



Judgment

217 apeal153.05

1

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

CRIMINAL APPEAL NO.153 OF 2005

Haribhau s/o Vishvnathji Sonkusare,
aged about 48 years, occupation service,
r/o Arni Road, Yavatmal, taluka and
district Yavatmal. **Appellant.**

:: VERSUS ::

The State of Maharashtra,
through PSO Police Station,
Bhandara. **Respondent.**

=====

Shri S.D.Chande, Counsel for the Appellant.
Shri A.G.Mate, Additional Public Prosecutor for the State.

=====

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 19/03/2024

PRONOUNCED ON : 16/04/2024

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 25.1.2005 passed by learned Special Judge, under the Prevention of Corruption Act, Bhandara (learned Judge of the trial court), in Special Criminal Case No.6/1993.

2. By the said judgment impugned, learned Judge of the trial court convicted the accused for offence punishable under Section 7

.....2/-

2

of the Prevention of Corruption Act, 1988 (the said Act) and sentenced him to suffer simple imprisonment for six months and to pay fine Rs.500/-, in default, to suffer simple imprisonment for one month.

He is also convicted for offence punishable under Section 13(1)(d) and 13(2) of the said Act and sentenced to suffer simple imprisonment for one year and to pay fine Rs.500/-, in default, to suffer simple imprisonment for two months.

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

In the year 1992, the accused was working as Surveyor in the office of the Survey Tahsildar i.e. the Land Records office at Sakoli, district Bhandara. He was campaigning at village Deulgaon, taluka Arjuni-Morgaon, district Bhandara for correction of revenue records. Haridas Kapgate (the complainant), resident of village Deulgaon, possesses agricultural land bearing gat No.67/2 situated at village Deulgaon. There was partition of his property between him and his uncle Mitaram Kapgate. The complainant along with Dayaram Maske came to know that the

3

accused is having camp at village Deulgaon for correction of records. They both on 14.9.1992, at about 3:30, met the accused in the office of the Grampanchayat at Deulgaon. The complainant asked for village map. Accordingly, the accused shown village map from which it revealed to him that the land belongs to him has been in two divisions instead four divisions and he asked for correction. The accused told him that the village map cannot be corrected unless he personally visits the agricultural field and, therefore, the complainant requested to visit the agricultural field on which the accused shown his inability. On 17.9.1992, at about 1:30 pm, again the complainant along with Dayaram met the accused in the office of the Grampanchayat at Deulgaon and requested to correct the village map on which the accused demanded amount Rs.300/-. After a negotiation, the amount was decided as Rs.150/-. It was agreed that the complainant would visit on 18.9.1992 along with amount Rs.150/-, till 3:00 pm. As the complainant was not willing to pay the amount, he approached office of the Anti Corruption Bureau (the bureau) on 19.9.1992 and lodged a report.

4

4. After receipt of the report, office of the bureau called two panchas. In presence of panchas, the complainant narrated the incident, which was verified by official of the bureau from the complaint. After following a due procedure, it was decided to lay a trap. The office of the bureau obtained three currency notes of Rs.50/- from the complainant. The demonstration as to phenolphthalein powder and sodium carbonate was shown to panchas and the complainant. The said solution was applied on tainted notes and kept in trouser pocket of the complainant. The instructions were given to pancha No.1 Goma Shrawan Motghare to stay with the complainant and pancha No.2 was asked to remain with other raiding party members. The complainant was further instructed not to hand over the amount unless it is demanded. Accordingly, the pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant along with panchas and raiding party members proceeded towards office of the accused at village Deulgaon. The complainant, shadow pancha, Goma Motghare, and Dayaram Maske went to the office of the Grampanchayat to meet the accused. However, the accused was not present. The accused returned back after some time and the complainant along with

5

pancha No.1 and Dayaram met the accused and the accused asked them to wait for some time. After some time, the accused came. There was communication between the accused and the complainant and it is alleged that the accused demanded the amount and the complainant handed over the said amount and gave a pre-determined signal. The accused was caught. The amount was recovered from him. Accordingly, post-trap panchanama was drawn. Pancha No.1 disclosed as to demand and acceptance. The officer of the bureau lodged report, seized relevant documents, and after obtaining a sanction, filed chargesheet against the accused.

