



Judgment

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

CRIMINAL APPEAL NO.503 OF 2005

Mahadeo s/o Ukanda Raut, aged about 25,
occupation service, resident of Malegaon,
taluka and P.S.Malegaon, district Washim. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
(through Police Station Officer Police
Station Malegaon and through Anti-Corruption
Bureau, Akola). **Respondent.**

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Shri Anil S.Mardikar, Senior Counsel assisted by Shri Digvijay
Singh, Advocate for the Appellant.
Mrs.Sneha Dhote, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 24/04/2024
PRONOUNCED ON : 09/05/2024

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order of conviction and sentence dated 12.9.2005 passed by learned Special Judge, Washim (learned Judge of the trial court) in Special Case No.4/2003 whereby the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced

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to suffer rigorous imprisonment for three years and to pay fine Rs.5000/-, in default, to suffer simple imprisonment for three months.

The accused is further convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and sentenced to suffer rigorous imprisonment for five years and to pay fine Rs.5000/-, in default, to suffer further simple imprisonment for five months.

Learned Judge of the trial court directed that all sentences shall run concurrently.

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

The accused was working as clerk at Malegaon Grampanchayat. Ramchandra Babuji Borade (complainant), was owner of plot of one guntha in Gadge Baba Colony at Malegaon, district Washim, which was purchased by him in view of sale deed. However, it was not mutated in his name. He wanted to mutate his name as he was intending to obtain loan for purchasing an auto-rickshaw and, therefore, he approached the office of the

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Grampanchayat on 16.7.2002 and met the accused. The accused asked him to file an application along with documents. The accused further asked him to pay Rs.1210/- towards tax. The complainant informed him that tax is only Rs.110/- and, therefore, he has not brought the said amount. However, the accused insisted him to pay the said amount. As the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau (bureau) at Akola and lodged a report.

3. On receipt of the report, officer of the bureau called two panchas in the office and decided to conduct a raid. In presence of panchas, the complainant narrated the incident, which was verified by panchas. A demonstration as to phenolphthalein powder and sodium carbonate was shown to the complainant and panchas. Necessary instructions were given to the complainant and panchas. The complainant produced seven currencies of Rs.100/- and one currency of Rs.101/-. The solution of phenolphthalein powder and sodium carbonate was applied on the tainted notes. The said notes were kept in shirt pocket of the complainant. Accordingly, pre-trap panchanama was drawn.

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4. After the pre-trap panchanama, on 18.7.2002, pancha witnesses, the complainant, and official of the bureau proceed to village Malegaon. As per instructions, the complainant along with pancha No.1 Rajendra Saraf proceeded towards the office of the accused. After a communication, the accused demanded the amount of tax as well as bribe. Thereafter, the accused gave a signal to the other raiding party members. The accused was caught. Relevant papers were seized. After obtaining a necessary sanction, chargesheet was filed against the accused.

5. During trial, viz. Ramchandra Babuji Borade vide Exhibit-18, the complainant (PW1); Rajendra Vishwanath Saraf vide Exhibit-28, shadow pancha (PW2); Baban Namdeo Chopade vide Exhibit-39, the Sanctioning Authority (PW3); Dinkar Kesharao Sarnaik vide Exhibit-44, and Yadeorao Damu Patil vide Exhibit-47, the Trap Officer (PW5).

6. The accused has also examined two defence witnesses Chandrakant Vishvanath Ladokar vide Exhibit-66 (DW1) and Chandrashekar Prabhakar Ansingkar vide Exhibit-67 (DW2).

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7. Besides the oral evidence, the prosecution further relied upon application filed by the complainant Exhibit-19, sale deed Exhibit-20, complaint Exhibit-21, seizure memo Exhibit-23, pre-trap panchanama Exhibit-22, Chemical Analyzer's Report Exhibit-24, tax receipt Exhibit-25, seizure memos Exhibits-29, 30, 32, 33, and 35, post panchanama Exhibit-36, daft sanction order Exhibit-41, Grampanchayat Resolution Exhibit-42, Grampanchayat Resolution Exhibit-43, map Exhibit-51.

