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

CRIMINAL APPEAL NO. 508 OF 2018

Vitthal S/o Bhaurao Salve,
Aged about 51 years,
Occupation – Service,
R/o. Kharwad, Post : Chichali,
Tah. Warora, Dist. Chandrapur.

.... **APPELLANT**

// **VERSUS** //

State of Maharashtra,
through Dy. S.P. (A.C.B.), Gadchiroli,
Tah. & Dist. Gadchiroli.

.... **RESPONDENT**

Mr. Anant Neware, Advocate for Appellant.
Mr. Nikhil Joshi, Additional Public Prosecutor for Respondent.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 02.01.2024.
PRONOUNCED ON : 08.01.2024.

JUDGMENT.

1. The appellant (accused) has challenged judgment and order of conviction and sentence dated 27.07.2018 passed by learned Judge, Special Court, designated under The Prevention of Corruption Act, 1988 (learned Judge of the trial court), Chandrapur. By the said judgment, the accused is convicted for an offence punishable under

Section 7 of the Prevention of Corruption Act, 1988 (the Act of 1988) and sentenced to suffer six months Rigorous Imprisonment and fine of Rs.3,000/- in default simple imprisonment of one month.

2. The genesis of the prosecution is complaint/report lodged by the complainant Mukharu Laxman Gaidhane with the Anti-Corruption Bureau(ACB), Gadchiroli on 27.09.2010. The gist of the said complaint is that the complainant is the owner of Survey No.298, admeasuring 2.40 H.R., situated at Mouza Kordha, District Chandrapur. He had applied for separation of 7/12 extract pertaining to the above said land, which is his ancestral property. He had also deposited the requisite fee of Rs.1,750/- on 01.10.2009 in the office of Taluka Inspector of Land Records (T.I.L.R.). The complainant, who is agriculturist and resident at Kordha, Tahsil Nagbhid, District Chandrapur. Shri Sudhakar Madankar, the official of the Land Record, carried out the measurement on 19.03.2010 and also submitted the measurement report in the office on 30.03.2010. At the relevant time, the accused serving as a 'Scrutiny Clerk' in the Land Record office has verified his application, description of the property, map, names of ownership and details regarding adjoining field on 03.04.2010. After said verification, he had prepared the report which is called as 'C-Report', he has to sent the said report to

the complainant and accordingly, he had sent the said report to the complainant on 09.04.2010 by post.

3. As per the allegation by the complainant, the office of the Talathi required the receipt of the said case papers for separation of 7/12 extract. As the said case papers are not received by the Talathi office, no action was taken on his application therefore, he visited the office of T.I.L.R., Nagbhid for enquiry. He made enquiry with the accused and accused asked him to bring the document which he has received by the post. It is alleged that the accused has demanded Rs.2,000/- from him for sending the required documents to the office of Talathi. On 21.09.2010, again complainant has visited the office of the accused and requested him to provide the documents, but the accused has demanded the amount of Rs.2,000/- and after negotiation, accused shown his willingness to accept Rs.1,000/-. It was decided that Rs.500/- would be paid by the complainant on 28.09.2010 and remaining amount is to be paid after fifteen days. It is further contention of the complainant that at the relevant time one Yashwant Nikure was also along with him. As he was not willing to pay the amount, he approached to the office of ACB, Gadchiroli and lodged the complaint.

4. After receipt of the report, Officers of the ACB called two panchas. In presence of panchas, the informant has narrated the incident which was verified by the panchas from the First Information Report. After following due procedure, it was decided to conduct the raid. The phone call was made from the mobile phone of Yashwant Nikure to the accused. The conversation between the accused and the complainant was recorded and accordingly, the verification panchnama was drawn. Thereafter, the informant produced the tainted two currencies of Rs.500/- in the office of ACB, Gadchiroli and numbers of currencies were noted. The demonstration as to the use and characteristic of phenolphthalein power and sodium bicarbonate was shown. The said solution was applied on the tainted currencies and said currencies were kept in the left shirt pocket of the informant. The instructions were given to the panchas and panch No.1 is directed to stay along with the complainant and panch No.2 was directed to stay along with the raiding party members. The complainant was further instructed to hand over the amount only on demand. Accordingly, Pre-trap panchnama was drawn.

