



Judgment

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

CRIMINAL APPEAL NO.447 OF 2012

Bhaurao s/o Wasudev Chauhan,
aged about 58 years,
occupation : service, r/o Sneha Nagar,
Bhandara, tahsil and
district – Bhandara. **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through : Anti Corruption Bureau,
Bhandara. **Respondent.**

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Shri Anil S.Mardikar, Senior Counsel assisted by Shri
N.S.Khandewale, Advocate for the Appellant.
Shri N.R.Rode, Additional Public Prosecutor for the State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 16/01/2024

PRONOUNCED ON : 24/01/2024

JUDGMENT

1. The appellant (accused) has challenged judgment and order of conviction and sentence dated 3.10.2012 passed by learned Additional Sessions Judge, Gondia (learned Judge of the trial court) in Special Criminal Case No.2/2008 whereby he is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the said Act) and sentenced him to suffer rigorous imprisonment for three years and to pay fine Rs.10,000/-, in default, to undergo further simple imprisonment for six months. He is also convicted for offence punishable Section 13(2) read with 13(i)(d) of the said

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Act and sentenced him to suffer rigorous imprisonment for three years and to pay fine Rs.10,000/-, in default, to undergo further simple imprisonment for six months.

2. Brief facts necessary for disposal of the appeal are as under:

The accused was serving as Industries Inspector attached to the District Industries Centre (DIC), Gondia. Complainant Gulab Zanaklal Rahangdale lodged report against the accused on 29.6.2004 alleging that he was desiring to start his own business and, therefore, he was in need of financial assistance. The Government of Maharashtra has a scheme for unemployed persons to provide financial aid to start industries and promote unemployed youths and, therefore, the complainant approached the accused on 23.6.2004 to obtain loan from the DIC and to obtain some guidance for securing loan. The accused used to visit once a week to the office of the Panchayat Samiti, Tiroda. On 23.6.2004, the complainant met the accused, but the accused demanded Rs.500/- from him for forwarding his papers along with recommendations for grant of loan from the concerned bank and called him along with the amount and an application

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with relevant documents on 30.6.2004. As the complainant was not willing to pay the said amount, he approached the office of the Anti Corruption Bureau (the bureau), Bhandara on 29.6.2004 by lodging complaint.

3. On receipt of the complaint, officials of the bureau called two panchas. In presence of panchas, the complainant narrated the incident which was verified by panchas from the complainant. After following due procedure, it was decided to conduct a raid. The complainant produced tainted amount of Rs.500/- i.e. five currencies of Rs.100/- denomination and numbers of currencies were noted. The demonstration as to phenolphthalein powder and solution of sodium carbonate was shown. The said solution was applied on the tainted amount and the amount was kept in shirt pocket of the complainant. The complainant was instructed not to hand over the amount unless it is demanded. Devendra Ninave, was asked to act as pancha No.1 and instructed to stay along with the complainant. Pancha No.2 was directed to stay along with raiding party members. Accordingly, pre-trap panchanama was drawn. After pre-trap panchanama, the complainant along with pancha No.1 went in the office of the accused. There was a communication between the complainant and the

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accused. The accused demanded the amount and the complainant handed over the same. Thereafter, after receipt of the pre-determined signal, the raiding party members came there and officials of the bureau caught the accused and the tainted amount was recovered from the accused. The fingers of the right hand of the accused were examined in the solution and the accused was arrested. The shirt of the accused was also seized and after completion of investigation, chargesheet was filed.

4. During trial, the prosecution examined in all 4 witnesses; viz. Gulab Zanaklal Rahangdale vide Exhibit-9, the complainant (PW1); Devendra Deorao Ninave vide Exhibit-14, the pancha (PW2); Malini Vijay Shankar vide Exhibit-28, the sanctioning authority (PW3), and Sevakram Raghuji Kore vide Exhibit-30, the Investigating Officer (PW4).

5. Besides the oral evidence, the prosecution placed reliance on personal search panchanama of the complainant (Exhibit-11); seizure memo (Exhibit-12); personal search panchanama of the complainant after trap (Exhibit-13); complaint (Exhibit-15); pre-trap panchanama (Exhibit-16); post trap panchanama (Exhibit-17); seizure memos (Exhibits-

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19 to 25); sanction order (Exhibit-29); the report lodged by Investigating Officer PW4 Sevakram Kore (Exhibit-31); FIR (Exhibit-32); letter to the Chemical Analyzer (Exhibit-33), and the Chemical Analyzer's Report (Exhibit-35).

6. 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.

7. I have heard learned Senior Counsel Shri Anil S.Mardikar for the accused and learned Additional Public Prosecutor Shri N.R.Rode for the State. I have been taken through the entire evidence so also the judgment and order of sentence impugned in the appeal.

