



Judgment

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

CRIMINAL APPEAL NO.386 OF 2012

Mohan s/o Keshavrao Jayebhaye,
aged about 35 years, occupation talathi,
r/o Indira Colony, Dapki Road,
Old City, Akola. **Appellant.**

:: V E R S U S ::

The State of Maharashtra,
through Police Station Officer,
Daryapur, tahsil Daryapur,
district Amravati. **Respondent.**

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Shri H.Deshpande, Counsel with Shri B.H.Tekam, Advocate for
the Appellant.

Shri S.S.Hulke, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02/01/2024

PRONOUNCED ON : 16/01/2024

JUDGMENT

1. By this appeal, the appellant (the accused) has challenged judgment and order of conviction and sentence dated 1.9.2012 passed by learned Additional Sessions Judge, Achalpur (learned Judge of the trial court) in Special Case (ACB) No.4/2005 whereby the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default of payment of the fine amount, to suffer further rigorous imprisonment for two months.

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The accused is further convicted for offence punishable under Section 13(1)(b) of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default of payment of the fine amount, to suffer further rigorous imprisonment for two months.

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

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

The accused is serving in the Revenue Department of the Government of Maharashtra as Talathi. Complainant Gopal Mahadeo Bawane, is resident of village Kuksa, taluka Daryapur, district Amravati. The Revenue Department has divided "E-Class" Land in 20 plots admeasuring 3000 square feet each for allotment. The complainant filed an application on 16.8.2004 to tahsil office at Daryapur for allotment of the said plots. The accused was assigned with duty of verification and submit a report. It is alleged that when the complainant approached the accused, he demanded Rs.1200/- for giving favourable report. As the complainant was not willing to pay the bribe amount, he approached the office of the Anti

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Corruption Bureau at Amravati (the bureau) and lodged a report on 22.9.2004.

3. After receipt of the report, office of the bureau called two panchas. In the presence of panchas, the complainant narrated the incident, which was verified by panchas from the complaint. After following due procedure, it was decided to conduct a raid and panchas and the complainant were called on 23.9.2004 in the office of the bureau. The complainant produced tainted amount of nine currency notes of Rs.100/- and two currency notes of Rs.50/- denomination and numbers of the currencies were noted. The demonstration as to anthracene powder and ultra violet lamp was shown. The said powder was applied on the tainted amount and kept in shirt pocket of the complainant. The instructions were given to pancha No.1 Kishor Devrao Khandpure to stay with the complainant and pancha No.2 was asked to remain along with the raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn.

4. After the pre-trap panchanama, the complainant along with panchas and raiding party members reached at Daryapur.

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After reaching at Daryapur, the complainant along with pancha No.1 Kishor Khandpure, proceeded towards Hotel Bhawani, near bus stand of Daryapur. After 10-15 minutes, the accused also came at the said hotel. There was a communication between the complainant and the accused. The complainant enquired about his work and the accused demanded amount. On demand, the complainant handed over the said amount of Rs.1000/- which is accepted by the accused and kept in the shirt pocket. After acceptance of the amount, the complainant has given pre-decided signal to the raiding party and the trap was laid. The amount was recovered from the accused. Accordingly, post-trap panchanama was drawn. Pancha No.1 disclosed as to the demand and acceptance. The office of the bureau lodged the report about the incident, seized relevant documents, and obtained sanction to prosecute the accused. After completion of the investigation, chargesheet is filed.

5. During the trial, the prosecution examined in all 5 witnesses; viz. Gopal Bawane vide Exhibit-22 (PW1), the complainant; Kishor Deorao Khandpure vide Exhibit-40 (PW2), the shadow pancha; Anand Sharadchandra Khedkar vide Exhibit-53 (PW3), pancha No.2; Ravindra Jalamsingh Jadhav

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vide Exhibit-57 (PW4), the sanctioning authority; and Dildar Balder Tadvi vide Exhibit-79 (PW5).

6. The accused has also examined two defence witnesses in support the defence, viz. Manoj Damodhar Raut vide Exhibit-96 (DW1) and Anil Tulshiramji Kundalwar vide Exhibit-99 (DW2).

7. Besides the oral evidence, the prosecution further relied upon the complaint Exhibit-34, map of the spot of the incident Exhibit-36, pre-trap panchanama Exhibit-41, post-trap panchanama Exhibit-42, seizure memos Exhibits-43 to 46, application filed by the complainant with the office of the accused Exhibit-54, sanction order Exhibit-58, report lodged by the office of the bureau Exhibit-83, and First Information Report Exhibit-84.

