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

CRIMINAL APPEAL NO.430 OF 2006

Sunil Vasantrao Deshpande,
aged 48 years,
occupation service,
resident of Atmnand Cooperative
Housing Society, Manpada Road,
Dombiwali (E),
Mumbai. ….. **Appellant.**

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

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

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Shri K.D.Shukla, Counsel for the Appellant.
Mrs.H.N.Prabhu, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 19/07/2024
PRONOUNCED ON : 06/08/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order of conviction and sentence dated 31.7.2006 passed by learned Judge, Special Court for ACB, Nagpur (learned Judge of the trial court) in Special Case No.3/2002 whereby he is convicted for offence punishable under

Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to undergo rigorous imprisonment for one year and to pay fine Rs.1000/-, in default, to undergo further rigorous imprisonment for three months.

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

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

The accused, at the material time, was working as Divisional Manager in Leather Industries Development Corporation Limited, Nagpur. On 12.10.2000, Tikaram Mohkar (the complainant) submitted an application for loan of Rs.18000/- as a scheme was introduced by the Government to grant 50% subsidy on total sanction loan. Accordingly, Rs.9000/- was sanctioned and the case was submitted to the Bank of India, Mowar Branch, tahsil Narkhed, district Nagpur along with sanction order and cheque Rs.9000/-. The complainant along with his brother Sanjay had been to the office of the accused on 10.4.2001 and it was alleged that at the relevant time, the accused demanded amount Rs.3000/- for issuing cheque of Rs.9000/-. The complainant again visited the office of the accused on 12.4.2001 in respect of his loan case and at the relevant time also, the accused demanded amount of Rs.3000/- and agreed to accept the same on 12.4.2001. As the complainant was not inclined to pay the amount, he approached the office of the Anti Corruption Bureau at Nagpur (the bureau) and lodged a report.

3. After receipt of the report, officers of the bureau called two panchas. In presence of panchas, the complainant narrated the incident, which was verified by panchas from the First Information Report. After following a due procedure, it was decided to conduct a raid and panchas and the complainant were called. The complainant produced 30 notes of Rs.100/- denomination. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was shown. The

said solution was applied on the tainted amount and the same was kept in shirt pocket of the complainant. The complainant and pancha No.1 Umakant Shende were instructed. As per instructions, pancha No.1 was asked to remain with the complainant and pancha No.2 was asked to remain with raiding party members. The complainant was instructed to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant and pancha No.1 went to the office of the accused and other raiding party members followed them. The complainant approached the accused and enquired about his work. As per allegation, the accused demanded the amount and the complainant handed over the same, which was accepted by the accused and kept beneath of a register on table. Thereafter, the complainant gave a signal and other party members came and caught the accused. The amount was recovered from the table. The hand wash of the accused as well as the complainant was obtained. Accordingly, post-trap panchanama was drawn. The investigating officer obtained a sanction. After completion of investigation, chargesheet was filed against the accused.

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4. During trial, the prosecution examined in all five witnesses namely Sudhakar Shyamraoji Dhote vide Exhibit-20 (PW1), the carrier; Umakant Shende vide Exhibit-24 (PW2), the Shadow Pancha; Tikaram Mohkar vide Exhibit-35 (PW3), the Complainant; Ramhari Shinde vide Exhibit-37 (PW4), the Sanctioning Authority, and Prakash Pawar vide Exhibit-43 (PW5), the Trap Officer.

5. Besides the oral evidence, the prosecution placed reliance on personal search of the complainant Exhibit-25, pre-trap panchanama Exhibit-26, seizure memos Exhibits-27, 28, and 30 map Exhibit-31, post-trap panchanama Exhibit-36, sanction order Exhibit-39, report Exhibit-45, First Information Report Exhibit-47, Chemical Analyzer’s Report Exhibit-52.

6. 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.

7. Heard learned counsel Shri K.D.Shukla for the accused and learned Additional Public Prosecutor Mrs.H.N.Prabhu for the

State. I have been taken through the entire evidence on record so also the judgment impugned in the appeal.