8. Learned Senior Counsel for the accused submitted that the judgment and order of conviction impugned is erroneous as there was no evidence regarding the demand and acceptance. Learned Judge of the trial court failed to appreciate that implicit reliance was placed on record by the prosecution on the evidence of the complainant PW1 Gulab Zanaklall Rahangdale, who has not supported the prosecution case. The evidence of pancha PW2 Devendra Ninave is also

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not cogent and reliable as he admitted during cross examination that at the time of communication, he was asked to stay outside room wherein the alleged incident has taken place. The evidence of pancha witness shows that at the relevant time, an employee by name Kukde was present in cabin of the accused as well as other two-three persons were also sitting, but none of them is examined. Thus, possibility of communication being heard by pancha PW2 Devendra Ninave is ruled out. The independent witnesses are not examined. Mere recovery of tainted amount from the accused is not sufficient in absence of any proof of the demand. In view of that, the appeal deserves to be allowed by acquitting the accused.

9. In support of his contentions, learned Senior Counsel for the accused placed reliance on following decisions:

1. Soundarajan vs. State, represented by the Inspector of Police Vigilance Anti Corruption, Dindigul¹;

2. B.Jayaraj vs. State of A.P.², and

3. Krishan Chander vs. State of Delhi³.

¹ 2023 SCC OnLine SC 424

² AIR 2014 SC (Supp) 1837

³ AIR 2016 SC 298

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10. *Per contra*, learned Additional Public Prosecutor for the State submitted that merely because the complainant turned hostile that by itself is not sufficient to acquit the accused as allegations are supported by pancha PW2 Devendra Ninave, who narrated about the demand and acceptance. Thus, the demand and acceptance at the hands of the accused is proved by the prosecution. It is also supported by investigating officer PW4 Sevakram Kore, who has recovered the same amount from the accused. The sanction accorded is valid sanction which is proved and, therefore, no interference is called for.

11. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)**⁴

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

4 2023 SCC OnLine SC 280,

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13. In order to prove the sanction, the prosecution placed reliance on the evidence of sanctioning authority PW3 Malini Shankar. She testified that at the relevant time, she was holding charge of the Development Commissioner (Industries) of the Directorate of Industries of the Maharashtra State. She received a letter from the investigating agency along with documents, pertaining to the accused who was serving as Industries Inspector, for according the sanction. She perused documents and studied contents and satisfied herself that there exists *prima facie* circumstances against the accused for prosecuting him under under Sections 7 and 13(2) read with 13(i)(d) of the said Act. On satisfaction, she accorded the sanction, which is at Exhibit-29. She further deposed that at the relevant time, she was authorized person to appoint and remove officers from rank of Industries Inspectors.

The cross examination of the above witness shows that along with case papers, she received draft also. She also received original case papers for her perusal. Her cross examination was recorded in a question and answer form. While answering question, "Will it be correct to say that you merely signed the draft copy of the sanction order supplied to you? She answered, "she has gone through it and made

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necessary corrections and then accorded the sanction". She further admitted that she has not specifically mentioned documents which are referred by her in the sanction order. Thus, her evidence shows that she received a draft sanction order which she had perused and by making corrections accorded the sanction.

14. Learned Senior Counsel for the accused submitted that though the sanction order is not seriously challenged by the accused before the trial court. However, cross examination of sanctioning authority PW3 Malini Shankar shows that on the basis of the draft sanction order, she accorded the sanction. Moreover, the sanction order nowhere reflects which documents she received and considered. The sanction order nowhere shows on what basis sanctioning authority PW3 Malini Shankar came to conclusion to accord the sanction.

15. Perusal of the sanction order reveals that in first paragraph, it is mentioned that the accused is public servant within the meaning of Section 2(c) of the said Act. In second paragraph, background of the complainant is mentioned. In third paragraph, the prosecution case is mentioned and in last paragraphs it is mentioned that she read papers of

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investigation carefully and satisfied that there is an adequate evidence to prosecute the accused and accorded the sanction.

16. 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.

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 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

⁵ 1979 AIR 677

⁶ 2014 Cri.L.J.930

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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 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

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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. 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 its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his/her own independent mind on the basis of evidence came before it.

20. The evidence of sanctioning authority PW3 Malini Shankar shows that she received the draft sanction order and after making some corrections, she accorded the sanction as per the draft sanction order.

21. The legal position is clear, as far as sanction order is concerned, which shows that an order of sanction should not

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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. 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 the sanction.

22. After going through the evidence of sanctioning authority PW3 Malini Shankar, though she stated that she applied her own mind, the sanction order nowhere discloses which documents she had taken into consideration while 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.

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23. Here, in the present case, such exercise by sanctioning authority PW3 Malini Shankar has not reflected in the sanction order. Learned Judge of the trial court has not taken into consideration the legal requirement while holding the sanction valid.

