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

CRIMINAL APPEAL NO.553 OF 2005

Sheshrao Mahadeorao More,
aged about 57 years, occupation – service,
c/o Shri Harde, Yeshwant Colony, Karanja,
taluka Karanja, district Washim.

LRs of deceased appellant.

1. Smt.Usha wd/o Sheshrao More,
aged about 66 years,
occupation household work.

2. Laxmikant s/o Sheshrao More,
aged about 34 years, occupation service,
both c/o Smt.Shalini Deshpande,
B-704, Tatva Apartments,
Old Mundwa Kharadi Road,
Wadgaon-Sheri, Pune, district Pune. ….. **Appellants.**

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

State of Maharashtra,
through P.S.O.Karanja Police Station,
through Deputy Superintendent of Police,
Anti Corruption Bureau, Akola. ….. **Respondent**.

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Shri S.V.Sirpurkar, Counsel with Ms.Garima Jain, Advocate for the Appellant/Accused.
Shri A.G.Mate, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 28/06/2024
PRONOUNCED ON : 12/07/2024

JUDGMENT

1. By this appeal, appellant Sheshrao Mahadeorao More (the accused) has challenged judgment and order of conviction and sentence dated 13.10.2005 passed by learned Special Judge, Washim (learned Judge of the trial court) in Special Case No.1/2003 whereby the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the P.C.Act) and sentenced to suffer rigorous imprisonment for three years and to pay fine Rs.3000/-, in default, to suffer further simple imprisonment for three months.

The accused is further convicted for offence punishable under Sections 13(1)(d) read with 13(2) of the P.C.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. The prosecution case can be stated, briefly, as under:

Accused Sheshrao Mahadeorao More, was serving as Senior Clerk (Junior Accounts Officer) with Karanja Panchayat Samiti, district Washim. Bhaurao Kisanrao Ghuge (the complainant) is an agriculturist and also owns Commander Jeep bearing registration No.MH-30/B/772. The said vehicle was engaged with the Health Department of Zilla Parishad on a contract basis from August 2001 @ Rs.999/- per month. The terms and conditions of use of the said vehicle were agreed by the complainant and accepted by the Chief Executive Officer of Washim Zilla Parishad. Accordingly, the complainant used to present bills of his claim of the said vehicle at Primary Health Centre, Khadidhamni. After verification of the claim, it was to be forwarded to the District Health Officer of Zilla Parishad. After bills are approved by the District Health Officer, the same are to be sent to the Block Development Officer, Karanja for issuance of cheques. The complainant presented bills of December 2001, January and February 2002 before the Block Development Officer.

3. On 28.3.2002, the complainant approached the accused for obtaining cheque in accordance with sanctioned bill of Rs.20,997/-. It is alleged that at the relevant time, the accused denied to hand over the cheque and demanded amount Rs.600/- from him. After a negotiation, the accused agreed to accept Rs.500/- and called the complainant with amount Rs.500/. As the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau at Washim (the bureau) on 30.3.2002 and lodged a complaint. After receipt of the complaint, officials of the bureau called two panchas who have also obtained information from the complainant. It was decided to lay a trap. The complainant produced five currency notes of Rs.100/- denomination. The demonstration as to solution of p*henolphthalein* powder and sodium carbonate was shown to the complainant as well as panchas. The said solution was applied on the tainted notes and notes were kept in a shirt pocket of the complainant. The complainant and pancha No.1 were instructed. As per instructions, the complainant was asked not to hand over the amount unless it is demanded. The complainant was further

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instructed to give a signal after acceptance of the amount. Pancha No.1 was instructed to remain with the complainant and observe events of happening. Pancha No.2 was asked to remain along with other raiding party members. Accordingly, pre-trap panchanama was drawn. On 30.3.2002, the complainant along with pancha No.1 proceeded towards the office of the accused. He met the accused. The accused demanded the amount from him and the complainant handed over the same. After getting a predetermined signal, the trap officer caught the accused. The amount was recovered from the accused. Accordingly, post-trap panchanama was drawn. During investigation, the Investigating officer collected relevant documents. After obtaining a sanction, chargesheet was filed against the accused.