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 S.Mardikar for the accused and learned Additional Public Prosecutor Mrs.Sneha Dhote for the State. I have been taken through the entire evidence so also the judgment impugned in the appeal.

10. Learned Senior Counsel for the accused submitted that the judgment impugned is erroneous and that too without appropriate reasoning. The evidence adduced by the prosecution falls short to

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establish that the amount accepted was towards remuneration or reward. No independent witness is examined to prove the demand. The acceptance of the amount by the accused in pursuance of the demand is not proved. The proof of demand is *sine qua non* to establish the charge. The evidence of defence witnesses shows that the accused has not demanded any amount. It was complainant PW1 Ramchandra Borade who handed over the said amount to the accused. The sanction to prosecute the accused as contemplated under Section 19 of the said Act is bad in law and, therefore, conviction and sentence imposed upon the accused stand vitiated on that ground itself. The defence of the accused is supported by cross examination of prosecution as well as defence witnesses. The presumption is rebutted by the accused on the basis of preponderance of probability. In view of the same, the appeal deserves to be allowed.

11. In support of his contentions, learned Senior Counsel placed reliance on catena of decisions. The relevant decisions would be referred at relevant time of discussion in the appeal.

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12. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed contentions made by learned Senior Counsel for the accused and submitted that the evidence of complainant PW1 Ramchandra Borade as to the demand and acceptance is duly corroborated by Shadow Pancha PW2 Rajendra Saraf. The evidence further shows that the accused has demanded the amount and accepted the same. The work of the complainant pending with the accused is sufficiently proved by the prosecution. The sanction accorded is also as per the law. In view of the same, the appeal is devoid of merits and liable to be dismissed.

13. Since question of validity of the sanction has been raised as a primary point by learned counsel for the accused persons, it is necessary to discuss an aspect of sanction. The sanction order was challenged on ground that it was accorded without application of mind and mechanically and, therefore, it is not valid sanction.

14. In view of well settled principles of law, the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. A sanction order

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should speak for itself. It is well settled that sanction order should not be so elaborate like an order of court containing a detailed reasons, but it should be after application of mind. Ultimately, an object of grant of sanction should be able to consider evidence and material before it and the Sanctioning Authority shall come to conclusion that whether the prosecution in circumstances be permitted or forbidden.

15. To prove the sanction, the prosecution examined Sanctioning Authority PW3 Baban Chopade, whose evidence shows that he went in the office of Grampanchayat on receiving message of arrival of officials of the bureau. He received the letter from them and they asked for supply of Resolution of the Grampanchayat. In response to that letter, he accorded the sanction for prosecution against the accused.

The cross examination of this witness shows that the Village Development Officer is authorized to recover the tax. The accused or any other employees is not vested with such rights. He stated that a draft sanction order was sent. He further admitted that Resolution was passed in earlier proceeding by which the

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Grampanchayat decided not to accord the sanction. He further admitted that any employees can be removed or appointed by any members of the Grampanchayat.

16. Perusal of the sanction order shows that on the basis of the Resolution passed by the Grampanchayat, the sanction was accorded by Sanctioning Authority PW3 Baban Chopade. He specifically mentioned in the last paragraph that he is the competent authority to remove the accused with previous approval of general body of the Grampanchayat and he accorded the sanction to prosecute the accused. It further shows that on careful perusal of case papers of Crime No.3039/2002, registered with the Malegaon Police Station, and upon thorough consideration of the evidence brought to light during the course of investigation, he is fully satisfied that sufficient evidence is available to launch a prosecution in the competent court of law and accorded the sanction.