5. After pre-trap panchnama, the informant along with panchas and raiding party members went to the office of the accused. The complainant along with panch No.1 visited office of the accused

and accused demanded the amount. As per the allegations, accused took them on the tea stall wherein the complainant made enquiry about his work and accused demanded the amount and asked him to hand over the same to the tea stall owner. The complainant has not handed over the amount, accused left the place and went in his office. The complainant and panch No.1 approached to the officer of the Anti-Corruption Bureau and narrated the incident. Thereafter, accused was caught and arrested. Accordingly, Post-trap panchnama was drawn. The officers of the Anti-Corruption Bureau lodged report about the said incident, seized relevant documents and sanction was obtained to prosecute the accused. After completion of the investigation, charge-sheet was filed against the accused.

6. During trial, the prosecution examined in all five witnesses by framing charge vide Exhibit-5. The five witnesses examined are P.W.1- Mukhru Laxman Gaidhane/complainant Exhibit-8, P.W.2 – Santosh Pandurang Mendhe/shadow panch Exhibit-16, P.W.3 – Vijay Chandrashekhar Singh panch on seizure panchnamas Exhibit-26, P.W.4 – Dadabhau Sonu Tadpe/sanctioning Authority Exhibit-32, P.W.5 – Sheikh Shabbir Ahmad Abdul Gaffar/Investigating Officer Exhibit-36.

7. Besides the oral evidence, the prosecution further relied upon, complaint Exhibit-19, Verification panchnama Exhibit-20, Personal Search panchnama of the complainant Exhibit-21, Pre-trap panchnama Exhibit-22, Post-trap panchnama Exhibit-23, letter issued by the Deputy C.E.O., Zilla Parishad Gadchiroli to the Deputy Superintendent of Police, Anti-Corruption Bureau Exhibit-27, Seizure Memo Exhibit-28, Personal Search panchnama of the accused Exhibit-30, letter issued by Deputy Director, Land Records Nagpur Division Exhibit-33, sanction order Exhibit-34, Report by the Investigating Officer at Exhibit-42, First Information Report (FIR) Exhibit-43 and Arrest panchnama Exhibit-44.

8. After considering the evidence adduced during the trial, the learned Judge of the trial Court held the accused guilty of the offence punishable under Section 7(i)(d) of the Act of 1988 and convicted and sentenced him as the aforesaid.

9. I have heard the learned Counsel Mr. Anant Neware for the appellant and learned Additional Public Prosecutor Mr. Nikhil Joshi for the State. I have been taken through the entire evidence so also the judgment and order of conviction and sentenced impugned in the appeal.

10. Learned Counsel for the appellant submitted that impugned judgment and order of conviction is not in accordance with law. The learned trial Court has not considered that there is no corroboration to the allegations regarding demand of the gratification amount by examining the independent witness. In fact, the complainant has not supported the prosecution's case and prosecution failed to prove the demand and acceptance of the bribe. Though P.W.-2 has stated about the subsequent demand, but previous demand is not proved and not corroborated. He further submitted that as a matter of fact, even the sanction to prosecute the accused, as contemplated under Section 19 of the said Act, is bad in law and, therefore, the conviction of the accused stood vitiated on that ground itself. He further submitted that as far as the previous demand is concerned, the evidence of the informant shows that he was accompanied by one Yashwant Nikure, who is not examined as well as the tea stall owner wherein the alleged communication between the complainant and accused has taken place and accused has asked the complainant to hand over the amount to the tea stall owner, said tea stall owner is also not examined. In the light of the above facts and circumstances, the demand is not proved and there was no acceptance. Thus, for all above reasons, the case of the prosecution fails and the accused is to be acquitted from the charges.

