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

CRIMINAL APPEAL NO.579 OF 2005
WITH
CRIMINAL APPEAL NO.602 OF 2005

CRIMINAL APPEAL NO.579 OF 2005
Ramdas Namdeo Wagh,
aged about 42 years,
occupation : service, resident
of Tarakhed,
Buldhana, district Buldhana. ….. **Appellant.**

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

State of Maharashtra,
through P.S.O. Buldhana
District : Buldhana. ….. **Respondent**.

CRIMINAL APPEAL NO.602 OF 2005
~~Baburao Vithoba Shelke~~, (Dead)
~~aged about 58 years,~~
~~occupation : service, resident~~
~~Buldhana, district Buldhana~~.

Through Legal Heirs.

1. Sunderabai Baburao Shelke,
aged 61 years, occupation Nil.

2. Anand Baburao Shelke,
age 37 years, occupation service,
(power of attorney holder for
applicant No.1 and 3 to 6) r/o
Gajanan Nagar Chikhli, taluka Chikhali,
district Buldhana.

3. Sau.Sunita Shivaji Shinde,
aged 47 years, occupation :
household, r/o Irla tahsil and district
Buldhana.

4. Sau.Anita Sunil Jadhav,
aged 45 years, occupation :
household, r/o Irla tahsil and district
Buldhana.

5. Sau.Seema Balasaheb Nimbalkar,
aged 43 years, occupation
household, r/o Shewli, tahsil and
district Jalna.

6. Santosh Baburao Shelke,
aged 42 years, occupation :
household, r/o Diwthana Chikhli,
district Buldhana. ….. **Appellants.**

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

State of Maharashtra,
through P.S.O. Buldhana
District : Buldhana. ….. **Respondent**.

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Shri Rugved Dhore, Counsel for Appellants.
Shri Ganesh Umale, Additional Public Prosecutor for the Resp./State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 26/06/2024
PRONOUNCED ON : 10/07/2024

COMMON JUDGMENT

1. By these appeals, appellants (accused persons) have challenged judgment and order of conviction and sentence dated 25.10.2005 passed by learned Additional Sessions Judge, Buldana (learned Judge of the trial court) in Special Case No.1/1999.

2. By the said judgment impugned, appellant Ramdas Wagh, who is accused No.2, is convicted for offence punishable under Section 12 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced to suffer rigorous imprisonment for one year and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for three months.

Appellant Baburao Shelke, who is accused No.1, is convicted for offence punishable under Section 7 of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for three months. He is also convicted for offence punishable under Section 13(1)(d) read with 13(2) of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment for three months.

Set off under Section 428 of the Code of Criminal Procedure was also given to them since they were in jail.

3. During pendency of the present appeal, appellant Baburao Shelke died and his legal representatives were brought on record.

4. Brief facts of the prosecution case, as emerge from police papers and recorded evidence, are as under:

Accused No.1 Baburao Shelke, was serving as Assistant Sub Police Inspector attached to the Buldhana Police Station and accused No.2 Ramdas Wagh was working as Police Patil. One Anil Bhambere, who is relative of Suresh Masna Patil (complainant), attended marriage on 23.4.1998 at the house of one Police Constable namely Morey. Some guests came for marriage made a complaint against said Anil Bhambere that he was found checking bags of guests and, therefore, the police initiated action against him under Section 109 of the Code of Criminal Procedure. When the complainant and one Rameshwar Bhambere approached the police station, they learnt that said Anil Bhambere is arrested in crime of theft and remanded to the police custody and, therefore,

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they met accused No.1 Baburao with a request not to obtain further police custody. Accused No.1 Baburao demanded Rs.5000/- from them and after a negotiation, agreed to accept Rs.500/- and called them in tahsil office with the said amount. As the complainant was not desiring to pay the amount, he approached the office of the Anti Corruption Bureau at Buldhana on 29.4.1998 and lodged a complaint. On the basis of his complaint, officials of the bureau decided to conduct a trap.