17. Sanctioning Authority PW3 Baban Chopade, while according the sanction, considered various documents of investigating papers and, thereafter, accorded the sanction. Recital

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of the sanction order itself shows that upon thorough consideration of the evidence brought to light during the course of investigation, he is fully satisfied that sufficient evidence is available to launch a prosecution and he accorded the sanction. The Resolution passed by the General Body of the Grampanchayat also shows that after verifying investigating papers and examining the same in detail, and after informing Members of the General Body of the Grampanchayat about the incident, the General Body of the Grampanchayat accorded the sanction. The contents of the said Resolution is reproduced for reference, as under:

दि.४/३/०३ ला श्री. ब. ना. चोपडे हयाचे अध्यक्षतेखाली मिटींग घेतली असता त्यामध्ये श्री. महादेव उंकाडा राउत हयांनी दि. १८/७/०२ रोजी मालेगांव येथे ६००/- रू. ची रक्कम स्वतःचा आर्थिक लाभ शासकीय वेतन अतिरिक्त घेण्यासाठी फिर्यादी कडून भ्रष्ट व गैरकायदेशीर मार्गाने व लोकसेवक या पदाचा दुरुउपयोग करून स्विकारली व लाचलुचपत प्रतिबंध कायदा १९८८ च्या कलम १३(२) सह कलम १३(१) या कलमानुसार दंडनीय असलेला अपराध केला ज्या अर्थी, लाचलुचपत प्रतिबंध खात्याच्या अकोला येथील अधिका-यांनी पो.ठाणे मालेगांव गु.र.नं. ३०३९/२००२ या गुन्ह्याच्या बारकाईने केलेल्या तपासात वर उघड झालेली बाबी काळजीपूर्वक लक्षात घेतल्यानंतर आणि ग्रामपंचायतीच्या सर्वसाधारण सभेत वरिल माहिती दिल्यानंतर सर्व साधारण सभेने घेतलेला ठराव क्र. २१ दि ४/३/०३ नुसार लाचलुचपत प्रतिबंधक कायदा १९८८ च्या कलम १३(१)(क) नुसार श्री महादेव उंकाडा राउत हयांनी वर उल्लेख

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केलेल्या अपराधाबद्दल दंडनीय असलेल्या कायद्या नुसार त्यांचे विरुद्ध न्यायालयात अभियोग दाखल करण्यास आवश्यक असलेली संमती प्रदान करण्यास मान्यता दिली आहे. ठराव सर्वानुमते मंजूर करण्यात आला.

18. It is well settled that sanction is solemn and sacrosanct act. It is also well settled that the law requires no sanction to be given in particular form. The sanction should be given in respect of facts constituting offence charged equally which applies to the sanction under Section 19 of the said Act.

19. In the present case, not only relevant papers are perused by Sanctioning Authority PW3 Baban Chopade but also Members of the General Body of the Grampanchayat were made aware about the incident, investigation and evidence collected during investigation and, thereafter, Resolution was passed.

20. Admittedly, earlier Resolution was passed by the Grampanchayat, which is at Exhibit-43. By that resolution, granting of sanction was refused by the General Body of the Grampanchayat. Perusal of Exhibit-43 shows that no reasons are assigned in the said Resolution for refusing the sanction and,

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therefore, again the officer of the bureau requested for sanction and it was accorded. The earlier Resolution nowhere states that on what basis the Grampanchayat came to conclusion that the case for granting sanction is not made out. On the contrary, the subsequent Resolution specifically states that on perusing of investigating papers and making aware of Members of the General Body of the Grampanchayat *prima facie* case is made out to accord the sanction and the sanction is accorded.

21. As observed earlier, that the sanction order is not required to be passed as of a court order, the issue of sanction should not be put at such pedestal as would make it impossible for the prosecution and the court to prosecute an accused. The object and purpose of grant of sanction and protection contemplated thereby does not mean that technical and trivial objections to legality and validity of sanction to be entertained. When all relevant materials placed before the sanctioning 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

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lead to conclusion that there was non-application of mind by the sanctioning authority.

22. By applying the above well settled principles to the instant case, the evidence of Sanctioning Authority PW3 Baban Chopade sufficiently shows that the General Body of the Grampanchayat has not only considered investigation papers, but also applied its mind and, thereafter, accorded the sanction.

23. Thus, the sanction is accorded after application of mind and, therefore, the contention of learned Senior Counsel for the accused, that the sanction is bad in law, is not sustainable and is liable to be discarded.