24. 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 Gulab Rahangdale and pancha PW2 Devendra Ninave. The prosecution also placed reliance on the evidence of investigating officer PW4 Sevakram Kore to prove the recovery of the tainted notes from the accused.

25. 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.

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26. The Honourable Apex Court in the case of **K.Shanthamma vs. The State of Telangana**⁷ referring the judgment in the case of **P.Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and anr**⁸ 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

⁷ 2022 LiveLaw (SC) 192

⁸ (2015)10 SCC 152

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

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

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

under Section 13(1)(d): (1) the accused must be a public servant; (2) by corrupt or illegal means, obtains for himself or any other person any valuable thing or pecuniary advantage; or or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage

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without any public interest; (3) to make out an offence under Section 13(1)(d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward; (4) an agreement to accept or an attempt to obtain does not fall within Section 13(1)(d); (5) mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision; (6) to make out an offence under this provision, there has to be actual obtainment, and (7) since the legislature has used two different expressions namely “obtains” or “accepts”, the difference between these two have to be taken into consideration.

28. In the light of the well settled law, if the evidence of the prosecution is appreciated, it would show that complainant PW1 Gulab Rahangdale has not supported the prosecution case and left loyalty towards the prosecution. As per allegations in the complaint are concerned, as the complainant was in need of financial assistance to start his industry and was desiring to obtain loan under the scheme run by the DIC, he approached the accused at of the office of the Panchayat Samiti, Tiroda. The accused demanded Rs.500/- to forward his application for sanctioning loan to the concerned

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bank and called him on 30.6.2004 along with the amount. During his evidence, he disowns his statement before officers of the bureau and stated that his father had borrowed hand loan of Rs.2000/- from the accused as his father was having family relations with the accused and amount of Rs.500/- was paid which was remained to be paid against the said hand loan. Though he is cross examined by learned APP, nothing transpired to prove the demand by the accused. The cross examination shows that on 23.6.2004 he approached the accused for loan of Rs.50,000/-. He also admitted that the accused told him to bring relevant documents and after submission of documents, he would recommend his loan case, but he flatly denied that there was any demand from the accused. He admitted his presence in the office of the bureau and also admitted presence of panchas and the entire procedure carried out in the office. He denied that the accused asked him to pay the amount towards "Kharha-Pani".

29. As complainant PW1 Gulab Rahangdale has not supported the prosecution case, reliance is placed on the evidence of pancha PW2 Devendra Ninave. He narrated the entire procedure carried out by officials of the bureau. Regarding the demand, his evidence shows that on the day of

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the trap i.e. 30.6.2004, they reached Tiroda at about 1:30 pm. He along with the complainant went to the office. The complainant communicated with the accused and the accused demanded the money and the complainant handed over amount of Rs.500/- by his right hand and the accused has accepted the same and kept in left pocket of his shirt and, thereafter, the accused was caught. His right hand fingers were examined in the solution. The said solution changed its colour. The tainted amount is seized and necessary seizure panchanamas are drawn. His cross examination shows that the solution was sprinkled on the currency notes and there were purple colour stains on it which are not appearing when the currency was shown to him before the court. His further cross examination shows that when the communication was going on between the complainant and the accused, the accused asked him to go out and he was standing at door. He further admitted that when they entered the office, 2-3 persons were sitting in front of the accused's table and they were talking to each other. He further admitted that one person by name Kukde was also present in the office. When the accused was caught, said Kukde was along with the accused. Thus, his cross examination shows that when the

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alleged incident of the demand and acceptance of the amount by the accused has taken place, 2-3 persons were sitting in the chamber of the accused.

30. In the light of the above cross examination, if the evidence of investigating officer PW4 Sevakram Kore is perused, it would show that he also admitted that when they entered the office, one person namely Kukde was present in the office. He shown his ignorance whether any other person is present in the office. He further admitted that distance between chair of the accused and door of chamber is about 12 feet. He further admitted that when he entered the the office of the accused, he found pancha witness Ninawe at the door of chamber of the accused.

31. Learned Senior Counsel for the accused submitted that if the cross examination of investigating officer PW4 Sevakram Kore is appreciated, it would show that during the communication between the complainant and the accused, there was no opportunity for pancha No.1 to hear conversation as admittedly he was asked to go out from the chamber and he was outside the chamber. He submitted that on probability, nobody will demand money in presence of

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other persons and the communication, if any, would have been between the complainant and the accused. Admittedly, the investigating officer before conducting the raid has not verified whether allegation of demand is genuine one.

Learned Senior Counsel in support of his contentions placed reliance on the decision of the Honourable Apex Court in the case of **B.Jayaraj vs. State of A.P.** *supra* wherein facts of the case show that complainant disowning to have made complaint and no other evidence adduced by the prosecution and held that demand of gratification cannot be held to be proved only on the basis of complaint filed and evidence of pancha witness. It is further held that in absence of proof of demand mere recovery of tainted amount from accused is not sufficient for his conviction.