8. Learned counsel for the accused submitted that the judgment impugned in the appeal is not in accordance with law. There was no valid sanction as well as the prosecution failed to prove the demand and acceptance. He submitted that as a matter of fact, even the sanction to prosecute the accused, as contemplated under Section 19 of the said Act, was bad in law as it was accorded without application of mind and, therefore, the conviction of the accused stood vitiated. He further submitted that the evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende is not consistent. Independent witnesses, in whose presence the demand was made, are not examined. There is no corroboration as to the previous demand also. As far as the demand on the day of the trap is concerned, the evidence of the complainant and the Shadow Pancha is not consistent and not inspiring confidence. As such, the judgment impugned in the appeal deserves to be quashed and

set aside and the accused is to be acquitted of the charge levelled against him.

9. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi**)[1].

10. *Per contra*, learned Additional Public Prosecutor for the State submitted that no prejudice is caused to the accused due to the sanction by incompetent person. There is a bar under Section 19(3) of the said Act to raise issue regarding validity of sanction. She further submitted that the evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende is consistent as far as the demand and acceptance is concerned. Thus, the appeal is devoid of merits and liable to be dismissed.

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

1. State of Madhya Pradesh vs. Jiyalal[2]**;**

1 2023 SCC OnLine SC 280
2 (2009)15 SCC 72

2. State by Police Inspector vs. V.T.Venkateshwar Murthy[3];

3. Neeraj Dutta vs. State (Govt.of NCT of Delhi)[4].

12. Since question of validity of the sanction has been raised as a primary point, it is necessary to discuss an aspect of sanction. The sanction order was challenged on ground that the sanction was accorded without application of mind and mechanically and Sanctioning Authority PW4 Ramhari Shinde is not competent to accord the sanction.

13. In order to prove the Sanction Order, the prosecution placed reliance on the evidence of Sanctioning Authority PW4 Ramhari Shinde. As per his evidence, at the relevant time, he was working as Managing Director, Maharashtra State Charmodyog Vikas Mahamandal, Mumbai. On 29.9.2001, he received a letter from the office of the bureau and also investigation papers including complaint and panchanamas. He studied all documents and satisfied that it was a fit case to grant sanction. Accordingly, he accorded the sanction (Exhibit-39). He further deposed that the Board of Directors are appointing and removing authority of

3 AIR 2004 SC 5517
4 2023 SCC OnLine SC 280

the accused. The Board of Directors consists of three IAS Officers and a Government Nominated Chairman. He was one of directors was empowered to look after day to day affairs of the Corporation. The powers were deleted to him to accord sanctions to prosecute persons.

14. Cross examination of Sanctioning Authority PW4 Ramhari Shinde shows that the Leather Industries Development Corporation is an undertaking of the Government of Maharashtra. He admitted that he is unable to point out provisions by which powers can be deleted to him to accord sanction. There was no Resolution passed by the Board of Directors empowering him to accord sanction. He further admitted that the accused was authorized to recover dues of the Corporation. If a person has already availed benefits of the Scheme and wants to refund benefits, the accused was authorized to receive amounts and issue receipts. It further came in his cross examination that from the letter it revealed to him that complainant PW3 Tikaram Mohkar was not entitled for the benefit of the Scheme as Sanjay Mohkar, the brother of the complainant, already availed the benefits of the

said Scheme. If Sanjay Mohkar would have returned the benefits already taken or the complainant would have returned such benefits, the complainant was entitled for such benefits of the Scheme.

Thus, the cross examination of this witness shows that from the material, which came before him, it reveals that an endorsement was on the letter that the complainant was not entitled for the benefits of the Scheme as his brother had already availed the said benefits.

15. Perusal of the Sanction Order reveals that Sanctioning Authority PW4 Ramhari Shinde reproduced the entire prosecution story in second last paragraph, it is observed that upon carefully reading papers of investigation and after carefully evaluating the evidence, he satisfied that there is an adequate evidence to prosecute the accused and he accorded the sanction. The evidence of the Sanctioning Authority shows that the Board of Directors was appointing and removing authority of the accused and he is one of Directors. The Board of Directors consists of a Government Nominated Chairman. His evidence further shows

that other Directors have delegated powers in his favour to accord the sanction. On the basis of the above evidence, the prosecution claimed that it proved the Sanction Order.

16. Perusal of the Sanction Order nowhere discloses that powers were delegated in favour of Sanctioning Authority PW4 Ramhari Shinde and, therefore, he applied his mind and accorded the sanction.