5. After receipt of the complaint, officers of the bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the First Information Report. The complainant produced tainted amount Rs.500/- i.e. five currency notes of Rs.100/- denomination. A demonstration as to use of phenolphthalein powder and sodium carbonate was shown. The said solution was applied on the tainted amount and kept in a shirt pocket of the complainant. Necessary instructions were given to the complainant as well as panchas. Pancha Vallabh Babrekar was asked to remain with the complainant. Whereas, other pancha was member of raiding

party. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant and panchas and all other raiding party members proceeded towards the Tahsil Office, Buldana. They halted their vehicle near hospital of Dr.Bothra. The complainant and pancha No.1 proceeded towards the Tahsil Office. However, accused No.1 Baburao was not present in the Tahsil Office. Accordingly, they informed officials of the bureau and came to know that accused No.1 Baburao is in the police station and, therefore, the complainant and pancha No.1 went to the police station. Accused No.2 Ramdas was also along with them. There was some communication between the complainant and accused No.2 Ramdas. After reaching at the police station, they met accused No.1 Baburao, who took them at his residence. Accused No.1 Baburao demanded the amount and asked to hand over the same to accused No.2 Ramdas. Accordingly, accused No.2 Ramdas accepted the amount and kept it in one bag. Immediately, the raiding party members came after receipt of a pre-determined signal. On enquiry, pancha No.1 disclosed as to the demand and acceptance. The hands of accused No.2 Ramdas were examined and tainted amount was recovered from one bag.

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The officers of the bureau drawn post-trap panchanama and lodged report about the said incident, seized relevant documents, obtained a sanction, and filed chargesheet against accused persons.

6. During trial, the prosecution examined in all eight witnesses; viz. Suresh Masna Patil vide Exhibit-26 (PW1), the complainant; Rameshwar Bandu Bhambere vide Exhibit-28 (PW2); Vallabh Babarekar vide Exhibit-29 (PW3); the shadow pancha; Bhimrao Mante vide Exhibit-37 (PW4), The Police Constable; Sk.Ibrahim Sk.Usman vide Exhibit-52 (PW5), the Police Constable; Digambar Gadekar vide Exhibit-56 (PW6), officer of the bureau; Anand Bharkhade vide Exhibit-69 (PW7); the Sanctioning Authority; and Sandip Vishoni vide Exhibit-79 (PW8), the Sanctioning Authority.

7. Besides the oral evidence, the prosecution also placed reliance on complaint Exhibit-27, pre-trap panchanama Exhibit-30, seizure memo Exhibits-31 to 33, FIR Exhibit-33/4, seizure memo Exhibit-34, post-trap panchanama Exhibit-35, map Exhibit-36, report by the officer of the bureau Exhibit-57, Chemical

Analyzer's Report Exhibit-62, and Sanction Orders Exhibits-70 and 80.

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

9. Heard learned counsel Shri Rugved Dhore for accused persons and learned Additional Public Prosecutor Shri Ganesh Umale for the State. I have been taken through the entire evidence so also the judgment impugned in the appeal.

10. Learned counsel for accused persons submitted that the judgment impugned in the appeal suffers from illegalities. There was no valid sanction to prosecute accused persons. The evidence of complainant PW1 Suresh Patil and PW2 Rameshwar Bhambere is not consistent and corroborative. The shadow pancha examined by the prosecution led his evidence, which is completely inconsistent with the evidence of complainant PW1 Suresh Patil and PW2 Rameshwar Bhambere. The presence of accused No.2 Ramdas with raiding party members before the complainant and

shadow pancha reached at the police station, itself creates a doubt about genuineness of the complaint. The trap officer has not verified the complaint is genuine or not. The amount was found in one bag. The Investigating Officer has not seized the said bag or verified whether there are marks of solution of phenolphthalein powder and sodium carbonate. Thus, the entire evidence is doubtful and prepared to implicate accused persons falsely. As far as accused No.2 Ramdas is concerned, the evidence of complainant PW1 Suresh Patil and PW2 Rameshwar Bhambere consistently shows that he was not aware that the amount handed over to him is a gratification amount. As such, the case of the prosecution fails and appeals deserve to be allowed.

11. *Per contra*, learned Additional Public Prosecutor for the State submitted that the tainted amount is recovered from house of accused No.1 Baburao. Complainant PW1 Suresh Patil and as well as pancha No.1 categorically stated about the demand and acceptance. The sanction was accorded after application of mind. Presumption is attracted, which is not rebutted by accused

persons. As such, appeals are devoid of merits and liable to be dismissed.