On the similar point, learned Senior Counsel further placed reliance on the decision of the Honourable Apex Court in the case of **Krishan Chander vs. State of Delhi** *supra* wherein also complainant turned hostile on the point of demand and acceptance and pancha witness did not hear conversation between accused and complainant at a time when complainant approached him to give bribery.

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32. Learned Senior Counsel submitted that here in the present case also not only pancha PW2 Devendra Ninave but also investigating officer PW4 Sevakram Kore stated that pancha was outside cabin when he entered the chamber of the accused.

33. Learned Additional Public Prosecutor for the State vehemently submitted that the evidence of pancha witness is sufficient to prove charges against the accused and placed reliance on the decision in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)** *supra*, but the Constitution Bench of the Honourable Apex Court in the said case held that in order to bring home the guilt of the accused, the prosecution has to first prove demand of illegal gratification and 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**⁹ observed that mere acceptance of money without there being any other evidence would not be sufficient for convicting the accused under

9 (2002)5 SCC 86

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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.

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

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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'.

34. In the light of the above well settled legal position, if the evidence is appreciated, there is no dispute as to the fact

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that the prosecution is under obligation to prove the demand as well as the acceptance. 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 pancha witness shows that he was asked to go out by the accused and he alone left the chamber and was outside the chamber when communication between the complainant and the accused was going on. This fact is also corroborated by investigating officer PW4 Sevakram Kore, who admitted that when he entered the chamber of the accused, pancha PW2 Devendra Ninave was standing outside the chamber. Thus, the evidence of pancha, regarding the demand and acceptance, falls short to prove the allegation especially when there is absolutely no evidence as to the prior demand by the accused. Thus, there is no corroboration to the evidence of the pancha.

35. The evidence of pancha PW2 Devendra Ninave and investigating officer PW4 Sevakram Kore shows that at the relevant time, one person by name Kukde was present in the office of the accused who is not examined by the prosecution. The evidence of investigating officer PW4 Sevakram Kore is

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silent on the fact that whether he recorded statement of said Kukde. The evidence of pancha further shows that when he along with the complainant entered the office of the accused 2-3 persons were communicating with the accused. The said persons were there when the accused communicated with the complainant. The statements of these persons neither recorded nor an attempt was made by the investigating officer to ascertain the truth as to the fact of demand and acceptance. The prosecution has not chosen to record statement of independent witness during the course of investigation and no attempt was made by the investigating officer to get himself satisfied regarding the complainant's assertion of the demand having come from the accused for illegal gratification. While considering the evidence of the prosecution, it is necessary to bring in mind an importance of evidence of the demand which is trustworthy and which makes trap a legitimate to eradicate corruption, otherwise it could be an illegitimate trap.

36. The Honourable Apex Court in the case of **State of Punjab v. Sohan Singh**¹⁰ considered aspect of non examination of independent witness and held that

¹⁰ (2009) 6 SCC 444

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independent witness drawn by the raiding party is not examined on the ground that he was won over is fatal to the prosecution.

37. In the light of the above evidence, the demand of illegal gratification is not proved by adducing satisfactory and convincing evidence since proof of demand is *sine quo non* for convicting the accused in such cases. It is well settled that mere possession and recovery of currency notes from accused without proof of demand would not establish offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the said Act. The said principle is reiterated by the Honourable Apex Court in the case of **Soundarajan vs. State, represented by the Inspector of Police Vigilance Anti Corruption, Dindigul** *supra* by observing that for establishing commission of an offence punishable under Section 7 of the said Act, proof of demand of gratification and acceptance of gratification is a *sine qua non*. Moreover, the Constitution Bench in the case of **Neeraj Dutta** *supra* has reiterated that presumption under Section 20 of the said Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof.

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38. In the instant case, upon careful scrutiny of the prosecution evidence, the prior demand by the accused is not proved by the prosecution. A doubt is created as to the demand of the amount as independent witness is not examined and there is no consistency between the evidence of pancha PW2 Devendra Ninave. I have already observed that principles for according the sanction are not taken into consideration. The entire exercise carried out, insofar as the sanction is concerned, is in secrecy and the sanction order nowhere shows *prima facie* application of mind. Thus, on the ground of sanction also, the prosecution case fails. The evidence as to the demand is not satisfactory and proof of demand is *sine quo non* to prove the charge. As such, the appeal deserves to be allowed and, therefore, following order is passed:

ORDER

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

(2) The judgment and order of conviction and sentence dated 3.10.2012 passed by learned Additional Sessions Judge,

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Gondia in Special Criminal Case No.2/2008 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 !!