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

18. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[5] has held that what the Court has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which

5 1979 AIR 677

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, 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

6 2014 Cri.L.J.930

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.

20. The Honourable Apex Court, in the case of **State of Karnataka vs. Ameerjan**[7], held that it is true that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily,

7 (2007)11 SCC 273

the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

21. The view in the case of **State of Karnataka vs. Ameerjan** *supra* is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**[8].

22. Learned Additional Public Prosecutor for the State placed reliance on the decision of **State by Police Inspector vs. V.T.Venkateshwar Murthy** *supra* wherein it is held that a combined reading of sub-sections (3) and (4) of Section 19 of the said Act makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a Court in appeal,

8 2021 SCC OnLine Bom 237

confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.

23. In the case of **State of Madhya Pradesh vs. Jiyalal** *supra* even if it was to be accepted that there has been an 'error, omission or irregularity' in the passing of the sanction order, learned Single Judge of the High Court has not made a finding which shows that a serious failure of justice had been caused to the Respondent.

24. Here, in the present case, the Sanction Order was not only challenged on the ground of incompetency but also it was challenged on the ground of non-application of mind.

25. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his own independent mind for generation of its satisfaction for sanction. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to

be borne in mind. In fact, the sanctioning authority is the best person to judge as to whether public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

26. Thus, the application of mind on the part of the sanctioning authority is imperative. The orders granting sanction must demonstrate that he/she has applied his/her mind while according sanction.

27. After going through the evidence of Sanctioning Authority PW4 Ramhari Shinde, though he stated that after reading and evaluating evidence, he accorded the sanction, the material placed before him during cross examination sufficiently shows that complainant PW3 Tikaram Mohkar was not entitled for the benefits of the Scheme as his brother Sanjay had already availed the benefits of the said Scheme as the same is revealed to him from the endorsement of the office on letter Article-P4. He further admitted that if brother of the complainant would have returned the benefits already taken or the complainant would have returned such benefits, the complainant was entitled for

such benefits of the Scheme. This vital aspect is not considered by the Sanctioning Authority while according the sanction. The evidence on record shows that powers were delegated to him. Perusal of the Sanction Order nowhere discloses powers were delegated to him. No Resolution is placed on record to show that he was delegated with powers to accord the sanction.

28. Admittedly, the grant of sanction is a serious exercise of power by the competent authority. It has to be apprised of all the relevant materials and on such materials the authority has to take a conscious decision as to whether the facts would show the commission of the offence under the relevant provisions. No doubt, elaborate discussion is not required, however, the decision making on relevant materials should be reflected in the order.

29. After going through the evidence of Sanctioning Authority PW4 Ramhari Shinde, admittedly, the Sanction Order nowhere reflects who has applied mind and which documents are considered by the sanctioning authority and on what basis the sanctioning authority came to the conclusion that the sanction is to be accorded to launch prosecution against the accused. As far

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as the sanction is concerned, no finding is recorded by learned Judge of the trial court as to validity of the sanction.

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

31. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW3 Tikaram Mohkar. As per his evidence, he received a letter from Mahatma Fule Development Corporation and, therefore, he approached the accused and the accused informed him that his loan cannot be sanctioned, however he would manage his application for sanction and demanded Rs.3000/- from him. At the relevant time, his brother accompanied him. He further deposed that on 12.4.2001 again he approached the accused along with one Amar Daryani and in his presence also the accused demanded amount Rs.3000/- and said Amar Daryani enquired the accused why the amount was required and the accused informed him that the application of the complainant was not worth for sanction and any how he would manage for the sanction and,

therefore, amount Rs.3000/- was required. He also narrated various events took place during the pre-trap panchanama. As to the demand, on the day of the trap, his evidence is that he and Shadow Pancha PW2 Umakant Shende went to the office of the accused and the accused was present. He enquired with the accused about his cheque and the accused asked about his work and, thereafter, the complainant handed over the amount to the accused. The accused accepted the same with his both hands and kept beneath of a register on table. The accused handed over the cheque to him and, thereafter, he gave a signal to the raiding party members and the accused was caught. He further stated that in the mean time, the accused went for a washroom and washed his hands. The Trap Officer caught the accused and enquired with Shadow Pancha PW2 Umakant Shende and the Shadow Pancha informed about the demand and acceptance and also informed that the amount is kept beneath of the register on the table which was seized. The hand wash of the accused and the complainant was obtained.