11. In support of his contention, he placed reliance on the cases of :

(i) **State of Maharashtra Vs. Gunwant Patiram Dhumbhare**, reported in **2012 ALL MR (Cri) 2980**,

(ii) **Subhash S/o Narayanraoji Rathod Vs. State of Maharashtra**, reported in **2017 ALL MR(Cri) 4144**,

(iii) **The State of Maharashtra Vs. Sikandar Khutubuddin Mujawar**, reported in **2020 ALL MR(Cri) 1259** and

(iv) **The State of Maharashtra Vs. Bajarang Shankarrao Bodhane**, reported in **2020 ALL MR (Cri) 1111**.

12. Per contra, the learned APP for the State submitted that though the complainant has not supported the prosecution's case, but the evidence of P.W.-2 - panch witness, who acted as a Shadow Panch has supported the case of the prosecution which proves that there was a demand and in pursuance of the said demand, the amount was accepted. Thus, the prosecution has proved the demand as demand. He further submitted that the evidence of the panch witness is not shattered during the cross-examination thus, prosecution has proved the demand beyond reasonable doubt. The sanction order is also valid and therefore, no interference is called for in the judgment and order passed by the learned Judge of the trial Court.

13. Since the 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.

14. On the point of valid sanction, the settled law is to be taken into consideration. The Hon'ble Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh,** reported in **1979 AIR 677** 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.

15. The Hon'ble Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal,** reported in **2014 Cri.L.J.930** 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 Hon'ble 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 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.

16. The Hon'ble Apex Court in the case of **State of Karnataka vs. Ameerjan** reported in **(2007)11 SCC 273**, held that it is true that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority.

17. The view in the case of **State of Karnataka vs. Ameerjan** (*supra*) is the similar view expressed by this court in the case of **Anand Murlidhar Salvi vs. State of Maharashtra**, reported in **2021 SCC OnLine Bom 237**.

18. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra,** reported in **2016 ALL MR (Cri) 3697** observed that absence of description of documents referred by sanctioning authority and only considering the grievances made by Complainant would show lack of application of mind by competent authority while according sanction. The documents other than complaint were taken into consideration those documents should have been referred in the sanction order. The sanction order is illegal and invalid.

19. In order to prove the sanction order, the prosecution placed reliance on P.W.-4 Dadabhau Tadpe, who has examined vide Exhibit-32. As per his evidence, he was posted as a Deputy Director of the Land Records at Nagpur Region from 01.06.2012 to 27.03.2014. On 21.03.2012, the ACB officials has sent him the case papers for granting sanction. After verifying the documents, he accorded the sanction. He further stated that the sanction order bears his signature which is at Exhibit-34. He further stated that the accused was Class-III employee and therefore he was the appointing and removing authority of the accused. During his cross-examination, suggestions were given to him that he has not applied his mind and accorded the sanction without application of mind, which are denied

by him. On the basis of above evidence, the prosecution claims that the prosecution has proved the sanction order.

20. Perusal of the sanction order, it reveals that in first para, he has mentioned that the accused is the public servant within the definition of Section 2(c) of the Act of 1988. In para Nos.2, 3 and 4, he has mentioned the prosecution's case, in further para Nos.5 to 8 he has mentioned about the procedure followed by the ACB officials and in subsequent para, he has mentioned that he has read the relevant documents and thereafter accorded the sanction.

21. Whether the sanction order is valid or not and when the sanction can be valid, the same is settled by the various decisions of the Hon'ble Apex Court, which are referred above. In view of the settled principles of law, it is crystal clear that the sanctioning authority has to apply his own independent mind for generation of its satisfaction for sanction. The mind of the sanctioning authority should not be under pressure and the said authority has to apply his own independent mind on the basis of the evidence which came before it. An order of sanction should not be construed in a pedantic manner. The purpose for which an order of sanction is required, the same is to be borne in mind. In fact, the sanctioning authority is the

best person to judge as to whether the public servant concerned should receive protection under the Act of 1988 by refusing to accord sanction for his prosecution or not.

22. 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 own mind while according sanction.