5. During trial, the prosecution examined in all six witnesses viz. Sompal Madanlal Sabu vide Exhibit-19, the Sanctioning Authority (PW1); Haridas Kapgate vide Exhibit-23, the complainant (PW2); Goma Shrawan Motghare vide Exhibit-27, shadow pancha (PW3); Manohar Shankarrao Dhande vide Exhibit-38 (PW4), Haribhau Budhaji Uparikar vide Exhibit-41, the Trap Officer (PW5), and Mohd. Sheikh vide Exhibit-41, the Investigating Officer (PW6).

6

6. Besides the oral evidence, the prosecution placed reliance on sanction order Exhibit-21, compliant Exhibit-24, pre-trap panchanama Exhibit-28, post-trap panchanama Exhibit-29, panchanama No.3 Exhibit-30, panchanama No.4 Exhibit-31, seizure memos Exhibits-32, 33, 35, 36, 37, and 47; FIR Exhibit-39; report lodged by the officer of the bureau Exhibit-49, and Chemical Analyzer's Reports Exhibits-53 and 54.

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

8. I have heard learned counsel Shri S.D.Chande and learned Additional Public Prosecutor Shri A.G.Mate for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentence impugned in the appeal.

9. Learned counsel for the accused, pointing out the evidence of complainant PW2 Haridas Kapgate and shadow pancha PW3 Goma Motghare, submitted that from the evidence of both witnesses it reveals that there was no demand. It is the

7

complainant, who has handed over the same amount without any demand. Thus, the demand and acceptance is not proved. He also pointed out from the evidence of Sanctioning Authority PW1 Sompal Sabu that sanction accorded is not a valid sanction as there is no evidence of the Sanctioning Authority that on what basis he came to conclusion that sanction is to be accorded.

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

- 1. Criminal Appeal No.1864/2013 (Pl.Babu vs. CBI) decided by the Honourable Apex Court on 18.1.2024;**
- 2. A.Sreenivasa Reddy vs. Rakesh Sharma and anr¹;**
- 3. Anand Murlidhar Salvi vs. State of Maharashtra²;**
- 4. Jagtar Singh vs. State of Punjab³, and**
- 5. Neeraj Dutta vs. State (Govt. of NCT of Delhi)⁴.**

11. *Per contra*, learned Additional Public Prosecutor for the State supported the judgment impugned and submitted that the evidence adduced by the prosecution sufficiently shows that

¹ (2023)8 SCC 711

² 2021 SCC OnLine Bom 237

³ 2023 SCC OnLine SC 320

⁴ 2023 SCC OnLine SC 280

8

Sanctioning Authority PW1 Sompal Sabu had considered material collected during the investigation and accorded the sanction. The evidence of prosecution witnesses categorically states about the demand and acceptance. The same being the position, the appeal is devoid of merits and liable to be dismissed.

12. As question of validity of the sanction is raised by the defence, it is necessary to discuss an aspect of sanction. 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.

13. In order to prove the sanction, the prosecution examined Sanctioning Authority PW1 Sompal Sabu. As per his evidence, in year 1993, he was serving as the Deputy Director of Land Records, Amravati Region. The Investigating Officer forwarded investigating papers to him for according a sanction. He perused the said papers and accorded the sanction. During his cross examination, he admitted that a draft sanction order was received by him, but denied that he accorded the sanction on the basis of the said draft sanction order. He specifically admitted that he had

9

not mentioned specifically in the sanction order that on the basis of which documents he accorded the sanction.

14. Perusal of the sanction order reveals that its initial paragraphs describe about the prosecution case and second last paragraphs states that upon reading of papers, he is of opinion that sanction is to be accorded.

15. Learned counsel for the accused submitted that by catena of decisions, now, it is settled that the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction. An order of sanction should not be construed in a pedantic manner. Purpose for which an order of sanction is required, is to be borne in mind. In fact, the Sanctioning Authority is the best person to judge as to whether a public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

16. The Honourable Apex Court, in the case of **A.Sreenivasa Reddy vs. Rakesh Sharma and anr** *supra*, as relied by learned counsel for the accused, held that The legislature has given great

10

importance to sanction as is evident from the Scheme of the Code of Criminal Procedure. It is further held that as a noun word “sanction” means “penalty” or “punishment” provided as a means of enforcing obedience to a law and in a wider sense an authorisation of any thing and it may convey the idea of authority. As a verb ‘sanction’ is defined as meaning to assent, concur, confirm or ratify.