Thus, this evidence shows that the accused asked him whether his work was done and he handed over the amount.

32. To corroborate the version of complainant PW3 Tikaram Mohkar, the prosecution examined Shadow Pancha PW2 Umakant Shende, who testified about the fact he acted as pancha and various events took place during the pre-trap panchanama. As to the demand and acceptance, his evidence is that he and the complainant approached the accused. The complainant asked the accused whether work was done and the accused answered in affirmative. Thereafter, the accused asked whether he had brought the amount and the complainant answered in affirmative. On which, the accused told that first to give the amount. On which, the complainant handed over the amount. The accused received the amount, counted the same, and kept beneath of a register on the table. Thereafter, the accused went to washroom and washed his hands. In the mean time, the complainant gave a signal and the accused was caught. The amount was recovered from the table. The hand wash of the accused was taken which

turned purple. The hand wash of the complainant was also taken which also turned purpose. Accordingly, the amount was seized.

33. The cross of complainant PW3 Tikaram Mohkar shows that Sanjay Mohkar is his brother, who obtained the benefits under the Scheme. He admitted that the accused informed him that his brother had received loan amount, but he denied that as his brother has received the benefits, he was not entitled for the said benefits. His cross examination shows that he obtained amount Rs.3000/- from Amar Daryani in the office of the bureau and handed it over to the Trap Officer.

Thus, the evidence of the said witness shows that at the time of first demand, his brother was along with him. At the time of second demand, one Amar Daryani was along with him. His evidence further shows that he has not disclosed before the Trap Officer that when he asked the accused for the cheque and the accused asked him whether his work was done.

Thus, the evidence of the said witness as to the demand on the day of the trap is an improvement.

34. Whether the evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende is consistent on the point of demand on the day of the trap, the same is required to be taken into consideration.

35. As per the evidence of complainant PW3 Tikaram Mohkar, he asked the accused whether his work was done and the accused also asked him whether he had brought it. The cross examination shows that it is an improvement. Whereas, the evidence of Shadow Pancha PW2 Umakant Shende shows that the complainant asked the accused whether work was done and the accused answered in affirmative. Thereafter, the accused asked, whether he brought it and also asked the complainant complainant to pay the amount first.

36. The cross examination of Shadow Pancha PW2 Umakant Shende shows that due to lapse of time, he is unable to remember conversations between the accused and the Trap Officer. The cross examination further shows that he is unable to recollect whether the complaint was read over by him. As to signatures on panchanamas, he stated that his signatures were obtained

subsequently on the next day. He further stated that due to the lapse of time, he is unable to recollect conversations between the accused and complainant PW3 Tikaram Mohkar.

37. Thus, the entire cross examination of Shadow Pancha PW2 Umakant Shende shows that he is unable to recollect the conversations between the complainant and the accused. His version as to the conversation between the accused and the Trap Officer and as to signatures on documents is also contrary to the evidence of the Investigating Officer since as per the investigating officer, signatures were obtained on the same day. Whereas, as per Shadow Pancha PW2 Umakant Shende, signatures were obtained on the next day.

38. The evidence on record shows that on the day of the first demand, complainant PW3 Tikaram Mohkar was accompanied by his brother Sanjay and on the day of the subsequent demand also, the complainant was accompanied by one Amar Daryani. Admittedly, both witnesses are not examined by the prosecution.

39. It is settled law that evidence of complainant should be corroborated in material particulars.

40. In the case of **Panalal Damodar Rathi vs. State of Maharashtra**[9] *supra*, it is observed by the Honourable Apex Court that after introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money, whether this part of the evidence of the complainant has been corroborated.

41. While deciding the issue involving the offence under the said Act, a fact required to be considered is that the evidence of

9 (1979)4 SCC 526

complainant PW3 Tikaram Mohkar will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

42. In the case of **M.O.Shamsudhin vs. State of Kerala**[10]**,** 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.

43. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**[11] wherein it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

> "According to the former, which is a rule of law, an accomplice is competent to give evidence and

10 (1995)3 SCC 351
11 1963 Mh.L.J. (SC) 273

> according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

44. Thus, in catena of decisions, it is held that the complainant himself is in the nature of accomplice and his story *prima facie* suspects for which corroboration in material particulars is necessary.