24. Besides the sanction order, the prosecution claimed that the accused demanded gratification amount and accepted the same. In order to prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Ramchandra Borade and Shadow Pancha PW2 Rajendra Saraf. The evidence of the complainant shows that as he was owner of the plot and desiring to mutate his name, he approached

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the accused for mutating his name. The accused asked him to deposit the amount of tax of Rs.1210/- and also asked him to file an application. He filed an application. On the next day of filing of the application, he met the accused and the accused told him that he will get receipt of Rs.110/- and amount Rs.600/- requires to be paid to one Puri who is officer and, therefore, he approached the office of the bureau. His application addressed to the Saranch is dated 16.7.2002 and the complaint is dated 18.7.2002. He narrated about events happened during the pre trap panchanama. As far as demand and acceptance is concerned, his evidence is to the extent that on 18.7.2002, he along with pancha No.1, approached the accused in his office. He asked the accused about his work. The accused asked him to take receipt from Gram Sewak and pay the amount to him. Accordingly, he went to the Gram Sewak and he was asked to pay the amount Rs.600 /- to Puri. He was asked to hand over the said amount to the accused. Accordingly, he handed over the said amount to the accused. The accused accepted the same and kept in shirt pocket. Thereafter, he gave signal and the accused was caught. The officials of the bureau prepared the solution and he was asked to dip right hand

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fingers. The solution changed its colour. It was filled in a bottle and the bottle was sealed. Accordingly, right side pocket of his pajama was also dipped in the solution and the solution was sealed. During his cross examination, he has left his loyalty towards the prosecution and stated that the amount was accepted by the accused for one Puri. He further admitted that there was no demand from the accused, but it was Puri who asked him to pay the amount to the accused. This witness is cross examined by learned APP also. During cross examination by learned APP, he admitted that that the accused has counted the amount and kept in shirt pocket. Thus, during cross examination, this witness completely left loyalty towards the prosecution and came with a case that the amount was demanded by Puri and asked to hand over the same to the accused and, therefore, he handed over the said amount to the accused.

25. The prosecution, in the light of the evidence of complainant PW1 Ramchandra Borade, strongly placed reliance on the evidence of Shadow Pancha PW2 Rajendra Saraf, whose evidence shows that he was called to act as pancha. Accordingly,

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he visited the office of the bureau. The complainant was introduced to him and he narrated the grievance which was verified by him by reading the complaint. He narrated about the events which took place during the pre-trap panchanama. After the pre-trap panchanama, he went along with the complainant in the Grampanchayat office. His evidence shows that when they reached at the office of the accused, the accused asked them to sit and, thereafter, the complainant paid Rs.110/- and the accused asked about remaining amount and the complainant replied in affirmative. The complainant had taken out bribe amount from his pajama pocket of his right side and handed over the same to the accused. The accused accepted and counted it and kept in his shirt pocket. Thereafter, on giving signal, the accused was caught. The fingers of the accused were dipped in the solution and the solution was collected in a bottle and the bottle was seized.

26. Thus, as per the prosecution, though complainant PW1 Ramchandra Borade left the loyalty, the evidence of Shadow Pancha PW2 Rajendra Saraf shows that there was a demand and in pursuance of the demand, the amount was accepted by the

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accused. Though this witness is cross examined at length, as far as the evidence as to the demand and acceptance is concerned, his evidence is not shattered. The cross examination also shows that on demand by the accused, the amount was paid by the complainant to the accused. As far as presence of other witnesses at the time of incident is concerned, it is not supported by the shadow pancha.

27. Admittedly, Trap Officer PW5 Yadeorao Patil was not witness on demand and acceptance, but his evidence shows that after receipt of the signal, he immediately went along with pancha No.2. Complainant PW1 Ramchandra Borade and pancha No.1 disclosed that the accused has accepted the amount and kept in shirt pocket. The solution was prepared and fingers of the complainant were dipped. The solution changed the colour which was seized and sealed in a separate bottle. Similarly, the accused was also asked to dip his fingers in a fresh solution. The solution changed its colour and, thereafter, it was seized and sealed. The said solution was sent to chemical analysis. The Chemical

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Analyzer's Report Exhibit-24 shows that phenolphthalein powder and sodium carbonate are detected in Exhibits-1 to 5.