4. To substantiate allegations, the prosecution examined in all six witnesses, as follows:

1. Bhaurao Kisanrao Ghuge vide Exhibit-20 (PW1), the complainant;

2. Suresh Ruprao Dharmale vide Exhibit-40 (PW2), the Shadow Pancha;

3. Eknath Rajaram Daule vide Exhibit-52 (PW3), the Sanctioning Authority;

4. Shankar Maroti Chandanse vide Exhibit-60 (PW4);

5. Vitthal Kisanrao Pagrut vide Exhibit-61 (PW5), and

6. Yadaorao Damu Patil vide Exhibit-62 (PW6).

5. Besides the oral evidence, the prosecution further relied upon CA Report Exhibit-17, complaint Exhibit-21, Office Order issued by Chief Executive Officer to the District Health Officer Exhibit-22, letter by the District Health Officer to the Medical Officer, Primary Health Centre Exhibit-23; seizure memo Exhibit-24; acknowledgment of receipt of cheque Exhibit-34, pre-trap panchanama Exhibit-41, seizure memo Exhibits-42 to 44; copy of contingent expenses bills Exhibits-44/1; seizure memos Exhibit-45 to 48; post-trap panchanama Exhibit-57; Sanction Order Exhibit-53; map Exhibit-56; report Exhibit-68; First Information Report Exhibit-69.

6. After considering the evidence adduced during the trial, learned Judge of the trial court held the accused guilty as the aforesaid.

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7. Heard learned counsel Shri S.V.Sirpurkar for the accused and learned Additional Public Prosecutor Shri A.G.Mate for the State. I have been taken through the entire evidence so also the judgment impugned in the appeal.

8. Learned counsel for the accused submitted that learned Judge of the trial court erroneously convicted the accused in absence of any cogent and reliable evidence as the demand and acceptance of the alleged gratification amount is not proved. He submitted that the amount recovered is not sufficient to hold that the amount is accepted towards the gratification. The demand and acceptance of illegal gratification is *sine qua non* to attract provisions of the P.C.Act. He further submitted that the sanction accorded is without application of mind. There is no corroboration as far as the demand is concerned. Mere recovery of tainted money, in absence of proof of demand, is not sufficient to hold the accused guilty. The prosecution failed to prove charges levelled against the accused. As such, the judgment impugned deserves to be quashed and set aside.

9. In support of his contentions, learned counsel for the accused placed reliance on the decision of the Honourable Apex Court in the case of **Mukhtiar Singh (since deceased) through his legal representative vs. State of Punjab**[1]**.**

10. *Per contra,* learned Additional Public Prosecutor for the Stated submitted that the evidence of complainant PW1 Bhaurao Ghuge is consistent and corroborative as far as the demand is concerned. The amount is recovered from the accused. The evidence of the complainant and the Shadow Pancha is not shattered during the cross examination. The sanction accorded is also after application of mind. As such, the appeal is devoid of merits and liable to be dismissed.

11. As learned counsel for the accused raised question of validity of the sanction, it is necessary to discuss an aspect of sanction. The Sanction Order was challenged on ground that the sanction was accorded without application of mind and mechanically.

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12. In order to prove the Sanction Order, the prosecution placed reliance on the evidence of Sanctioning Authority PW3 Eknath Daule, who testified that in July 2002 he was Chief Officer of Zilla Parishad. He is competent authority to appoint and dismiss Class-II employees. He received documents. He had gone through papers minutely and applied his mind and concluded that there was sufficient and satisfactory material for grant of sanction to prosecute the accused. He has given dictation to his stenographer of the Sanction Order and, thereafter, he prepared the Sanction Order as per the dictation. He had gone through it and then put his signature.

13. Though Sanctioning Authority PW3 Eknath Daule is cross examined at length, nothing incriminating is brought on record to shatter his evidence.

As far as granting of the sanction, after application of mind, is concerned, the evidence of this witness clearly shows that he has gone through documents minutely and perused material and found it satisfactory to accord the sanction and, thereafter, he himself dictated the Sanction Order and after

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transcribing the same, he again gone through it and, thereafter, put his signature. Though lengthy cross examination is taken, as far as this part of the evidence is concerned, the same is not shattered.

The Sanction Order is also perused wherein, initially, the prosecution case was reproduced and in second last para it is specifically mentioned that upon carefully reading papers of investigation into Crime No.3026/2002 of Karanja Police Station and carefully evaluating the same, he found that there is an adequate evidence to prosecute the accused and thereby accorded the sanction.

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

15. The Honourable Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[2] 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

2 1979 AIR 677

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

16. In view of the settled principles of law, it is crystal clear that the Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction. The sanction order should speak for itself. It is well settled that sanction order should not be so elaborate like an order of court containing 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 a conclusion that whether the prosecution in the circumstances be permitted or forbidden. It is further well settled that sanction is solemn and

sacrosanct act. The law does not require sanction to be in a 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 P.C.Act.

