



Judgment

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

CRIMINAL APPEAL NO.497 OF 2005

Sanjay Ramdas Kalmegh,
aged about 30 years,
occupation : service, r/o
Pimpri-Deshmukh, taluka
Shegaon, district Buldana.

..... **Appellant.**

:: V E R S U S ::

State of Maharashtra.
through Anti Corruption
Bureau, Buldana, taluka and district
Buldana.

..... **Respondent.**

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Shri Anil Mardikar, Senior Counsel assisted by Shri Sumit Joshi
and Shri Harsh Kanjwani, Advocates for the Appellant.
Shri Nikhil Joshi, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 08/03/2024

PRONOUNCED ON : 21/03/2024

JUDGMENT

1. Being aggrieved and dissatisfied with judgment and order of conviction and sentence dated 31.8.2005 passed by learned Special Judge, Khamgaon (learned Judge of the trial court) in Special Anti Corruption Case No.01/2003, the appellant (accused) has preferred this appeal.

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2. By the said judgment 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.500/-, in default, to suffer further simple imprisonment for two months.

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

3. In brief, the prosecution case runs as follows:

The accused was serving as Patwari at Pimpri-Deshmukh, halka taluka Shegaon, district Buldana. Village Sujatpur is within jurisdiction of Pimpri-Deshmukh where agricultural land of Raghunath Tandale (the complainant) is situated. The complainant is owner of gat No.123. The father of the complainant purchased 7acres 38 gunthas agricultural land on 21.5.1948 and during his life time, the said land was partitioned between the complainant and his two brothers. The complainant

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and his brother Jagannath were allotted 1H7R land each and 1H8R was allotted to elder brother of the complainant. The share allotted to the complainant is numbered as gat No.123. The complainant in the month of August 2001, came to know that area of his agricultural land was shown less as 0.71R in 7.12 extract though it was 1H7R and, therefore, he filed an application addressing the accused on 30.8.2001 requesting correction in the 7/12 extract. The copies of the said application were forwarded to the Tahsildar and the Sub Divisional Officer. Though the complainant repeatedly requested the accused to correct the area, the accused had not taken any steps and, therefore, he made separate application before the Tahsildar, Shegaon. On the basis of the above application, the case was registered bearing No.RTS/64/Sujatpur/3/2001/2002. The case was fixed for hearing. However, the accused remained absent on all dates except 18.5.2002 and 4.6.2002 and, therefore, a show cause notice was issued against him by Naib Tahsildar asking his explanation for not attending proceedings and directed him to remain present in Tahsil Office on 19.6.2002. The said notice was handed over to the complainant to serve upon the accused and, therefore, the complainant went to his

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house on 13.6.2002 and served him the show cause notice. At that time also, the complainant requested the accused to increase the area of the agricultural land gat No.123. On the request of the complainant, the accused demanded Rs.1000/- which was reduced to Rs.500/-. The accused then asked the complainant to attend the Tahsil Office on 15.6.2002 though hearing was fixed on 19.6.2002 along with cash amount Rs.500/- and on the same day he would be supplied 7/12 extract of his land. As the complainant was not willing to pay the said amount, he approached the office of the Anti Corruption Bureau at Nagpur (the bureau) and lodged a report.

4. After receipt of the report, the office of the bureau called two panchas on 15.6.2002 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 had produced five currency notes of Rs.100/-. A demonstration as to phenolphthalein powder and sodium carbonate solution was shown. The said solution was applied on tainted notes. The said

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notes were kept in shirt pocket of the complainant. The instructions were given to pancha No.1 Sampat Zine and pancha No.2. Pancha No.1 was asked to stay along with the complainant . The complainant was instructed to hand over the amount only on demand. Accordingly, a pre-trap panchanama was drawn.

5. After the pre-trap panchanama, the complainant and pancha No.1 went to Tahsil Office. Initially, the accused was not present. He came in the Tahsil Office after some time. After arrival of the accused, the complainant had a talk with the accused. The accused took them in Tahsil Office. The accused demanded the amount and accepted the same. The corrected 7/12 extract was handed over to the complainant. After counting the amount, the accused took in the same in his pant pocket. After acceptance of the amount, the complainant gave a signal and the accused was caught. During his personal search, the tainted notes were recovered from his pant pocket. The said amount was seized. The hand wash of the accused was obtained as well as pant of the accused was also seized and examined and on the basis of which, post-trap panchanama was drawn. The officer of the bureau

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lodged report about the said incident, seized relevant documents and obtained sanction to prosecute the accused. After completion of the investigation, chargesheet was filed.