28. To rebut the presumption, the defence examined DW1 Chandrakant Ladokar, serving as clerk, who testified that Rajendra Puri asked complainant PW1 Ramchandra Borade to pay Rs.710/- to the accused and accordingly the complainant paid the same. His cross examination shows that the accused was doing the work of recovery of tax. He admitted that he is not aware about the transaction between the accused and the complainant. His cross examination further shows that the demand was not by the accused but it was by one Rajendra Puri. The same version was narrated by him first time in the court.

29. The defence also examined DW2 Chandrashekar Ansingkar, who testified that he was present when the trap was conducted. Complainant PW1 Ramchandra Borade visited and received some papers and then he went to Rajendra Puri Saheb and then he came to the accused and told the accused that Puri told him to pay Rs.710/-. The cross examination of this witness shows that two minutes before the talk was taken place between

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the complainant and the accused, the transaction of payment occurred. It further reveals from his cross examination that he was not aware what work the complainant was having with the accused. On the basis of this evidence, the defence has attempted to show that there was no demand by the accused but the demand was by one Puri.

30. Learned Senior Counsel for the accused submitted that proof of demand is *sine qua non* for establishing the charge under Sections 7 and 13 of the said act. In support of the said contention, learned Senior Counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **V.D.Jhingan vs. State of Uttar Pradesh**¹ wherein also it is held that in order to raise presumption what the prosecution has to prove is that the accused person has received "gratification other than legal remuneration."

Learned Senior Counsel also placed reliance on the decision of the Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**² wherein it is observed

¹ (1996)3 SCR 736

² (1979)4 SCC 526

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that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on.

Learned Senior Counsel for the accused further placed reliance on following decisions :

- 1. C.M.Girish Babu vs. CBI³;**
- 2. State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede⁴; and**
- 3. State of Punjab vs. Madan Mohan Lal Verma⁵, and**
- 4. Khaleel Ahmed vs. State of Karnataka⁶.**

31. In the aforementioned decisions, consistent view is that mere recovery of tainted amount from the accused, when substantive evidence is not reliable, is not enough to prove the guilt. Presumption would attract when the prosecution proves the charge against the accused.

3 2009 3 scc 779

4 2009 15 SCC 200

5 2013 14 SCC 153

6 2015 16 SCC 350

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

33. The Constitution Bench of the Honourable Apex Court in the case of Neerja **Dutta vs. State (Govt.of NCT of Delhi)**⁷ held that for recording conviction under Sections 7 and 13 (1)(d)(i) (ii) of the said Act, the prosecution has to prove the demand and acceptance of illegal gratification either by direct evidence which can be in the nature of oral or documentary evidence or by circumstantial evidence in the absence of direct or oral evidence. It further held that under Section 7 of the said, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the said Act.

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34. While deciding the issue involving the offence under the said Act, a fact required to be considered is that the evidence of the complainant corroborates with any other evidence.

35. Shadow Pancha PW2 Rajendra Saraf, in clear words stated that it was the accused who enquired with complainant PW1 Ramchandra Borade, after paying the tax amount, that what about rest of the amount and, therefore, the complainant handed over the said amount.

36. Thus, for proving the offence under Section 7 of the said Act, following things required to be proved are : (1) the amount is accepted or obtained; (2) any gratification whatsoever other than legal remuneration, and (3) as a motive or reward for doing any official function rendering or attempting to render any service with the Government Department.

37. As per Explanation (d) to Section 7-A of the said Act, when such a public servant receives gratification as a motive or reward for doing what he does not intend or is not in a position to or has not done, comes within this expression motive or reward.