23. After going though the evidence of sanctioning authority – P.W.4, though he stated that he has applied his mind and perused the investigation papers, the sanction order nowhere discloses that on what basis he came to the conclusion that the sanction has to be accorded. The sanction order only shows that he perused the documents, studied it and accorded the sanction. The sanction order nowhere discloses that which material was examined by him and on what basis he satisfied that the sanction is to be accorded. Admittedly, the grant of sanction is a serious exercise of power by the competent authority. 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.

24. After going through the evidence of sanctioning authority P.W.-4 Dadabhau Tadpe, admittedly, the sanction order nowhere reflects which documents are considered by the sanctioning authority to accord the sanction and on what basis he came to the conclusion that sanction is to be accorded to launch the prosecution against the accused. There is no findings by learned Judge of the trial Court as to the validity of the sanction.

25. Besides the issue of sanction, the prosecution claimed that the accused has demanded gratification amount. To prove the said demand, the prosecution mainly placed reliance on the evidence of P.W.-1 complainant and P.W.-2 Santosh Mendhe, the shadow panch, who has examined vide Exhibit-16.

26. As far as the evidence of the complainant is concerned, though he stated that he is the owner of three Acres agricultural land and filed an application for separating the 7/12 extract, but he has not supported the case of the prosecution as far as demand by the accused is concerned, he completely left the loyalty towards the

prosecution. During the cross-examination of APP, though he admitted that the agricultural land was not partitioned and therefore, the 7/12 extract showing the name of his brother Manohar and sister Mainabai. He further admits that he had given application to Tahsildar, Nagbhid and the Tahsildar, Nagbhid passed an order dated 03.07.2000 in respect of the measurement of land and he deposited the amount towards the measurement. He further stated that accordingly, the measurement was conducted, he also received the copy of Map from the T.I.L.R. through the post. He also admitted that he has after receipt of the said order of the measurement, he met with Talathi and made enquiry, but he came to know that the papers are not received from the T.I.L.R. office therefore, he approached to the office of the accused and made enquiry regarding his papers, but he denied that for sending the papers accused has demanded Rs.2,000/- from him and agreed to accept Rs.1,000/- and accepted Rs.500/-. As far as presence of Yashwant Nikure is concerned, he admitted that on 27.09.2010, when he went in the office of ACB, said Yashwant Nikure was along with him. During the cross-examination by the defence, also he admitted that Yashwant Nikure was along with him when he approached to the ACB office to lodge the report. He further admitted that said Yashwant Nikure was also present along with him when he approached to the accused in his office.

27. As the complainant has not supported the prosecution case, the prosecution has examined P.W.-2 Santosh Mendhe, who acted as a shadow panch, who narrated about the entire incident and stated that he along with the complainant visited the office of the accused, complainant made enquiry with accused about his work and accused told him to bring the amount of Rs.500/- and take back his papers. P.W.-2 further stated about the verification panchnama by stating that after reaching in ACB office, the ACB officials asked the Yashwant Nikure to make a phone call to the accused. The complainant made a phone call to the accused and communication between complainant and the accused was recorded, accordingly verification panchnama was drawn. He has also narrated about the gratification amount that the complainant has produced five notes of Rs.100/- and handed over to the ACB officials on which the solution and the powder was applied. As far as demand is concerned, his evidence is to the extent that when he along with the complainant visited the office of the accused, accused told the complainant to wait for some time. Accordingly, they were waited in the office for ten minutes, thereafter, accused took them in a tea stall. On enquiry by the complainant, he asked the complainant to pay the amount to the tea stall owner, but the amount was not paid by the complainant and they approached to the raiding party members wherein the ACB

officials were present. During cross-examination of this P.W.-2, he admitted that the verification panchnama was drawn prior to execution of Padtalni panchnama. He also stated about the presence of the Yashwant Nikure in the office of ACB. He further admitted that when Padtalni panchnama was prepared, he had not gone to the Nagbhid, rest of the suggestions are denied by him.