17. In the light of the above well settled legal position, if the Sanction Order is perused, it appears that after application of mind, the sanction was accorded. The purpose for which an order of sanction is required is to be borne in mind and by applying parameters, it reveals that after application of mind on the part of the Sanctioning Authority, the sanction was accorded. It is well settled that issue of sanction cannot be put at such pedestal as it would make impossible for the prosecution to prove the same. The object and purpose for grant of sanction and protection contemplated thereby do not mean 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.

18. Thus, the sanction accorded, in the present case, is after application of mind and, therefore, the objection raised as to the sanction is not sustainable and liable to be discarded.

19. Besides the issue of the sanction, the prosecution claimed that the accused demanded gratification amount and accepted the same. In order to prove the demand and acceptance, the prosecution mainly relied upon the evidence of complainant PW1 Bhaurao Ghuge and Shadow Pancha PW2 Suresh Dharmale.

As per the evidence of the complainant, he is owner of Commander Jeep bearing registration No.MH-30/B/772, which was engaged with the Zilla Parishad on a rental basis. Accordingly, he entered into an agreement and as per the agreement, he was entitled for the bill against the use of the vehicle. He had submitted bill of December 2001, January and February 2002. His bill was prepared at Primary Health Centre, Khadidhamni. The bill was sent to the District Health Officer and after his approval, it was forwarded to the office of the Block Development Officer. He met the accused to receive the cheque. However, the accused asked from him two documents. The accused has also demanded Rs.600 to clear bills. Though the complainant told him that after receipt of the cheque amount, he would pay the same, the accused was not ready and had not handed over the cheque and called him on 30.3.2002. As such, he approached the office of the bureau and lodged the complaint. He narrated about the entire procedure carried out by the officer of the bureau before laying the trap. He also stated that some instructions were given to him.

Sum and substance of the evidence of the said witness is that on the day of the trap also, the accused demanded the amount and accepted the same.

20. The defence of the accused was that he asked the complainant to bring amount Rs.500/- from PW5 Vitthal Pagrut, which was given to him as hand loan and the said amount is accepted by him. The cross examination of complainant PW1 Bhaurao Ghuge shows that prior to disputed bills he had claimed two months bill. He also admitted that the accused asked him two documents, but he handed over one document to the

accused on the day of the trap. The cross examination shows that the complainant made a complaint to the Block Development Officer as the accused was not handing over the cheque. Despite directions given by the Block Development Officer, the accused has not handed over the cheque. As far as the defence of the accused is concerned, the same is denied by the complainant.

21. To corroborate the version complainant PW1 Bhaurao Ghuge, the prosecution examined Shadow Pancha PW2 Suresh Dharmale. His evidence is to the extent that he was called as a pancha in the office of bureau with pancha No.2. He perused the oral and written report of the complainant and also gathered information from the complainant. After the pre-trap panchanama, he proceeded along with the complainant towards the office of the accused wherein the accused demanded the amount against issuance of cheque and accepted the same. The presence of one employee namely Chandanse is also narrated by Shadow Pancha PW2 Suresh Dharmale in the office of the accused. During cross examination, the Shadow Pancha

admitted that the accused gave his explanation that the amount was received by him against the loan amount which was given to one Pagrut through the complainant. Except this cross examination, no material is brought on record to falsify the version of the Shadow Pancha.

Thus, the evidence of the Shadow Pancha remains unshattered during the cross examination.

22. The prosecution has also examined PW4 Shankar Chandanse, who is co-employee of the accused, who narrated about his presence on the day of the incident. He testified that complainant PW1 Bhaurao Ghuge approached the accused and, thereafter, the accused called file of the complainant from him and, thereafter, he handed over the file to the accused and he handed over the cheque after the accused directed him to hand over the same. During the cross examination, he admitted procedure that bills from the Primary Health Centre are received and the accused is responsible to check bills. After signatures of the accused, bills were forwarded and after passing of bills by Block Development Officer, the same are received to him for

preparing cheques. He denied that the cheque was prepared on 28.3.2002. He also admitted that on 28.3.2002, there was a controversy between Morey and the complainant and they approached the Block Development Officer and the accused directed him that unless and until order of Zilla Parishad is attached, cheques are not handed over.

Thus, the contention of the accused that the cheque was ready on 28.3.2002 itself, is denied by this witness.