12. Since question of validity of sanction has been raised as primary point, it is necessary to discuss an aspect of sanction. The sanction orders were challenged on ground that it was not accorded by applying mind and, therefore, it is not valid sanction.

13. In order to prove sanction order, in respect of accused No.2 Ramdas, the prosecution placed reliance on the evidence of Sanctioning Authority PW7 Anand Bharkhade. As per his evidence, he was working as the Sub Divisional Officer (Revenue). Accused No.2 Ramdas was Police Patil. He received papers of investigation. He went through the entire papers and accorded the sanction. The Sanction Order is at Exhibit-70. His cross examination shows that he admitted during cross examination that he used draft sanction order, but he explained that he studied papers and applied his mind. He further stated that original papers were not sent to him. He further admitted that from papers it is not disclosed that prior to actual trap, accused No.2 Ramdas and complainant PW1 Suresh Patil had come into contact

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of each other. Thus, his evidence is only to the extent that he read papers and, thereafter, accorded the sanction.

Perusal of sanction order Exhibit-70 shows that the entire prosecution story is reproduced and only it is mentioned that upon carefully reading papers, he is satisfied that there is an adequate evidence to prosecute accused No.2 Ramdas and, therefore, he accorded the sanction.

14. Another Sanctioning Authority PW8 Sandip Vishoni, is examined to prove the sanction Exhibit-80 accorded for the prosecution of accused No.1 Baburao. His evidence is to the extent that all papers of investigation were sent to him. He applied his mind and found that there is a sufficient evidence and accorded the sanction. His cross examination shows that in requisition letter it was mentioned that a draft sanction order has been sent and he can peruse the same. He did not make any enquiry with accused No.1 Baburao before according the sanction.

Perusal of sanction order Exhibit-80 shows that the entire prosecution story is reproduced and he mentioned that after carefully evaluating the evidence, he accorded the sanction.

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

16. The Honourable Apex Court, in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh**[1]**,** has held that what the court has to see is whether or not the Sanctioning Authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same and any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which 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.

1 1979 AIR 677

17. The Honourable Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal**[2], has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the Sanctioning Authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the Sanctioning Authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself 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

2 2014 Cri.L.J. 930

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.

18. It is true that an order of sanction should not be construed in a pedantic manner. However, it is well settled that purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the Sanctioning Authority is the best person to judge as to whether a public servant concerned should receive protection under the said Act by refusing to accord sanction for the prosecution or not. For the aforementioned purpose, undisputedly, application of mind on the part of the Sanctioning Authority is imperative. The order granting sanction

must be demonstrative as to facts that there had been proper application of mind on the part of the Sanctioning Authority. An absence of description of documents referred by the Sanctioning Authority and only considering grievance made by complainant, it would show lack of application of mind by the competent authority while according sanction. The documents other than complaint require to be taken into consideration and should be referred in sanction order.

19. In view of settled principles of law, it is crystal clear that Sanctioning Authority has to apply his/her own independent mind for generation of his/her satisfaction for sanction and order of sanction should not be construed in a pedantic manner. The mind of the Sanctioning Authority should not be under pressure and has to apply his/her own independent 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 the sanction for prosecution or not.

20. Thus, application of mind on the part of the Sanctioning Authority is imperative. The order granting sanction must

demonstrate that the Sanctioning Authority has applied his/her mind while according sanction.

21. After going through the evidence of Sanctioning Authorities PW7 Anand Bharkhade PW8 Sandip Vishoni, though they have stated that they have applied their minds, sanction orders nowhere disclose that they have received investigation papers or complaint or the post-trap panchanama. The wordings used in sanctioning orders only disclose regarding allegations made in the complaint. The draft sanction orders were also sent to them. Admittedly, grant of sanction is a serious exercise of powers by competent authority and he/she has to be apprised of all relevant materials and on such material, the authority has to take a conscious decision as to whether facts would show commission of offence under relevant provisions. No doubt, elaborate discussion is not required, however decision making on relevant materials should be reflected in order, which is absent in the present case.

22. Besides the issue of sanction, the prosecution claims that accused No.1 Baburao demanded the amount and accused No.2 Ramdas accepted the same on behalf of accused No.1 Baburao.

23. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Suresh Patil and PW2 Rameshwar Bhambere, who was along with the complainant at the relevant time and Shadow Pancha PW3 Vallabh Babarekar.