28. Admittedly, P.W.-5 is not the witness on the demand and the acceptance, his evidence is only to the extent of procedure followed by him while drawing the pre-trap panchnama, verification panchnama and post-trap panchnama. During cross-examination he admitted that he has not made any enquiry with the tea stall owner.

29. It is submitted by the learned Counsel for the appellant/accused that as far as the evidence of the informant P.W.-1 Mukhru Gaidhane is concerned, he has not supported the case of prosecution therefore, entire prosecution rested upon the evidence of P.W.-2 Santosh Mendhe. Admittedly, Santosh Mendhe is not the witness as regards to the previous demand. As per the prosecution's case, at the time of previous demand, Yashwant Nikure was present along with the complainant. Though said Yashwant was present at the time of previous demand by the accused, when complainant

approached to the ACB office and at the time of verification panchnama, said Yashwant is not examined by the prosecution and no explanation is put forth by the prosecution for his non examination. It is an admitted position that said Yashwant was present along with the complainant when earlier demand was made as well as during the verification panchnama and his presence was also noted in the ACB office. It is pertinent to not that, though call is made during the verification panchnama from the mobile phone of said Yashwant Nikure, the mobile phone was not seized by the Investigating Officer. The learned Counsel for the appellant submitted that when first demand was made, said Yashwant Nikure was present, who was not examined as a witness and, therefore, previous demand is not proved by the prosecution. To support his contention, he placed reliance on the judgment of **State of Maharashtra Vs. Gunwant Patiram Dhumbhare** (*supra*) wherein it is held that when first demand was made his friend was with him, who was not examined as a witness, hence no case is made out for interference with the impugned order of acquittal. On the same issue, learned counsel placed reliance on the decision of **The State of Maharashtra Vs. Sikandar Khutubuddin Mujawar** (*supra*), wherein also it is held that peon who was accompanying with accused at the time of raid and tea stall owner were not examined, prosecution has failed to prove its case and acquitted the accused. Similar issue was decided by this Court in the case of **State of Maharashtra Vs. Bajarang Shankarrao Bodhane** (*supra*), wherein also this Court has taken a view that at the time of acceptance of bribe, clerks and other employees were sitting at a distance of only two feet but none of them were called to testify, it casts doubt on demand of bribe by accused and accused is acquitted.

30. It is well settled that the evidence of the complainant should be corroborated in material particulars to corroborate the version of the complainant. The witness namely Yashwant Nikure, who was along with the complainant since the date of initial demand till the demand during the verification panchnama is the material witness, who is not examined by the prosecution in support of the charge. The Hon'ble Apex Court in the case of **Panalal Damodar Rathi vs. State of Maharashtra**, reported in **(1979)4 SCC 526,** wherein it is held that there could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the

accused with the crime has to be insisted upon. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of the complainant has been corroborated. The Hon'ble Apex Court held that it should corroborate to each other. Similar view is expressed by the Hon'ble Apex Court in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab**, reported in **2017 SCC OnLine SC 742**, wherein also it is held that the statement of complainant and inspector, the shadow witness in isolation that the accused had enquired as to whether money had been brought or not, can by no mean constitute demand as enjoined in law. Such a stray query *ipso facto* in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence.

31. While deciding the issue involving the offence under the Act of 1988, a fact required to be considered is that the evidence of the prosecution will have to be scrutinized meticulously. The

testimony of such person requires careful scrutiny. In the case of **M.O.Shamsudhin vs. State of Kerala**, reported in **(1995)3 SCC 351**, it has been held that word "accomplice" is not defined in the Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in crime. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together, the courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.

32. In the case of **Bhiva Doulu Patil vs. State of Maharashtra**, reported in **1963 Mh.L.J. 9SC) 273**, wherein it has been held that the combine effect of Sections 133 and 114, illustration (b) may be stated as follows:

> *"According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice,*

not accept the evidence of such a witness without corroboration in material particulars."