23. Another witness examined by the prosecution to discard the contention of the accused as to the acceptance of the amount is, PW5 Vitthal Pagrut working with the Primary Health Centre, Khadidhamni as Health Assistant. He testified that the vehicle of the complainant was hired by his office. He drawn bills for months of October and November 2001 and bills till February 2002. He attempted to get signature of the concerned officer and, therefore, bills were handed over to the complainant on 25.3.2002 for obtaining signatures of the concerned officer. The complainant produced bills in Panchayat Samiti, Karanja on 28.3.2002. On 30.3.2002, he had been to the office of the

Panchayat Samiti whereat he came to know that the accused is trapped by the bureau. He was immediately enquired by officer of the bureau about bills. As far as the defence of the accused is concerned, he specifically stated that he did not give any amount to the complainant for paying it to the accused. He had not taken Rs.500/- from the complainant. There was no personal transaction with the accused. He has not stated before the trap officer that the accused had paid hand loan etc.. During cross examination also, he admitted that some of employees had given him amount by collecting contribution to perform last rites of his brother who expired suddenly, but he specifically stated that the amount which the accused was paying was not handed over by him to the complainant to hand over the same to the accused. He stated that he told the complainant that he would pay the said amount personally to 2-3 persons. Thus, the defence of the accused is not supported by this witness.

24. The evidence of the Trap Officer is as to the acceptance and recovery of the money. He testified that after getting the signal, he caught the accused and enquired with him. The

amount was recovered from the accused and explanation of the accused was that he accepted the amount through the complainant which was given as hand loan to one Pagrut.

Thus, the evidence of the Trap Officer states about the procedure carried out by him.

After trap, he collected hand wash of the complainant as well as the accused. The pant of the accused was also seized. The CA Report which is on record shows that phenolphthalein powder and sodium carbonate are detected in the hand wash.

Thus, not only the oral but also the documentary evidence is also produced by the prosecution to prove the charge against the accused.

25. As far as proof of demand and acceptance is concerned, it is well settled that demand and acceptance can be proved on the basis of circumstantial evidence.

26. The Constitution Bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**[3] held

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that for recording conviction under Sections 7 and 13 (1)(d)(i) (ii) of the P.C.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 P.C.Act.

27. 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.

28. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**[4] referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**[5] held that the proof of demand of bribe by a public servant and its acceptance by him is *sine qua non* for establishing the offence under Section 7 of the P.C.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 P.C.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

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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".

29. To prove the offence under Sections 7 and 13(1)(d) of the P.C.Act, following are ingredients of the said Sections, which require to be prove:

> **<u>under Section 7</u>:** (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.
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> **<u>under Section 13(1)(d)</u>**: (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 acceptable 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.

30. The Constitution Bench of the Honourable Apex Court in the case of Neeraj **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 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**[6] 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)(d) of the P.C.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

6 (2002)5 SCC 86

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.

31. 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 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'.

32. 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 Bhaurao Ghuge is not only corroborated by Shadow Pancha PW2 Suresh Dharmale but also the same is corroborated by PW4 Shankar Chandanse, which shows that the accused was concerned with issuance of cheques to the complainant. The defence of the accused was falsified by PW5 Vitthal Pagrut. The defence of the accused was that he accepted the amount from the complainant which was given to PW5 Vitthal Pagrut as hand loan. PW5 Vitthal Pagrut denied the said version and specifically deposed that he has not handed over any amount to the complainant to hand over the same to the accused against the hand loan obtained by him. On the contrary, his evidence is that he told the complainant that he would pay the amount at his own to 2-3 persons.

33. Thus, the evidence as to the demand and acceptance is consistent and corroborative.

34. The statutory presumption under Section 20 of the P.C.Act comes into play when evidence either direct or circumstantial shows that money was accepted other than for

motive or reward under Section 7 of the P.C.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.

35. In the case in hand, a condition precedent to draw such legal presumption, that the accused has demanded the amount and accepted the same, has been proved and established. The evidence of the Trap Officer shows that the amount was recovered from the accused. The hand wash of the accused was collected as well as his pant was seized and the CA Report shows that p*henolphthalein* powder and sodium carbonate were detected. As far as the evidence of the Forensic Science Laboratory is concerned, the same remains unchallenged.

36. In the light of the above evidence, the defence of the accused, that he had accepted the amount through the complainant, which was given to Pagrut as hand loan, is falsified.

37. Thus, the explanations given by the accused are not sufficient to rebut the presumption.

38. The Honourable Apex Court, in the case of **C.M.Girish Babu vs. CBI Cochi, High of Kerala**[7]**,** held that it is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. It is further held that it is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

39. Thus, as observed earlier, the accused has offered explanations which appear to be false to rebut the presumption under Section 20 of the P.C.Act.

40. Thus, a primary condition for acting on the legal presumption, that the prosecution should have proved that

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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 supported by proof, the presumption created by the provision cannot be said to be rebutted. Learned Judge of the trial court has rightly considered the same and convicted and sentenced the accused.

41. 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.)

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