6. During the trial, the prosecution examined in all seven witnesses namely: Raghunath Tandale vide Exhibit-7 (PW1), the complainant; Sampat Zine vide Exhibit-19 (PW2), shadow pancha; Bhaskar Borle vide Exhibit-25 (PW3), Naib Tahsildar; Ulhas Patil vide Exhibit-34 (PW4), police official who registered First Information Report; Dinesh Waghmare vide Exhibit-39 (PW5), sanctioning authority; Sanjay Lahane vide Exhibit-45 (PW6), carrier, and Devidas Mahale vide Exhibit-49 (PW7), Trap Officer.

7. Besides the oral evidence, the prosecution placed reliance on application filed by the complainant dated 30.8.2001, complaint Exhibit-9, 7/12 extracts Exhibits-12 and 13, mutation entry Exhibit-18, letter to panchas Exhibit-20, pre-trap panchanama Exhibit-21, map Exhibit-23, seizure memo Exhibit-24, letter by Collector to Naib Tahsildar Exhibit-26, letter to the Sub Divisional Officer Exhibit-27, Roznama Exhibit-28, show cause

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notice Exhibit-29, order by the Tahsildar Exhibit-30, letter to Talathi Exhibit-31, First Information Report Exhibit-36.

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

9. Heard learned Senior Counsel Shri Anil Mardikar for the accused and learned Additional Public Prosecutor for the State. I have been taken through the entire evidence so also the judgment and order impugned in the appeal.

10. Learned Senior Counsel for the accused submitted that the judgment impugned is erroneous and without appropriate reasoning. The evidence adduced by the prosecution falls short to establish that the amount was accepted towards remuneration or reward. No independent witness is examined as to first demand. A possibility of the complainant thrusting the amount in the pocket of the accused cannot be ruled out. In fact, the amount was handed over for depositing the same for measurement. The sanction to prosecute the accused as contemplated under Section

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19 of the said Act is bad in law and, therefore, the conviction and sentence imposed upon the accused stand vitiated on that ground itself. The defence of the accused is supported by the cross examination. Thus, presumption is rebutted by the accused on preponderance of probability.

11. In support of his contentions, learned Senior Counsel placed reliance on **Bismillakha s/o Salarkha Pathan vs. State of Maharashtra¹**, and **Soundarajan vs. State rep. by the Inspector of Police Vigilance Anti Corruption Dindigul²**.

12. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed contentions of learned Senior Counsel for the accused. He submitted that document on record particularly the application filed by the complainant which is forwarded to the Tahsildar for correcting the area of the agricultural land owned by the complainant, shows the Tahsildar directed the accused to make an enquiry and submit report. The Tahsildar registered case bearing RTS No.64/Sujatpur/3/2001-2002 and issued show cause notice to the accused. He submitted that the accused demanded

¹ 2003(5) Mh.J.J. 243

² 2023 SCC OnLine SC 424

money in presence of pancha No.1 and accepted the money which was recovered from the accused which shows involvement of the accused. There is no reason for the accused to accept the amount for depositing the same towards measurement as separate office is situated for accepting fees towards measurement. The defence of the accused is not supported by the Naib Tahsildar. Thus, looking to circumstances and the evidence, which is consistent, no interference is called for in the judgment impugned in the appeal.

13. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on decisions viz. **State of M.P. vs. Jiyalal³**, **State by Police Inspector vs. T.Venkatesh Murthy⁴**; and **Criminal Appeal No.1864/2013** (PI.Babu vs. CBI) decided by the Honourable Apex Court on 18.1.2024.

14. As learned Senior Counsel for the accused raised an issue regarding validity of sanction, it is, therefore, a primary point which is required to be discussed. The sanction order was challenged on ground that it was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

3 AIR 2010 SC 1451

4 AIR 2004 SC 5117

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15. 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.

16. In view of the well settled principle 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 whether a public servant concerned should receive protection under the said Act by refusing to accord sanction for prosecution or not. Thus, 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.