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. I have heard learned counsel Shri Haribhau Deshpande for the accused and learned Additional Public Prosecutor Shri S.S.Hulke for the State. I have been taken through the entire

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evidence so also the judgment and order of conviction and sentence impugned in the appeal.

10. Learned counsel for the accused submitted that the judgment and order of conviction impugned is erroneous and without appropriate reasoning. Learned Judge of the trial court failed to appreciate inconsistencies came in the evidence and failed to appreciate that the demand and acceptance is not proved. He further submitted that even the sanction to prosecute the accused as contemplated under Section 19 of the said Act is bad in law and, therefore, the conviction of the accused stood vitiated on that ground itself. He submitted that pancha No.2 PW3 Anand Khedkar as well as the post trap panchanama nowhere show that any glittering was found on the hands of the accused though the accused has accepted the amount by hands. Learned Judge of the trial court failed to appreciate that immediate explanation is given by the accused that the amount is thrust in his shirt pocket by the complainant. The defence of the accused is supported by circumstance as no glittering is found on his hands though he accepted the amount by his own hands. Thus, the entire prosecution fails in the light of the said variance. For all the above reasons, the accused deserves to be acquitted.

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

1. Ravindra Mahadeo Kothamkar vs. The State of Maharashtra¹;

2. Onkar Tukaram Ramteke vs. The State of Maharashtra²;

3. Sunil Hirasingh Rathod vs. The State of Maharashtra³, and

4. The State of Maharashtra vs. Shridhar Madhavrao Murti⁴.

12. *Per contra*, learned Additional Public Prosecutor for the State submitted the evidence of complainant PW1 Gopal Bawane is corroborated by shadow pancha PW2 Kishor Khandpure, who proves the demand and acceptance. The amount recovered from the shirt pocket of the accused is proved by pancha No.2 PW3 Anand Khedkar. The prosecution has also proved that the sanction is as per the law and valid and, therefore, no interference is called for in the judgment and order passed by learned Judge of the trial court.

13. Since question of validity of the sanction has been raised as a primary point, it is necessary to discuss an aspect

1 2016 ALL MR (Cri) 775

2 2022 ALL MR (Cri) 4404

3 2022 ALL MR (Cri) 647

4 2021 ALL MR (Cri) 2829

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of sanction. The sanction order was challenged on the ground that the sanction was accorded without application of mind and mechanically and, therefore, it is not a valid sanction.

14. In order to prove the sanction order, the prosecution placed reliance on the evidence of sanctioning authority PW4 Ravindra Jadhav examined vide Exhibit-57. As per his evidence, at the relevant time, he was serving as the Collector of Amravati district. He received documents pertaining to the investigation. He is the superior officer having authority of appointment of talathis and their removal. After studying papers, he arrived at an opinion that there is a *prima facie* case and accorded the sanction. During his cross examination, he admitted that the orders of appointment of talathis are issued by signature of the Sub Divisional Officer. It further came in his evidence that before communicating with him, correspondence was made with one Mr.Gogate who was the Sub Divisional Officer for obtaining sanction. Said Gogate has not accorded the sanction and communicated to him by letter expressing his inability to accord the sanction, is neither denied nor accepted by him. He stated that he is unable to recollect about the said communication.

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15. Perusal of the sanction order reveals that its first paragraph describes designation of the accused and second to forth paragraphs describe recital of the First Information Report and the investigation is disclosed. Fifth paragraph shows that upon careful reading of papers, he came to conclusion that the sanction is to be accorded and accordingly he accorded the sanction. Thus, the entire sanction order states about allegations and perusal of the papers by sanctioning authority PW4 Ravindra Jadhav.

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

17. 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

⁵ 1979 AIR 677

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of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned.

18. 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

⁶ 2014 Cri.L.J.930

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authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

19. 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

⁷ (2007)11 SCC 273

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mind. Ordinarily, 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.

20. 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.

21. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra**⁹ observed that absence of description of documents referred by sanctioning authority and only considering the grievances made by Complainant would show lack of application of mind by competent authority while according sanction. The documents other than complaint were taken into

⁸ 2021 SCC OnLine Bom 237

⁹ 2016 ALL MR (Cri) 3697

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consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

22. 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. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his own independent mind on the basis of the evidence which came before it. 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.

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

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24. After going through the evidence of sanctioning authority PW4 Ravindra Jadhav, though he stated that he has applied his mind and perused the investigation papers, the sanction order nowhere discloses which documents he perused and on what basis he satisfied himself for according the sanction. 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. Admittedly, the grant of sanction is a serious exercise of powers by the competent authority.