45. In the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**[12], it is held that statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

46. Besides the evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende, the

12 2017 SCC ONLine SC 742

prosecution also placed reliance on the evidence which is circumstantial in nature.

47. As per the evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende, after the trap, the hand wash of the accused was obtained.

As per the evidence of Trap Officer PW5 Prakash Pawar also, the hand wash of the accused was obtained.

The Chemical Analyzer's Report Exhibit-52, also shows contents of Exhibit-123 that pink colour liquid contains phenolphthalein powder and sodium carbonate.

The evidence of the complainant and the Shadow Pancha consistently shows that after acceptance of the amount by the accused and before he was caught, the accused had been to washroom and came after washing his hands.

Trap Officer PW5 Prakash Pawar, has also admitted during his cross examination that before members of raiding party arrived at the hall, the accused went for answering nature's call.

Thus, consistent evidence is that before the accused was caught and after allegedly he accepted the amount, he had been to washroom and came after washing hands.

In the light of the above evidence, it is difficult to accept that the hand wash of the accused was contained with phenolphthalein powder and sodium carbonate.

48. Thus, the evidence, as to the hand wash and the hand wash was having contents of phenolphthalein powder and sodium carbonate, is also doubtful.

49. As observed earlier that as per the evidence of complainant PW3 Tikaram Mohkar, at the time of the first demand, his brother accompanied him and at the time of second demand, one Amar Daryani was along with him and said Amar Daryani was along with him in the office of the bureau, the evidence of Trap Officer PW5 Prakash Pawar contradicts the same who stated that only complainant approached his office. He specifically stated that it did not happen that in his presence

somebody has given amount of Rs.3000/- to the complainant and, thereafter, he has produced the same to use in the trap.

Thus, the evidence of the complainant and the investigating officer is also not consistent.

50. Before laying the trap, the Investigating Officer has not verified genuineness of allegations. His cross examination shows that he did not enquire about rules for advancing loan in case one of family members had already taken benefit of the Scheme. He did not enquire about rules in case family members who had already taken loan have to surrender the loan if from the same family other members want to borrow loan and to take advantage of the Scheme.

Thus, the enquiry was not conducted by the trap officer to verify whether allegations are truthful or not.

51. Thus, the entire evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende and Trap Officer PW5 Prakash Pawar is inconsistent with each other. The tainted amount was found on the table. The evidence of

witnesses shows that in the meantime, the accused had been to the wash room. Thus, in absence of the accused, keeping the amount beneath of the register on the table by the complainant cannot be ruled out. The entire evidence on record shows that the initial demand is not corroborated by any independent witnesses. The brother of the complainant was present at the time of initial demand who is not examined. At the time of the second demand, independent witness Amar Daryani was present and as per the evidence of the complainant, he was also present in the office of the bureau, who is also not examined. The evidence as to the demand is inconsistent as there is no corroboration by the Shadow Pancha to the evidence of the complainant. When a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. the reason being that the complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to bye-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. Whereas, burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt. 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.

52. In the instant case, upon careful consideration of the prosecution evidence, the evidence as to the demand and acceptance is not established beyond reasonable doubt. The evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende is also not consistent and corroborative. The earlier demand in presence of independent witnesses is also not established as the said witnesses are not examined.

53. As far as the applicability of presumption is concerned, learned Additional Public Prosecutor for the State placed reliance on the decision of the constitution bench of the Honourable Apex

Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi**) *supra* wherein it has been 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. It is further held that insofar 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.

54. In the instant case, as observed earlier, the prior demand by the accused is not proved by the prosecution since a doubt is

created as to the demand of the amount because independent witnesses are not examined and there is inconsistency between the evidence of complainant PW3 Tikaram Mohkar and Shadow Pancha PW2 Umakant Shende and Trap Officer PW5 Prakash Pawar. The sanction is also not valid as it was accorded without application of mind.

55. Thus, the entire exercise carried out, as far as sanction is concerned, is in secrecy and there is no evidence that powers are delegated to Sanctioning Authority PW4 Ramhari Shinde to accord the sanction. Thus, on the ground of sanction also, the prosecution in the present case fails. As such, as the appeal deserves to be allowed, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 31.7.2006 passed by learned Judge, Special Court for ACB, Nagpur in Special Case No.3/2002 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!