17. To prove the sanction, the prosecution examined Sanctioning Authority PW5 Dinesh Waghmare serving as Collector, Buldana. As per his evidence, he is appointing and disciplinary authority of cadre of Talathis. The Deputy Superintendent of Police, Buldana (ACB) had sent a proposal for according the sanction along with documents of crime No.3112/2002 and all documents were scrutinized by him. On scrutinizing documents,

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he found that the accused who is public servant accepted bribe amount and, therefore, he accorded the sanction which is at Exhibit-40. He specifically stated that before according the sanction, he had gone through complaint of complainant PW1 Raghunath Tandale, the proceeding in the court of the Tahsildar for correction of area, 7/12 extract of land of the complainant, and all relevant record and, thereafter, he found the accused being public servant has misused his post by dishonestly taking bribe from the complainant while discharging official duty. From his cross examination, it came on record that entry of record of right was by the complainant along with his application. It was found that 45R of land of the complainant was acquired by the Government for canal purpose and mutation to that effect was sanctioned on 7.8.1975.

18. It also came on record that separate department was available for measurement of the agricultural land. Thus, an attempt was made to show that as some of lands was already acquired by the Government and only 62R of land was in the name of the complainant, no question arises of correcting the record.

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The amount was handed over towards fees of measurement of the land.

19. Perusal of the sanction order shows that in second last para it is specifically mentioned that upon carefully reading case of investigation papers into Crime No.3112/2002 and evaluating the evidence on record, I am satisfied that there is an adequate evidence to prosecute the accused for offences constituted by acts, as mentioned above.

20. Thus, Sanctioning Authority PW5 Dinesh Waghmare, while according the sanction, considered not only police papers but also the record including the application filed by complainant PW1 Raghunath Tandale, 7/12 extract, case registered before the Tahsildar, investigation papers, facts of trap, successful completion of trap, demand by the accused, and seizure of currencies.

21. 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. The sanction should be given in

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respect of facts constituting offence charged equally which applies to the sanction under Sections 6 and 19 of the said Act.

22. In the present case, all facts constituting offence of misconduct with which the accused was charged were placed before Sanctioning Authority PW5 Dinesh Waghmare. The sanctioning authority considered material placed before him. The sanction speaks for itself and satisfaction of the sanctioning authority is apparent.

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

24. 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

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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.

25. In the case of **State of M.P. vs. Jiyalal** *supra*, as relied by learned Additional Public Prosecutor for the State, the Honourable Apex Court held that even if it were to be accepted that there has been an 'error, omission or irregularity' in the passing of the sanction order, unless it is shown that serious failure of justice been caused to the respondent, the conviction cannot be set aside. It is further held that the The sanction order was clearly passed in discharge of routine official functions and hence there is a presumption that the same was done in a *bona fide* manner. It was of course open to the Respondent to question the genuineness or validity of the sanction order before the Special Judge but there was no requirement for the District Magistrate to be examined as a witness by the prosecution.

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26. In the case of **State by Police Inspector vs. T.Venkatesh Murthy** *supra* , also, as relied upon by learned Additional Public Prosecutor for the State, the Honourable Apex Court held that plea about defective sanction was raised at belated stage and, therefore, discharge is not proper. While discussing the expression failure of justice, it is held that expression “failure of justice” would appear sometimes as an etymological chameleon. The criminal Court, particularly the superior Court should make a close examination to ascertain whether there was really a failure of justice or it is only a camouflage.

27. By applying these principles, in the instant case, the evidence of Sanctioning Authority PW5 Dinesh Waghmare sufficiently shows that he considered not only investigating papers but also various documents, revenue record, and, thereafter, after application of mind, accorded the sanction.

28. Perusal of the sanction order as well as the evidence of Sanctioning Authority PW5 Dinesh Waghmare shows that he had scrutinized documents forwarded to him as regards to Crime No.3112/2002 and also the proceeding pending before the

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Tahsildar, 7/12 extract, and all relevant record and, thereafter, accorded the sanction and, therefore, learned Senior Counsel for the accused submitted that as the sanction is not valid, the same is not sustainable and is liable to be discarded.

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

30. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Raghunath Tandale, shadow pancha PW2 Sampat Zine, and Naib Tahsildar PW3 Bhaskar Borle.