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38. In the case of **Hazari Lal vs. State (Delhi Administration)**⁸, the Honourable Apex Court discussed the concept of “obtaining” and held that “obtaining” can be proved by circumstantial evidence and there is no necessity that the act of obtaining must be proved by direct evidence. By referring the judgment of **M.Narsinga Rao vs. Sate of Andhra Pradesh**⁹ it is observed that proof does not mean proof to rigid mathematical demonstration, because that is impossible. It must mean such evidence as would induce a reasonable man to come to a particular conclusion.

39. In the case of **Hazari Lal** *supra* the Honourable Apex Court observed that the conviction in such a case can be based even on the evidence of the police officer who laid the trap if the evidence is found reliable. The Honourable Apex Court referred the illustration (a) to Section 114 of the Evidence Act which is similar in nature and observed that that if the accused does not give a reasonable explanation, the Court can presume the existence of the fact like the fact of obtaining money which it thinks likely to have happened having regard to the facts of the case.

⁸ (1980)2 SCC 390

⁹ (2001)1 SCC 691

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40. In the present case, though complainant PW1 Ramchandra Borade has left loyalty towards the prosecution, the evidence of pancha witness, which is substantive evidence on the point of demand and acceptance, is further corroborated by circumstance that is the amount was recovered from the accused. It is further corroborated that though the evidence of circumstantial in nature that is the Chemical Analyzer's Report, it shows that the solution collected by dipping the fingers of the complainant as well as the accused contains phenolphthalein powder and sodium carbonate.

41. Though learned Senior Counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Sudru vs. The State of Chattisgarh** decided on 22.8.2019, facts of the cited case are not identical to the present case and not helpful to the accused.

42. 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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43. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**¹⁰ referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**¹¹ 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

¹⁰ 2022 LiveLaw (SC) 192

¹¹ (2015)10 SCC 152

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

44. 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

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while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere 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.

45. 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

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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**¹² 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 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.

12 (2002)5 SCC 86

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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 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

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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'.

46. 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 Shadow Pancha PW2 Rajendra Saraf, who is an independent witness, is consistent and corroborated by circumstances that the amount was recovered from the accused. It is also corroborated by evidence of Trap Officer PW5 Yadeorao Patil, who laid the trap and recovered the amount from the accused. Though the pancha witness is cross examined, his evidence is not shattered during the cross

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examination. Merely because the complainant has not supported the prosecution that by itself is not sufficient to discard the evidence of the pancha witness who is an independent witness.

47. It is not rule of law that the evidence of hostile witness, who makes different statements at different time, should be rejected in toto. It can be said that the evidence of such witness needs close scrutiny.

48. If the evidence of the complainant is considered, he has filed the complaint on an allegation that the accused demanded the amount and subsequently he came with a case that it was one Puri who demanded the amount and on his contention he has handed over the said amount.

49. In a bribery case, it is always required to be kept in mind that many a times for complainant it becomes difficult to give an evidence against the accused because the complainant is required to visit his office in future also in connection with works and many a times there is a possibility that employees may harass him and

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that can be reason for the complainant to give evidence partly in favour of the accused and partly in favour of the prosecution.

50. In the present case, the evidence of the independent witness sufficiently shows that there was a demand by the accused and in pursuance of the said demand, the amount was accepted. No reason came forward to discard the evidence of the said witnesses. As far as presence of defence witnesses are concerned, they appear to be interested witnesses and their cross examination shows that they are not aware about the exact communication between the complainant and the accused.

51. 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.

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52. In the present case, a condition precedent to draw such legal presumption, that the accused demanded the amount and accepted, has been proved and established on the basis of the evidence Shadow Pancha PW2 Rajendra Saraf, who is an independent witness. Thus, presumption under Section 20 of the said Act comes into play and no reasonable explanation is forthcoming that may rebut the presumption.

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

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supported by proof, the presumption created by the provision cannot be said to be rebutted.

54. In this view of the matter, I find that learned Judge of the trial court rightly appreciated the evidence adduced and convicted and sentenced the accused. I do not find any reason to inter with the said findings. As such, the appeal is devoid of merits and liable to be dismissed and the same is **dismissed**.

55. The accused is directed to surrender before the appropriate authority within a period of fifteen days from today.

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!