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

34. In the present case, admittedly, the complainant has not supported the prosecution's case as to the demand. As far as the evidence of the shadow panch is considered, he has witnessed on the subsequent demand. His evidence shows that there was a communication between the complainant and the accused through the telephonic call made from the mobile phone of Yashwant. The communication was to the extent that the complainant Mukhru Gaidhane asked the accused whether his papers are ready, on that the accused told him that you came in the Land Records office along with Rs.500/- and take back your papers. Admittedly, said Yashwant Nikure is not examined, his mobile phone is also not seized. As far as the communication between the complainant and the accused is concerned, when complainant and P.W.-2 visited the office of the accused, it is to the extent that after reaching into the office of the accused, complainant made enquiry whether his documents are

ready, accused asked him to wait for some time thereafter, accused called the complainant and offered him tea and they went on the tea stall. After drinking tea, accused told the complainant to pay the amount to the tea stall owner, but the said amount was not paid. The wordings uttered by the accused are "चहावाल्याला पैसे दे". On the basis of which, learned APP submitted that the statement uttered by the accused, itself is sufficient to show that the demand was made by the accused by saying "चहावाल्याला पैसे दे". On appreciation of the evidence, it appears that the accused, complainant and the panch had a tea on the said tea stall. It is not clear whether the accused has asked the complainant to pay the amount i.e. gratification amount to the tea stall owner or asked the complainant to pay the money against the tea which they had. For the clarification, the examination of the tea stall owner was required, but the said tea stall owner was not examined by the prosecution.

35. Thus, as far as earlier demand of the accused is concerned, it is deposed that Yashwant Nikure was present along with the complainant. The Investigating Officer also admitted regarding the presence of said Yashwant Nikure. The said Yashwant Nikure was also present during the verification panchnama and a phone call was made from his mobile phone, neither the mobile

phone of the Yashwant Nikure was seized nor he is examined and prosecution has not given any explanation about the same. The prosecution has chosen not to examine him and no attempt was made by the Investigating Officer to get himself satisfied regarding the complainant's assertion of demand having come from the appellant for illegal gratification. The Investigating Officer further admitted that he has not made enquiry with the tea stall owner, the enquiry with the tea stall owner was required to prove the case of demand. As per the prosecution's case, accused asked to pay the amount to the tea stall owner. Whether the tea stall owner was having knowledge that he has accepted the amount on behalf of the accused, which is a gratification amount, which would have clarify after examining said tea stall owner, but it is apparent that said tea stall owner was neither enquired by the Investigating Officer nor his statement was recorded, it creates a doubt regarding the prosecution's case.

36. The aspects of non examination of independent witness was considered by the Hon'ble Apex Court in the case of **State of Punjab Vs. Sohan Singh**, reported in **(2009)6 SCC 444**, wherein it is held that independent witness not examined is fatal to the case of prosecution.

37. It is well settled that prove the charges against the accused, a demand requires to be proved by the prosecution. The evidence on aspect of demand and acceptance for illegal gratification, examination of the complainant and panch witness not sufficient. It is well settled that the demand for bribe money is *sine qua non* to constitute an offence under Section 7 of the Act of 1988 and the mere recovery of the currency would not prove the charge against the accused in absence of evidence as to the demand. Insofar as the offence under Section 7 is concerned, it is settled position of law that demand of illegal gratification is *sine quo non* to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The proof of demand of illegal gratification thus is that essential ingredients of the offence under Section 7 of the Act of 1988 and in absence thereof, unmistakably the charge therefore would fail.

38. It is held by the Hon'ble Apex Court in para Nos.13 and 14 in the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab** cited supra as follows:

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

"7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extent to seven years and shall also be liable to 2 (2014) 5 SCC 103 3 (2016) 11 SCC 357 fine.