25. After going through the evidence of sanctioning authority PW4 Ravindra Jadhav, admittedly, the sanction order nowhere reflects the material on the basis of which the sanctioning authority came to conclusion that the sanction is to be accorded to launch prosecution against the accused. There is no finding by learned Judge of the trial court as to validity of the sanction.

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26. Besides the issue of the sanction, the prosecution claimed that the accused has 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 Gopal Bawane and shadow pancha PW2 Kishor Khandpure. The prosecution has also examined pancha No.2 PW3 Anand Khedkar, who removed the tainted amount from the shirt pocket of the accused. The accused is prosecuted for the offence punishable under Section 7 and 13(1)(b) of the said Act.

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

28. 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**

¹⁰ 2022 LiveLaw (SC) 192

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and anr¹¹ 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 person accused of the offence under Section 7 or 13 of the Act would not entail his conviction.”

29. 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:

11 (2015)10 SCC 152

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under Section 7: (1) the accused must be a public servant or expecting to be a public servant; (2) he should accept or obtain or agrees to accept or attempts to obtain from any person; (3) for himself or for any other person; (4) any gratification other than legal remuneration, and (5) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour.

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptance of any valuable

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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.

30. In the light of the well settled law, if the evidence of the prosecution is appreciated, it would that the prosecution has placed reliance on complainant PW1 Gopal Bawane. As per his oral evidence, the accused is serving as Talathi and one scheme was implemented by the tahsil office for allotment of plots for construction of the house at Kuksa. He applied for the same by preferring an application requesting him to allot him plot No.176 admeasuring 3000 square feet. As the accused was serving as Talathi, he approached him for submitting a report on his application and he demanded amount Rs.1200/- for favour report and he paid Rs.200/-, but he was not willing to pay the amount and, therefore, he approached the office of the bureau. He narrated the entire procedure laid down by the bureau for conducting the raid. Thus, as per his evidence, when he approached the accused along with shadow pancha PW2 Kishor Khandpure, the

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accused again demanded the amount and accepted the amount. He further stated that he gave a signal as instructed by the officers of the bureau and the accused was caught and the amount was seized from him.

To corroborate his version, the prosecution has also examined shadow pancha PW2 Kishor Khandpure, who has also narrated that he along with the another pancha was called in the office of the bureau. In their presence, complainant PW1 Gopal Bawane narrated his grievance and they have verified the same and, thereafter, it was decided to conduct the raid and he has narrated the entire procedure carried out by the officials of the bureau during pre-trap and post-trap panchanamas. As per his evidence, he along with complainant PW1 Gopal Bawane went at Bhawani Hotel near bus stand of Daryapur where the accused came and demanded the amount and accepted the same.

31. Now, it has to be seen, whether the evidence of complainant PW1 Gopal Bawane and shadow pancha PW2 Kishor Khandpure is corroborating to each other on every particulars.

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During cross examination of complainant PW1 Gopal Bawane, he admitted that he has constructed the house house by committing encroachment over the government land prior to 17 years. In the year 2004, the house was allotted to him under “Indira Awas Yojna” and he had also filed one more application for allotment of the plot. His cross examination further shows that even he was having one house at Kuksa and one house under “Indira Awas Yojna”. He filed an application and he was not a homeless. It further reveals from his cross examination that he was having apprehension that the present accused would submit a report against him. It further shows that he was having cordial relationship with predecessor of the accused. His cross examination further reveals that village development officer was entrusted with the task of implementation of the Scheme and talathi has nothing to do that.

32. If cross examination of complainant PW1 Gopal Bawane and shadow pancha PW2 Kishor Khandpure is taken into consideration, as far as the demand and acceptance is concerned, as per complainant PW1, he and pancha had gone to the house of accused at Daryapur and the accused has asked him about the amount and he called the accused at

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Bhawani Hotel and went at the same hotel and the accused came after 15 minutes.

Whereas, as per shadow pancha PW2, after getting down from the vehicle, he went along with the complainant towards the bus stand and the complainant told him that he had called the accused at Bhawani Hotel for receiving the amount. According to him, the complainant took out the amount Rs.1000/- from his left pant pocket and handed over the same to the accused. The accused accepted the same and kept in the shirt pocket. Whereas, as per the evidence of complainant PW1, he handed over the amount to the accused and the accused had kept the amount in his shirt pocket.

The evidence of pancha No.2 PW3 Anand Khedkar, also shows that the amount was removed from the shirt pocket of the accused.

The post-trap panchanama shows that after getting signal, the accused was caught and the amount was removed from his shirt pocket.

It is pertinent to note that recital of the post-trap panchanama, shows that the hands and the clothes of the

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accused are examined in the light of ultra violet lamp and glittering was found on the shirt pocket of the accused.

