admitted that the auditor has power to issue challans and directs the society to deposit challans in RBI. Thus, his evidence makes the fact clear that the accused issued challan to deposit the amount in RBI and in view of that, the society deposited the amount in treasury. If this contention is accepted, defence of the accused, that the amount is accepted towards the audit fees to deposit the same, goes away.

33. Assistant of the accused PW3 Sundarlal Bhargav has not supported the prosecution as far as the

demand by the accused is concerned. He was assisting the accused in auditing accounts of the society. However, his evidence shows that challan Exhibits-23 to 25 bears signatures of the accused given to the society in his presence. He denied suggestion that complainant PW4 Bhimrao Bhagde asked the accused that the amount be deposited by installment.

34. Evidence of PW6 Shivshankar Gajbhiye is to the extent that he was working in Garrison Engineering and member of the society. The society was advancing loans to its members and officers of the bureau seized receipts from him.

35. PW7 Vijay Manwatkar was Secretary at the relevant time. He also stated that the challan was given for depositing the amount in the bank towards audit fee and complainant PW4 Bhimrao Bhagde told that he can deposit only Rs.2000/-. Thus, this witness has not supported the prosecution case. However, his evidence shows that the work of audit was in progress and the audit was conducted by the accused.

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36. As per evidence of Ex-President of the Society PW9 Devchand Patil, in audit, amount Rs.47000/- was was found due and the accused told him to deposit audit fee of Rs.8000/-- and complainant PW4 Bhimrao Bhagde told him that he has only amount Rs.2200/- and he would go to Nagpur and deposit the same.

37. PW11 Laxman Yelonde is also employee of Garrison Engineering. His evidence also shows that the accused kept amount Rs.2000/- on table and left the place. Thus, it is apparent that he has not supported the case of the prosecution. Admittedly, the amount is not recovered from the table, but it is recovered from the wallet of the accused from his pant pocket.

38. The another material witness on which the prosecution relied upon is Trap Officer PW10 Vinayak Hiwre who narrated about the entire procedure carried out by him. As far as recovery of the amount is concerned, his evidence shows that after the accused was caught, enquiry was made with him and personal search was taken. During personal search, amount

Rs.2000/- was recovered from the wallet of the accused. During cross examination, an attempt was made to show that amount Rs.29334/- was due against the complainant. He further admitted that on the day of the trap he had called explanation of the accused about the trap.

39. 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.

40. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**[5] referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**[6] 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

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6 (2015)10 SCC 152

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. 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.”

41. 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.

42. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)**[7] 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.**

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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 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

8 (2002)5 SCC 86

‘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

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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'.

43. In the light of the above well settled legal position, if the evidence is appreciated, there is no dispute as to the fact the prosecution is under obligation to prove the demand as well as the acceptance. The evidence of complainant PW4 Bimram Bhagde and shadow pancha PW1 Khushal Rasekar is consistent and corroborative to each other on a material particulars. Though they are cross examined at length, the said consistent evidence is not shattered. On the question of reason for the demand and payment of bribe, the evidence of the complainant

shows that he categorically stated that the demand was made to show lesser amount due against the complainant in the audit report. Regarding the subsequent demand, the shadow pancha corroborated the version of the complainant. It is further corroborated through the communication which is recorded in a post-trap panchanama. As far as the evidence narrating the said communication is concerned, it is not shattered during the cross examination. The defence of the accused is also not fortified by the accused on the basis of per-ponderance of probability.

44. On the contrary, the other evidence laid by the prosecution of PW2 Mohan Shende who is District Special Auditor of Cooperative Societies; PW3 Sundarlal Bhargav, who is assistant of the accused; PW6 Shivshankar Gajbhiye; Ex-President of the Society PW9 Devchand Patil; and PW11 Laxman Yelonde shows that challans were given to the society to deposit the amount towards the audit fee.

45. If signed challans are handed over to the society by the accused to deposit the audit fee, there is no reason for the accused to accept the amount towards installment as audit fee.

46. 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 of 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.

47. In the case at hand, condition precedent to draw such a legal presumption is that accused has demanded and is paid bribe money has been proved and established by adducing the evidence on record. Thus, the presumption under 20 of the said Act becomes applicable for offence committed by the accused under Section 7 of the said Act. The accused was found in possession of bribe money and no reasonable

explanation is forthcoming that may rebut the presumption. Further, recovery of money from the wallet of the accused has also been proved without doubt. Not only the oral evidence but also Chemical Analyzer’s Report Exhibit-74 shows that during analysis pink colour liquid in bottles, ten rupees notes, wallet, full pant seized from the person of the accused are examined and analyzed and phenolphthalein powder and sodium carbonate are detected in pink colour liquid.

48. It is pertinent to note that in this regard statement of the accused was recorded and he has explained that the amount is accepted towards an installment to deposit amount as audit fee. However, this explanation is falsified in that light of the oral evidence of complainant PW4 Bimram Bhagde; shadow pancha PW1 Khushal Rasekar; assistant of the accused PW3 Sundarlal Bhargav; PW2 Mohan Shende who is District Special Auditor of Cooperative Societies;

PW6 Shivshankar Gajbhiye, and PW7 Vijay Manwatkar who have consistently stated that the accused issued

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challans to the society to deposit the amount towards the audit fee. The place where the amount is accepted also assumes importance. If the accused has accepted the amount as installment towards the audit fee, which is to be deposited in the bank, the accused has to call the complainant in his office and not at the xerox centre. The evidence of PW11 Laxman Yelonde shows that the complainant has kept the amount on table is also falsified from circumstantial evidence that the amount is recovered from the wallet of the accused.

49. After appreciating the evidence, in the light of the explanation, whether the said amount was an illegal gratification other than legal remuneration or not, it cannot be gainsaid that if the accused offers reasonable and probable explanation based on the evidence that the amount was accepted by him other than as an illegal gratification, benefit of doubt should be given to the accused. It is true that the accused is not required to establish his defence beyond reasonable doubts, but on the preponderance of probabilities. However, the court

cannot be oblivious to the statutory presumption permissible to be raised.

50. In this view of the matter, once undue advantage other than legal remuneration is proved to have been accepted, presumption is attracted and the accused has not rebutted the said presumption.

51. Though learned counsel for the accused placed reliance on decisions of the Honourable Apex Court in cases of **C.M.Girish Babu vs. CBI, Cochin, High of Kerala** *supra* and **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab** *supra*, the said decisions are not helpful to the case in hand as the analysis of the evidence shows that the accused has demanded the amount and accepted the same. The evidence of complainant PW4 Bimram Bhagde and shadow pancha PW1 Khushal Rasekar is consistent and corroborative by the evidence of the other witnesses.

52. Insofar as the defence of the accused is concerned, which is not supported by any of circumstances, the circumstances in the nature of Chemical Analyzer Report corroborates the prosecution

case. The attempt of the accused of rebutting the presumption that he accepted the amount towards audit fee which is to be deposited by the society is also improbable and unacceptable.

53. Thus, in the present case, primary condition for acting on the legal presumption that the prosecution should have proved that whatever received by the accused was gratification is proved by the prosecution. The fact is said to be proved when its existence is directly established or when upon the material before it, the court finds its existence so probable that a reasonable man would act on the supposition that it exists. Unless explanation is supported by proof, the presumption created by provisions cannot be said to be rebutted.

54. In the present case, the evidence as to the demand of illegal gratification and acceptance is convincing. Learned Judge of the trial court rightly appreciated the evidence adduced. The sanction granted is also a valid sanction. The demand and

acceptance is proved which is *sine qua non* for establishing the charge.

55. In the light of the above, the appeal is **dismissed**.

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!