The evidence of the complainant discloses that one of his relatives was detained by the police by taking action against him under Section Section 109 of the Code and, therefore, he along with PW2 Rameshwar had been to the police station. At the police station, he came to know that his relative Anil Bhambere is arrested by the police in theft case and investigation was with accused No.1 Baburao and, therefore, he met accused No.1 Baburao and alleged accused No.1 Baburao demanded Rs.5000/- and after a negotiation, shown his readiness to accept Rs.500/-. Accused No.1 Baburao called him on 29.4.1998 along with the said amount. He further deposed that at the time of initial demand, PW2 Rameshwar was along with him. After lodging of the report and pre-trap panchanama, he along with pancha No.1 visited accused No.1 Baburao, who demanded the amount, and on his behalf, accused No.2 Ramdas accepted the same. Accused persons were caught immediately after acceptance of the amount. The amount was recovered from one bag from the house of accused No.1 Baburao.

The cross examination of this witness shows that though the demand was made to him on 27.4.1998, he approached the office of the bureau on 29.4.1998. Prior to that, he has not made any grievances against accused No.1 Baburao. During the cross examination, material omission, that accused No.1 Baburao asked accused No.2 Ramdas to accept the amount, is brought on record and proved through Trap Officer PW6 Digambar Gadekar. The cross examination further shows that the raid decided to be conduced at the tahsil office, but it was unsuccessful. From the cross examination, previous dispute between the complainant and accused No.1 Baburao was also brought on record. He admitted to the extent that accused No.1 Baburao never assured to him to do any personal work.

As far as accused No.2 Ramdas is concerned, he specifically admitted that on 29.4.1998 till the trap was laid, accused No.2 Ramdas was not aware that the amount is of gratification amount and demanded by accused No.1 Baburao. He further admitted that accused No.2 Ramdas has been unnecessarily implicated.

24. Thus, as far as the demand is concerned, initial demand was in presence of PW2 Rameshwar. The evidence shows that it was complainant PW1 Suresh Patil, who has handed over the amount to accused No.2 Ramdas. As far as communication of accused No.1 Baburao to hand over the amount to accused No.2 Ramdas is omission and not narrated while lodging the report. The said omission is proved through the Trap Officer.

25. Whether there is a corroboration to the demand and acceptance alleged by complainant PW1 Suresh Patil through PW2 Rameshwar Bhambere, the evidence of PW2 Rameshwar is

material. As far as the demand is concerned, his evidence is that they met accused No.1 Baburao and accused No.1 Baburao demanded amount Rs.5000/- and subsequently shown his readiness to accept Rs.500/-. On the day of the trap, he was not present. So, his evidence is to the extent of initial demand. The cross examination shows that on 29.4.1998 there was discussion between him and the complaint to lodge a report. During evidence, he specifically admitted that on 29.4.1998 accused No.1 Baburao has not demanded any amount from him. Accused No1 Baburao has not taken any efforts to meet him. He further admitted that on 29.4.1998 the MCR Report was filed by the police before the court. The allegation against accused No.1 Baburao is that he demanded the amount for not extending the PCR of Anil who was in police custody. However, this admission shows that he had already submitted the MCR Report before the court. Thus, the cross examination shows that prior to demand on 29.4.1998 and acceptance he has submitted a MCR Report.

26. The evidence of Shadow Pancha PW3 Vallabh Babarekar is also material on this aspect. He is a witness as to the demand

and acceptance on the day of the trap. His evidence shows that as per instructions of officials of the bureau, he visited along with complainant PW1 Suresh Patil at Tahsil Office, but accused No.1 Baburao was not there and, therefore, they went to police station. Thereafter, accused No.1 Baburao took them at his house. Accused No.1 Baburao and accused No.2 Ramdas went inside another room and, thereafter, accused No.1 Baburao asked about the amount and the complainant handed over the said amount to accused No.2 Ramdas on the say of accused No.1 Baburao and, thereafter, accused No.1 Baburao and accused No.2 Ramdas were caught. The evidence shows that accused No.2 Ramdas met him at a square before he approached to accused No.1 Baburao.

Thus, the evidence consistently shows that before approaching accused No.1 Baburao, accused No.2 Ramdas, who is Police Patil, was with raiding party members.