31. 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 PW1 Raghunath Tandale. The evidence of the complainant shows that he is an agriculturist and by way of partition, he became owner of gat No.123 admeasuring 1H7R. In the year 2001, he came to know that the area of his agricultural field was reduced and, therefore,

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he filed a written application addressing to the Talathi for making correction. He had also forwarded copies of the same to the Tahsildar and the Sub Divisional Officer, Khamgaon. The accused has demanded from him mutation and bhumi abhilekh which are supplied by him. As no action was taken on his application, he again made a similar application before the Tahsildar, Shegaon. On the basis of the said application, the proceeding was registered as No.RTS/64/Sujatpur/3/2001/2002. Though he attended the said proceeding, the accused failed to attend the said proceeding and, therefore, show cause notice was issued to him asking him to explain why he was not present on the date of hearing i.e. 19.6.2002. The Naib Tahsildar handed over him show cause notice to serve the accused. He accordingly visited the house of the accused to serve the notice. At the relevant time, he requested the accused to rectify the area of his land gat No.123 and the accused demanded him Rs.1000/- and after negotiation, the said amount was reduced to Rs.500/- and the accused called him in the Tahsil Office with amount Rs.500/- on 15.6.2002 and, therefore, the complainant approached the office of the bureau on 14.6.2002. After receipt of the complaint, it was decided to conduct a trap on

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15.6.2002. After following a due procedure, the complainant along with the shadow pancha was present in the Tahsil Office on 15.6.2002. The accused also came in the Tahsil Office. They both approached the accused. The accused took them in the office of the Naib Tahsildar. The accused shown the concerned record to the Naib Tahsildar and the Naib Tahsildar wrote his remark on the record and, thereafter, they came out and the accused took them in one hotel wherein the complainant asked about 7/12 extract. The accused took them in another hotel wherein the accused prepared 7/12 extract on the basis of original record and handed over to the complainant. Area of the land of the complainant was corrected and, thereafter, the accused demanded from him Rs.500/- which was handed over to the accused by the complainant. After accepting the amount, the complainant gave a signal and the accused was caught red handed and the amount was recovered from him.

32. To corroborate the version of complainant PW1 Raghunath Tandale, the prosecution examined Shadow Pancha PW2 Sampat Zine who has also narrated that he along with the another pancha

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was called in the office of the bureau. In their presence, the complainant narrated his grievance and they verified the same and, thereafter, it was decided to conduct a raid. He had also narrated the entire procedure carried out by official of the bureau during the pre-trap and post-trap panchanamas. As far as the demand is concerned, his evidence shows that he along with the complainant went the Tahsil Office. Initially, the accused was not present in the office. The accused came in the office after 10-15 minutes. The complainant shown him the accused and, thereafter, the complainant met the accused and they all went in the chamber of the Naib Tahsildar. The accused produced some register before the Naib Tahsildar. The Naib Tahsildar produced register and made signature and then they came out of the chamber. The accused took them in a hotel whereat he handed over corrected 7/12 extract and, thereafter, demanded the amount and accepted the same. The complainant gave a pre-determined signal and the accused was caught. The amount was recovered from the accused. The hand wash of the accused was obtained which shows that the colour of the solution was changed. As the accused has kept the bribe amount in his pant pocket, the pant of the accused was

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seized and portion of the pocket was dipped into the solution and the colour was changed. Accordingly, post-trap panchanama was drawn.

33. Regarding the grievance of complainant PW1 Raghunath Tandale and corroborate his version, the prosecution has also examined Naib Tahsildar PW3 Bhaskar Borle. Naib Tahsildar PW3 Bhaskar Borle corroborated contentions of the complainant that the complainant had filed an application before the Collector making a grievance that the area of his agricultural land was reduced. The Collector forwarded the said complaint to the Tahsil Office for an enquiry. Similarly, letter was issued by the Sub Divisional Officer, Khamgaon on 4.6.2002. On the basis of which, the proceeding was registered in his office numbered as RTS/64/Sujatpur/3/2001/2002. Roznama was also produced on record of the said proceeding which shows that as the accused has attended the proceeding only 18.5.2002 and 4.6.2002 and on rest of dates he remained absent and, therefore, show cause notice was issued to the complainant and the notice was handed over to the complainant to serve the accused. The evidence further shows that

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earlier proceeding was fixed on 19.6.2002, but as the complainant and the accused were present in the office on 15.6.2002, the proceeding was taken on board and Roznama was rectified. The Naib Tahsildar perused the entire record on 15.6.2002 and sanctioned the mutation bearing No.464 and the area of the land of the complainant was rectified.