Pancha No.2 PW3 Anand Khedkar specifically admitted that in a statement given by the accused, he had explained that complainant PW1 Gopal Bawane had thrust the amount in his shirt pocket. As far as the place of the acceptance is concerned, according to complainant PW1, the amount was accepted inside the Bhawani Hotel. Whereas, as per the evidence of pancha No.2 PW3 Anand Khedkar, the amount was accepted outside the Bhawani Hotel.

The post-trap panchanama nowhere refers that glittering was found on the hands of the accused. This fact is to be appreciated in the light of the defence. As per the prosecution witnesses, the accused has accepted the amount by his hands and kept it in his shirt pocket. The evidence of complainant PW1 Gopal Bawane and pancha No.2 PW3 Anand Khedkar is consistent about the same. But, recital of the pre-trap panchanama and the evidence of pancha No.2 PW3 Anand Khedkar, nowhere says that any glittering was found on the hands of the accused.

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33. The defence of the accused is that the amount was thrust in his pocket. The accused has given immediate explanation as per the evidence of pancha No.2 PW3 Anand Khedkar as well as as per the evidence of PW5 Dildar Tadvi, who is the investigating officer. He has also examined two independent witnesses DW2 Anil Tulshiramji Kundalwar, hotel owner and DW1 Manoj Damodhar Raut, the talathi, who both have stated that the amount was thrust in the shirt pocket of the accused.

Though these defence witnesses are cross examined at length, nothing incriminating came on record to disbelieve them. Moreover, their evidence is also corroborated by the circumstance that no glittering is found on the hands of the accused. If the accused would have accepted the amount by his hands, it would have stained with the anthracene powder and glittering ought to have appeared on his hands.

34. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)**¹² held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of

12 2022 LiveLaw (SC) 1029

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

13 (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 5(1)(a) and (b) and not

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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'.

35. In the light of the above well settled legal position, if the evidence 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 Gopal Bawane and shadow pancha PW2 Kishor Khandpure appears to be not consistent on the aspect of the place where exactly the amount was accepted. As per complainant PW1, the amount was accepted inside the Bhawani Hotel. Whereas, as per the evidence of shadow pancha PW2, it was accepted outside the Bhawani Hotel. The evidence as to the demand is also not consistent as complainant PW1 has stated that initially they went at the house of the accused and the accused demanded the amount. Whereas, shadow pancha PW2 stated that complainant PW1 told him that he has called

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the accused at Bhawani Hotel and the demand was made at Bhawani Hotel. The evidence regarding acceptance is also to be appreciated in the light that as per the evidence of complainant PW1 and shadow pancha PW2, the accused has accepted the amount by his hands and kept in shirt pocket. Though the shirt pocket and hands of the accused are examined, in the light of ultra violet lamp, glittering was only found on the shirt pocket and not on hands of the accused. Recital of the panchanama as well as the evidence of pancha No.2 PW3 Anand Khedkar nowhere shows that glittering was found on the hands of the accused. The admission given by pancha No.2 PW3 and investigating officer PW5 Dildar Tadvi is to the extent that immediately after the trap, the accused gave one statement stating the amount was thrust in his shirt. If the explanation of the accused which was given immediately is appreciated, recital of the post-trap panchanama does not refer any anthracene powder on the hands of the accused and the evidence of the defence witnesses supports the defence of the accused that the amount was thrust in his shirt pocket. The evidence of complainant PW1 shows that he applied for the plot under the Scheme of "Indira Awas Yojna". He was already having house

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at Kuksa and another house under “Indira Awas Yojna” and additionally, he filed an application for allotment of the plot for which the report of the accused was required. He further admitted that he has constructed the house by encroaching upon the government land and task of implementation of “Indiara Awas Yojna” was with village development officer.

36. If the entire evidence is appreciated, it shows that illegally complainant PW1 Gopal Bawane has constructed house on the government land by encroaching upon the same. He is already having house at Daryapur under the Scheme of “Indiara Awas Yojna” and, thereafter, also he filed an application for allotment of the plot. The possibility of thrusting the amount for getting the favourable report from the accused cannot be ruled out.

37. It is well settled that the evidence of complainant should be corroborated in material particulars.

38. The Honourable Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**¹⁴ has held that there could be no doubt that the evidence of the complainant should be corroborated in material particulars. After

¹⁴ (1979)4 SCC 526

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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 and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of the complainant has been corroborated. The Honourable Apex Court held that it should corroborate to each other.

In the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**¹⁵ also it is held that the statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as

¹⁵ 2017 SCC ONLine SC 742

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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.