The cross examination further shows that he has not heard any communication between accused No.1 Baburao and accused No.2 Ramdas. Thee was no communication between the complainant and accused No.2 Ramdas at the house of accused No.1 Baburao in respect of work of the complainant.

Thus, as far as the demand is concerned, the evidence of Shadow Pancha PW3 Vallabh Babarekar is shattered during the cross examination as he specifically admitted that there was no communication between the complainant and accused No.1 Baburao as to the work.

27. It is well settled that a stray enquiry, whether amount is brought, is not sufficient to prove the demand. The cross examination of complainant PW1 Suresh Patil and PW2 Rameshwar Bhambere as well as Shadow Pancha PW3 Vallabh Babarekar falls short to prove the demand at the instance of accused No.1 Baburao. The evidence of Trap Officer PW6 Digambar Gadekar, admittedly, is only to extent of recovery of amount. The amount was not recovered either from accused No.1 Baburao and accused No.2 Ramdas, but it was recovered from one bag. The cross examination of the Trap Officer shows that he has not examined inside portion of the bag wherein the amount was found. He also admitted that accused No.1 Baburao did not

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meet the complainant at the office of the tahsil. He also admitted that the complainant had no personal work with accused No.1 Baburao. He further admitted that till exchange of the bribe amount, accused No.2 Ramdas had no knowledge about the tainted notes.

28. The evidence of Police Constables PW4 Bhimrao Mante and PW5 Sk.Ibrahim Sk.Usman is only to extent that accused No.1 Baburao is serving as Police Constable and investigation of theft case was with the accused. So their evidence is not material as far as allegations against accused No.1 Baburao and accused No.2 Ramdas are concerned.

29. The absence of accused No.1 Baburao at the Tahsil Office and circumstance accused No.2 Ramdas accompanying complainant PW1 Suresh Patil and Shadow Pancha PW3 Vallabh Babarekar prior approaching accused No.1 Baburao and acceptance of the amount by accused No.2 Ramdas, though there was no discussion between accused No.1 Baburao and accused No.2 Ramdas and evidence of the complainant who has not stated while lodging the report that it was accused No.1 Baburao who

asked accused No.2 Ramdas to accept the amount creates a doubt about the entire prosecution case and the manner in which the trap was conducted.

30. Admittedly, proof of demand is *sine qua non* to prove offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the said Act. As far as demand is concerned, the evidence of witnesses should be consistent.

31. The Constitution Bench of the Honourable Apex Court in the case of **Neerja Dutta vs. State (Govt.of NCT of Delhi)**[3] 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**[4] wherein it is held that mere acceptance of money without there being any other evidence would not be

3 (2023)4 SCC 731
4 (2002)5 SCC 86

sufficient for convicting the accused under Section 13(1)(d)(i) of the said Act. In Sections 13(1) and (b) of the said Act, the Legislature has specifically used the words ‘accepts’ or ‘obtains’. As against this, there is a departure in the language used in clause (1)(d) of Section 13 and it has omitted the word ‘accepts’ and has emphasized the word ‘obtains’. In sub clauses (i) and (ii) (iii) of Section 13(1)(d), the emphasize is on the word “obtains”. Therefore, there must be evidence on record that accused ‘obtained’ for himself or for any other person any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant or he obtained for any person any valuable thing or pecuniary advantage without any public interest.

While discussing the expression “accept”, the Honourable Apex Court observed that “accepts” means to take or receive with “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 the 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. When a trap is set for proving a charge of corruption against a public servant, evidence about 'acceptance' has its own importance. In the present case as noted above, the accused is charged of the offence punishable under Section 7 of the said Act wherein, demand is *sine qua non* for establishing the charge. He further submitted that in a Constitution Bench judgment in **Neerja Dutta vs. State (Govt.of NCT of Delhi)** *supra,* it is held that Section 13(1)(d) of the Prevention of Corruption Act has the following ingredients which has to be proved before bringing home the guilt of the public servant namely :

(1) the accused was a public servant;

(2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a 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; and

(6) to make out an offence under this provision, there has to be actual obtainment,

In paragraph No.6 of the judgment by referring the case of **Subhash Parbat Sonvane vs. State of Gujarat** *supra* it was 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) of the said Act. In Sections 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 the accused 'obtains' 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 that he obtained for any person any valuable thing or pecuniary advantage without any public interest.