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

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

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

40. After appreciating the evidence on record, it reveals that as per the prosecution case, the accused has demanded the amount for forwarding the documents. The evidence shows that accused has already forwarded the documents to the Tahsil office and also forwarded copy of the same to the complainant. The evidence of the complainant itself shows that after measurement of the land, the necessary C-Report and other relevant documents were sent to him by post, but said documents are not forwarded to the Talathi office and, therefore, he approached to the office of the accused. If this evidence is taken into consideration, it is sufficiently shows that the accused has already complied his work. In the case of **State of Maharashtra vs. Ramrao Marotrao Khawale**, reported in **2017 ALL MR (Cri) 3269**, this court has held that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. It is further held that the

reason being that the complainant is also considered to be an interested witness or a witness who is very much interested to get his work done from a public servant at any cost and, therefore, whenever a public servant brings to the notice of such an interested witness certain official difficulties, the person interested in work may do something to tempt the public servant to bye-pass the rules by promising him some benefit. Since the proof of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against the accused. Whereas, burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt.

41. The Hon'ble Apex Court in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra**, reported in **(1997)10 SCC 600**, held that the primary condition for acting on the legal presumption under Section 4(1) of the Act is that the prosecution should have proved that what the accused received was gratification. The word "gratification" is not defined in the Act. Hence it must be understood in its literal meaning. In the Oxford Advanced Learner's Dictionary of Current English, the word "gratification" is shown to have the meaning "to give pleasure or satisfaction to". The word "gratification" is used in Section 4(1) to denote acceptance of

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

42. In the case of **State of Maharashtra vs. Rashid B.Mulani**, reported in **(2006)1 SCC 407**, it is held that a fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. Something more, than raising a reasonable probability, is required for rebutting a presumption of law. Though, it is well-settled that the accused is not required to establish his explanation by the strict standard of 'proof beyond reasonable doubt', and the presumption under Section 4 of

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

43. In the instant case, upon careful consideration of the prosecution evidence, particularly the evidence of the complainant P.W.1 as well as P.W.2- Santosh Mendhe, I find that the prosecution could not establish beyond reasonable doubt the prior demand that gratification was demanded by the accused. The corroboration is required on a material particulars. The earlier demand as per the prosecution was in presence of the independent witness Yashwant Nikure, who is not examined by the prosecution. As per the prosecution, the accused asked to hand over the amount to the tea stall owner, the Investigating Officer has neither examined the said tea stall owner nor recorded his statement and even not made any enquiry with the said tea stall owner. The only duty assigned to the accused was to sent the relevant papers to the complainant which was already sent by him.

44. It is well settled that while deciding the offence under the Act of 1988, complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of complainant should be

corroborated in material particulars. Here in the present case, the complainant has not supported the prosecution's case.

45. As far as the applicability of presumption is concerned, the Hon'ble Apex Court in the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)** reported in **2023 SCC OnLine SC 280**, wherein it has been held that presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands. It is further held that insofar as Section 7 of the Act of 1988 is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law.

46. In the instant case, as observed earlier, that prior demand by the accused is not proved by the prosecution, which creates a doubt as to the demand of the amount as the independent witness though available is not examined. I have already observed that the principles for according the sanctions are also not taken into consideration.

47. It is well settled that granting of sanction is a solemn sacrosanct act which affords protection to the government servants against frivolous prosecutions, 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 sanctioning authority to exercise powers strictly keeping in mind all the relevant facts and material and accord the sanctions.

48. Here in the present case, sanction order Exhibit-34 discloses that the material was examined by the sanctioning authority, but it nowhere discloses which material was received by the sanctioning authority and on what basis the subjective satisfaction is recorded by the sanctioning authority. Thus, the entire exercise as far as sanction is concerned, nowhere shows that the sanctioning authority has applied his mind and accorded sanction.

49. Thus, on the ground of sanction also the prosecution in the present case fails. The evidence as to the demand is not satisfactory and proof of demand is *sine qua non* to prove the charge. As such, as the appeal deserves to be allowed, I pass following order:

ORDER

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

(2) The judgment and order of conviction and sentence dated 27.07.2018 passed by learned Judge, Special Court, designated under The Prevention of Corruption Act, 1988, Chandrapur in Special (ACB) Case No.6/2012 convicting and sentencing the accused is hereby quashed and set aside.

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

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

Kirtak