39. While deciding the issue involving the offence under the said Act, a fact required to be considered is that the evidence of complainant PW1 Gopal Bawane will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

40. In the case of **M.O.Shamsudhin vs. State of Kerala**¹⁶, 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.

16 (1995)3 SCC 351

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41. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**¹⁷, 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 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.”

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

43. In the present case, learned counsel for the accused rightly pointed out that there is a variance in the evidence of complainant PW1 Gopal Bawane and shadow pancha PW2 Kishor Khandpure as to the demand as well as acceptance. Prior conducting the raid, the officers of the bureau have not

¹⁷ 1963 Mh.L.J. (SC) 273

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verified whether the allegationa made by the complainant are genuine and there was a demand by the accused.

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

45. It is held by the Honourable Apex Court in paragraph Nos.13 and 14 in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab** *supra* as follows:

“13. Before averting to the evidence, apt it would be to refer to the provisions of the Act whereunder the original accused had been charged:

“7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the

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Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extent to seven years and shall also be liable to 2 (2014) 5 SCC 103 3 (2016) 11 SCC 357 fine.

13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offence of criminal misconduct, (2).....”

14. The indispensability of the proof of demand and illegal gratification in establishing a charge under Sections 7 and 13 of the Act, has by now engaged the attention of this Court on umpteen occasions. In A.Subair vs. State of Kerala, this Court propounded that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and till that is accomplished, the accused should be considered to be innocent.”

46. In the case of **The State of Maharashtra vs. Ramrao Marotrao Khawale**¹⁸, this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that 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

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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 by-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.

47. The Honourable Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**¹⁹ held that the primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word "gratification" is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learner's Dictionary of Current English, the word "gratification" is shown to have the meaning "to give pleasure or satisfaction to". The word "gratification" is used in Section 4(1) to denote acceptance of something to the pleasure or satisfaction of the recipient. If

¹⁹ (1997)10 SCC 600

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the money paid is not for personal satisfaction or pleasure of the recipient it is not gratification in the sense it is used in the section. In other words unless the prosecution proves that the money paid was not towards any lawful collection or legal remuneration the court cannot take recourse to the presumption of law contemplated in Section 4(1) of the Act, though the court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at may stage.

48. In the case of **State of Maharashtra vs. Rashid B.Mulani**²⁰, it is held that 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 supported by proof, the presumption created by the provision cannot be said to be rebutted. Something more, than raising a reasonable probability, is required for rebutting a presumption of law. Though, it is well-settled that the accused is not required to establish his explanation by the strict standard of 'proof beyond reasonable doubt', and the presumption under Section

²⁰ (2006)1 SCC 407

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4 of the Act would stand rebutted if the explanation or defence offered and proved by the accused is reasonable and probable.

49. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing and since the proof of demand is a *sine quo non* for convicting the accused in such cases, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt.

50. After appreciating the evidence on record, as per the prosecution case, the accused has demanded the amount for forwarding the report. The evidence of the complainant PW1 Gopal Bawane shows that he has encroached over the government land and also having one house under the Scheme of "Indira Awas Yojna". Additionally, he wants to obtain the plot for constructing the house and, therefore, he approached with the application. Thus, the intention of the complainant can be gathered from the circumstances. If this evidence is taken into consideration, in the light of the fact that no anthracene powder was found on the hands of the accused and the defence of the accused that the amount is

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thrust in his shirt pocket, which is supported by the circumstance that no anthracene powder was found on his hands and found only on the shirt pocket, admittedly, the accused is not required to establish his explanation by the strict standard of proof 'beyond reasonable doubt'. The explanation is supported by the oral evidence of the defence witnesses as well as the circumstance that no glittering was found on his hand and the presumption would stand rebutted when the explanation or the defence offered and proved by the accused is reasonable one.

51. It is also well settled that while deciding the offence under the said Act, the complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. 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.

52. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt. of NCT of Delhi)** *supra* held that presumption of

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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.

53. In the instant case, as observed earlier that prior demand by the accused is not proved by the prosecution, a doubt is created as to the demand of the amount as the independent witness is not examined and there is no consistency between the evidence of complainant and the shadow pancha. I have already observed that principles for according the sanctions are not taken into consideration. The sanctioning authority to exercise powers strictly keeping in mind all the relevant facts and material and accord the sanction. The sanction order nowhere discloses that the said satisfaction. Thus, the entire exercise carried out by the sanctioning authority is without application of mind. The

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evidence as to the demand and acceptance is also not satisfactory. The demand and acceptance require to be proved which is *sine quo non* for establishing the charge. As such, the appeal deserves to be allowed and, therefore, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 1.9.2012 passed by learned Additional Sessions Judge, Achalpur in Special Case (ACB) No.4/2005 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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