17. In the case of **Anand Murlidhar Salvi vs. State of Maharashtra** *supra*, as relied by learned counsel for the accused, held that Object of provisions for sanction is that the authority giving the sanction should be able to consider for itself, the evidence before it comes, to conclusion that prosecution in the circumstances be sanctioned or forbidden. Ordinarily, the Sanctioning Authority is the best person to judge, as to whether public servant concerned should receive protection under the Act, by refusing to accord the sanction for his prosecution or not.

18. The Honourable Apex Court, in the case of **Mohd. Iqbal Ahmad vs. State of Andhra Pradesh**⁵, has held that what the Court

11

has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

19. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**⁶, 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,

12

disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

13

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

21. Perusal of the evidence of Sanctioning Authority PW1 Sompal Sabu shows that he admitted that the sanction order nowhere reflects material on the basis of which he came to conclusion that sanction is to be accorded to launch prosecution against the accused.

22. Besides the issue of the sanction, the prosecution claimed that the accused demanded the amount of gratification and accepted the same. In order to prove the demand and acceptance, the prosecution mainly placed reliance of the evidence of complainant PW2 Haridas Kapgate. As per his evidence, he is the owner of gat No.67/2. Initially, it was admeasuring 10 acres and

14

divided into four parts. He met the accused and asked him to show the map. The accused shown him map and it reveals to him that gat No.99 was divided into two parts and, therefore, he requested to correct the said map, on which the accused asked him to contact him on 17.9.1992. On 17.9.1992, he met the accused along with Dayaram Maske and requested to hold spot inspection of his agricultural land for which the accused demanded Rs.300/-. After a negotiation, the demand was reduced upto Rs.150/-. The said demand was made to him in presence of Dayaram and second demand was made on 17.9.1992 as well as on the day of the trap i.e. 19.9.1992. He also narrated about the procedure carried out by the office of the bureau before laying down the trap i.e. the pre-trap panchanama and during post-trap panchanama. As to the demand, on the day of the trap, his evidence is that on 18.9.1992, at 1:30 pm, he left the office of the bureau and proceeded to Deulgaon. The accused was not present there and, therefore, they came back on 19.9.1992. Again, they have to go to Deulgaon. The complainant met the accused in presence of Dayaram and the shadow pancha. There was a communication between him and the accused and he enquired with the accused about his work and the

15

accused asked, if he had arranged for money, thereafter, the accused shown him the map wherein he found that his field was shown as divided into four parts. Thereafter, the accused asked him to pay the amount and he handed over the tainted notes to him and gave a pre-determined signal. During cross-examination, he stated that on 19.9.1992, after he met Dayaram on petrol pump, who narrated him that he had also lodged a report against the accused and the police told that they both should simultaneously approach the accused. He further admitted that the accused had undertaken the spot in question of his field and complied his work.

23. To corroborate the version of complainant PW2 Haridas Kapgate, the prosecution has also examined shadow pancha PW3 Goma Motghare.

As per the evidence of shadow pancha PW3 Goma Motghare, he was called in the office of the bureau on 19.9.1992 along with pancha No.2. In the office of the bureau, the complainant narrated the grievance and they have also verified the grievance from the complaint. He has narrated various events

16

during pre-trap panchanama. As to the demand and acceptance, his evidence is that he along with the complainant, other pancha, Dayaram, and other raiding party members proceeded to Deulgaon. They visited the office of the accused. The complainant asked about his work and the accused replied in affirmative. Thereafter, the complainant handed over the amount to the accused. During cross examination, he specially admitted that there was no demand by the accused, but it was the complainant who handed over the said amount to the accused. He also stated that he is not aware about documents or nature of documents on which his signatures are obtained.

24. Thus, the evidence of complainant PW2 Haridas Kapgate shows that after the map was shown to him, he handed over the amount to the accused, which is not corroborated by shadow pancha PW3 Goma Motghare as his evidence specifically states that the complainant enquired about his work and the accused replied in the affirmative. Thereafter, the complainant had handed over amount Rs.150/- to him. Thus, the evidence of the shadow pancha completely silent about the demand by the accused. Admittedly,

17

the prosecution has not examined Dayaram, who was present along with the complainant on 14.9.1992 as well as on 17.9.1992 and 19.9.1992. To corroborate the version of the complainant, evidence of said Dayaram was required. However, the prosecution has not examined him and no explanation is put forth for his non-examination.