33. As far as abuse of the position is concerned, in case of **Subhash Parbat Sonvane vs. State of Gujarat** *supra*, in paragraph No.7, the Honorable Apex Court held that it is enough if by abusing his position as a public servant a man obtains for himself if any pecuniary advantage entirely irrespective of motive or reward for showing favour or disfavour. The Statutory presumption under section 20 of the Act is available for the offence punishable under Section 7 or 11 or Clause (a) and (b) of sub-Section (1) of Section 13 and not for Clause (d) of sub-Section (1) of Section 13 of the said Act.

34. While discussing the expression "accept", it was observed in case **C.K. Damodaran Nair Vs. Union of India**[5] that "accepts" means to take or receive with a "consenting mind". The 'consent'

5 (1997)9 SCC 477

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, 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”. 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 the offence under Section 13(1)(d) read with Section 13(2) is concerned. Under the said Section, the prosecution has to prove that the accused ‘obtained’ the valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant and that too without the aid of the statutory presumption under Section 20 of the said Act as it is available only in respect of offences under Section 7 and 11 and not under Section 13(1)(d) of the said Act. The Honorable Apex Court expressed ‘obtain’ means to secure or gain (something) as a 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 fact that the prosecution is under obligation to prove the demand as well as the acceptance. As to the demand, the evidence adduced is not consistent and corroborative. The entire case of the prosecution depends upon the acceptance of the amount, but the evidence shows that accused No.2 Ramdas was along with complainant PW1 Suresh Patil and Shadow Pancha PW3 Vallabh Babarekar prior to approaching accused No.1 Baburao. In that circumstances, the evidence as to fact that accused No.1 Baburao asked accused No.2 Ramdas to accept the amount appears to be doubtful. Moreover, Shadow Pancha PW3 Vallabh Babarekar specifically admitted that there was no discussion between the complainant and accused No.1 Baburao in his presence. The

shadow pancha has also not heard any communication between accused No.1 Baburao and accused No.2 Ramdas showing that it was accused No.1 Baburao who asked accused No.2 Ramdas to accept the amount. The amount was found in one bag. The said bag was not seized and forwarded to Chemical Analysis. As far as presumption is concerned, the prosecution has to first prove foundational facts and, thereafter, the accused persons have to rebut presumption.

36. 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'. If the entire evidence is appreciated, admittedly, there is no evidence as to the demand and in pursuance of the demand, there was an acceptance. As the entire case of the prosecution depends upon the acceptance of the amount, there is no evidence that the amount was demanded by accused No.1 Baburao and in pursuance of the said demand, the amount was handed over. Admittedly, the word "gratification" is not defined in the said Act. Hence it must be understood in its literal meaning. In

the Oxford Advanced Learner's Dictionary of Current English, the work "gratification" is shown to have the meaning "to give pleasure or satisfaction to". The word "gratification" is used to denote acceptance of something to the pleasure or satisfaction of the recipient. If the money paid is not for personal satisfaction or pleasure of the recipient, it is not the gratification in the sense it is used in the section. In other words, unless the prosecution proves that money paid was not towards any lawful collection or legal remuneration, the Court cannot take recourse to the presumption of law. The court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act.

37. In the case of **State of Maharashtra vs. Rashid B.Mulani**[6], 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, explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Something more than raising

6 (2006)1 scc 407

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 proof, he can discharge it on the basis of preponderance of probability.

38. As observed earlier, prior demand by accused No.1 Baburao, which is *sine qua non,* is not proved as well as the demand and acceptance on the day of trap is also not established. The presence of accused No.2 Ramdas, prior to trap with complainant PW1 Suresh Patil and Shadow Pancha PW3 Vallabh Babarekar, creates a doubt. The sanction accorded is without application of mind.

39. Thus, keeping in mind all relevant facts and the material and the evidence on record, the evidence as to the demand and acceptance is not satisfactory.

40. In this view of the matter, as appeals deserve to be allowed, following order is passed:

ORDER

(1) The Criminal Appeals are **allowed**.

(2) The judgment and order of conviction and sentence dated 25.10.2005 passed by learned Additional Sessions Judge, Buldana in Special Case No.1/1999 is hereby quashed and set aside.

(3) The accused persons are acquitted of offences for which they are charged and convicted.

Appeals stand **disposed of**.

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

!! BrWankhede !!