34. Thus, the evidence of all these three witnesses shows that there was a grievance of complainant PW1 Raghunath Tandale that area of his land gat No.123 was reduced and, therefore, he filed an application not only to the Talathi but also copies of the same are forwarded to the Tahsildar, Collector and Sub Divisional Officer, Khamgaon. In view of the direction of the Sub Divisional Officer and the Collector, the proceeding was registered and the notice was issued to the accused. After issuing of the notice, the accused attended only two dates and subsequently remained absent and, therefore, show cause notice was issued. The application filed by the complainant is at Exhibit-8, letter by the Collector to the Tahsildar is at Exhibit-26, letter by Sub Divisional Officer to the Tahsildar is at Exhibit-27, Roznama recorded by the Naib Tahsildar

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in proceeding No.RTS/64/Sujatpur/3/2001/2002 is at Exhibit-28, and show cause notice is at Exhibit-29. The letter issued by the Tahsildar to Talathi to hold an enquiry is at Exhibits-30 and 31, report of the Talathi is at Exhibit-32. During the cross examination, the defence of the accused is that area of the land of the complainant was reduced as 45R land was acquired by the Government which is admitted by the complainant as well as Naib Tahsildar. Both witnesses have admitted that cultivation area in old 7/12 extract was shown to be 62R and measurement of the land was not carried out prior to the date of incident i.e. on 15.6.2000. The defence of the accused was that amount Rs.500/- was handed over to him by the complainant for depositing the same for measurement of the land which is denied by the complainant. It came in the cross examination that separate office of land record is available at Shegaon and the work of measurement of the land lies with the said office. Besides the oral evidence of the complainant, 7/12 extracts are also filed on record which are at Exhibits-12 to 14.

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35. As far as the evidence of Shadow Pancha PW2 Sampat Zine is concerned, he has supported the prosecution case and during cross examination an attempt was made to shatter his evidence, but nothing fruitful came on record to falsify his version. He specifically stated that there was no talk between the accused and the complainant in hotel situated in the tahsil premises regarding payment of measurement charges. He stated that even thereafter there were no talks in his presence between the accused and the complainant pertaining to payment of measurement of charges. Thus, the defence of the accused appears to be that he has accepted the amount towards charges of measurement. On the contrary, cross examination shows that pancha No.2 Chinhole searched the accused and took out the cash amount from his pant pocket by his right hand. It also shows that finger of right hand of the accused was dipped and the colour of solution was changed. Thus, the cross examination also confirms the fact that the amount was recovered from the accused and regarding the acceptance, the hand wash of the accused was obtained which shows that the solution has changed its colour.

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36. In cross examination, Naib Tahsildar PW3 Bhaskar Borle admitted that duties and responsibilities of revenue officers and survey officers are given in Sections 7 and 8 of the Maharashtra Land Revenue Code. Surveyors are appointed by the Government of Maharashtra. The survey officers have to fix boundary marks. It also shows that on the day of "Lokshahi Din" complainant PW1 Raghunath Tandale has made a complaint that area of his land was reduced and the enquiry was conducted about the same. PW3 also stated that he had not confirmed whether the acquired land 44R was still in possession of the complainant as on 15.6.2002. He also admitted that 36R land was added in gat No.123 by virtue of his order dated 15.6.2002. Corrected 7/12 extract is also seized during investigation which shows that it was corrected on 15.6.2002. Thus, the evidence of the complainant is corroborated by Shadow Pancha PW2 Sampat Zine and Naib Tahsildar PW3 Bhaskar Borle, but it is also corroborated by the documentary evidence as Exhibits-15 i.e. 7/12 extracts show it was corrected on 15.6.2002.

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37. It is submitted by learned Additional Public Prosecutor for the State that the evidence on record, that the application filed by the complainant for correcting 7/12 extract, was addressed to the accused. The copies of the same are forwarded to the Collector and the Sub Divisional Officer, Khamgaon. On the basis of direction given by the Collector and the Sub Divisional Officer, vide their letters dated 5.3.2002 and 4.6.2002, the Naib Tahsildar registered the proceeding and report of the Talathi was called. As the Talathi has not attended the proceeding, show cause notice was issued to the Talathi which is at Exhibit-29. The evidence of complainant PW1 Raghunath Tandale and Naib Tahsildar PW3 Bhaskar Borle shows that the show cause notice was handed over to the complainant to serve upon the Talathi i.e. the accused and, therefore, the complainant had been to the house of the accused and requested the accused to correct the record on which the accused had demanded the amount. As per instructions of the accused, the complainant remained present in the Tahsil Office on 15.6.2002. Prior to that, he approached the office of the bureau and the trap was arranged. On that day, the area of the land of the complainant was corrected by the Naib Tahsildar. The evidence on

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this aspect of the complainant, shadow pancha, and the Naib Tahsildar is consistent and corroborating. The amount is recovered from the accused. Not only the hand wash but also the pant pocket of the accused was examined by dipping into the solution and it changed the colour. Thus, the evidence of the complainant is corroborated by the circumstantial as well as the direct evidence.

38. Learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**⁵ 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.

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He submitted that the in view of the evidence on record, the presumption is attracted and the prosecution proved the case against the accused beyond reasonable doubt. There is no rebuttal of the presumption by the accused. The defence of the accused that he accepted the amount towards fees of measurement is not substantiated either by evidence or on the basis of cross examination of witnesses.

39. Though learned Senior Counsel for the accused vehemently submitted that the amount was accepted towards the measurement fees, the same is not supported either by any of witnesses or by any circumstantial evidence. In fact, the evidence on record shows that the accused was not at all concerned with the office of the land record where surveyors are appointed to measure lands.

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

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41. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**⁶ referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**⁷ held that the proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the said Act. The failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offences under Sections 7 and 13 of the said Act would not entail his conviction thereunder. The Honourable Apex Court has reproduced paragraph No.23 of its decision in the case of **P.Satyanarayana Murthy** *supra*, which reads thus:

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

⁶ 2022 LiveLaw (SC) 192

⁷ (2015)10 SCC 152

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

42. 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

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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 acceptance 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.

43. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)** *supra* held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the

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nature of oral evidence or documentary evidence. The Honourable Apex Court, while discussing expression “accept”, referred the judgment in the case of **Subhash Parbat Sonvane vs. State of Gujarat**⁸ observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under Section 13(1)(d)(i). In Section and 13(1) and (b) of the said Act, the Legislature has specifically used the words 'accepts' or 'obtains'. As against this, there is departure in the language used in clause (1)(d) of Section 13 and it has omitted the word 'accepts' and has emphasized the word 'obtains'. In sub clauses (i) and (ii) (iii) of Section 13(1)(d), the emphasize is on the word “obtains”. Therefore, there must be evidence on record that accused 'obtained' for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression “accept”, the Honourable Apex Court observed that “accepts” means to take or receive with

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“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 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

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(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'.

44. In the light of the above well settled legal position, if the evidence adduced is appreciated, there is no dispute as to the fact that the prosecution is under obligation to prove the demand as well as the acceptance. The evidence of complainant PW1 Raghunath Tandale and shadow pancha PW2 Sampat Zine is consistent and corroborative to each other on the demand and acceptance. It is also corroborated by Naib Tahsildar PW3 Bhaskar Borle. Though all above three witnesses are examined at length, the said consistent evidence is not shattered. On the acceptance, the evidence of the investigating officer also supports the case. On the question of reason for the demand and payment of bribe, the evidence of the complainant is also corroborated by the

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documentary evidence and Shadow Pancha PW2 Sampat Zine regarding the subsequent demand. As far as the work with the accused is concerned, the evidence of Naib Tahsildar PW3 Bhaskar Borle and documents showing enquiry was forwarded to the Naib Tahsildar and during enquiry the Naib Tahsildar issued show cause notice to the accused show his connection with the work of complainant PW1 Raghunath Tandale.

45. 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.

46. In the case at hand, condition precedent to draw such a legal presumption is that the accused demanded and accepted the amount which has been proved and established by adducing the evidence on record. Thus, presumption under Section 20 of the said Act becomes applicable for offence committed by the accused

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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.

47. Further, recovery of money from the accused and the scientific evidence in the nature of Chemical Analyzer's Report show that the solution has changed its colour after hands of the accused and portion of his pant were dipped into the said solution. The defence of the accused is not probable and acceptable.

48. After appreciating the evidence, in the light of the explanation, it shows that the amount was an illegal gratification other than legal remuneration. It is true that the accused is not required to establish his defence beyond reasonable doubt, but on the basis of preponderance of probabilities. However, the court cannot be oblivious to the statutory presumption permissible to be raised.

49. In this view of the matter, once undue advantage other than legal remuneration is proved to have been accepted,

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presumption is attracted and the accused has not rebutted the said presumption.

50. 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.

51. 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 same. The sanction granted is also after application of mind. The demand and acceptance are proved which is *sine qua non* for establishing the charge.

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

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!