25. As far as the evidence of the Investigating Officer is concerned, he has not witnessed as to the demand and acceptance. He reached after receiving the signal by complainant PW2 Haridas Kapgate. He has not verified, before laying the trap, whether the allegation of demand, as alleged by the complainant, was genuine or not.

26. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**⁷ has held that there could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any

⁷ (1979)4 SCC 526

18

better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of the complainant has been corroborated. The Honourable Apex Court held that it should corroborate to each other.

27. In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**⁸ also it is held that the statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence

19

on record cannot amount to a demand to be a constituent of the offence.

28. In the case of **M.O.Shamsudhin vs. State of Kerala**⁹, it has been held that word "accomplice" is not defined in the Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in crime. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.

29. 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 demand as well as acceptance. The evidence of complainant PW2 Haridas Kapgate and shadow pancha PW3 Goma Motghare shows that both witnesses have not stated about the demand by the accused. The

9 (1995)3 SCC 351

20

prosecution has also not examined Dayaram, who was present along with them to corroborate factum of demand. The officer of the bureau has also not verified genuineness of allegations made by the complainant.

30. It is well settled that mere possession and recovery of currency notes from accused, without proof of demand, would not establish an offence under Section 7 as well as Section 13(1)(d)(i) (ii) of the said Act.

31. The Honourable Apex Court, in the case of **Jagtar Singh vs. State of Punjab** *supra*, as relied by learned counsel for the accused, also by considering the judgment of the Constitution Bench in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)** *supra*, summarized discussion and reproduced paragraph No.74, which is as under:

“74. What emerges from the aforesaid discussion is summarised as under:

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused

21

public servant under Sections and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of Criminal Appeal No.1669 of 2009 illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the

22

public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is Criminal Appeal No.1669 of 2009 a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not.

23

Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said Criminal Appeal No.1669 of 2009 presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d) (i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.”

32. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**¹⁰ held that in order to bring home the guilt of the accused, the

¹⁰ 2022 LiveLaw (SC) 1029

24

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**¹¹ 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

11 (2002)5 SCC 86

25

for any person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression “accept”, the Honourable Apex Court observed that “accepts” means to take or receive with “consenting mind”. The ‘consent’ can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to ‘acceptance’ and, therefore, it cannot be said that as an abstract proposition of law, that without a prior demand there cannot be ‘acceptance’. The position will however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the 1947 Act is concerned. Under the said Sections, the prosecution has to prove that the accused ‘obtained’ the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his

26

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'.

33. Thus, it is well settled that to prove offences under Sections 7 and 13(1)(d) of the said Act, proof of demand is *sine qua non*. As there is no corroboration to the evidence of complainant PW2 Haridas Kapgate as to the demand and the prosecution has not examined witness Dayaram, who was all the way present with complainant on 14.9.1992, 17.9.1992, and 19.9.1991 i.e. on the day of the trap itself, foundational facts are

27

not proved by the prosecution and, therefore, presumption of fact with regard to the demand and acceptance would not attract.

34. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of Neeraj **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. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

35. In the instant case, as observed earlier that prior demand by the accused is not proved by the prosecution, a doubt is created as to the demand of the amount as the independent witness, who was present along with complainant PW2 Haridas, is not examined. There is no proof of demand and, therefore, mere

28

possession of the gratification amount is not sufficient to hold the accused guilty. The evidence of complainant PW2 Haridas Kapgate is not corroborated on the point of demand and the evidence of shadow pancha PW3 Goma Motghare shows that it was the complainant who handed over the said amount to the accused without any demand.

36. Since proof of demand is *sine qua non* for convicting accused in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt. I have already observed that principles for according the sanctions are not taken into consideration. Thus, the sanction accorded is also not valid sanction.

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

ORDER

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

(2) The judgment and order of conviction and sentence dated 25.1.2005 passed by learned Special Judge, under the Prevention

29

of Corruption Act, Bhandara, in Special Criminal Case No.6/1993 convicting and sentencing the accused is hereby quashed and set aside.

(3) The accused is acquitted of offences for which he was charged and convicted.

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!