



Judgment

442 apeal6.05

1

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

CRIMINAL APPEAL NO.6 OF 2005

~~Indrajit s/o Jaynath Pande,~~
aged about 48 years,
occupation:- PCB No.13 SP Office Nagpur,
r/o c/o Shri Havaladar Chandrashekhar Pande,
Rathod Layout, Police Line Takli, Nagpur.

Since Dead Through his LRs

1. Smt.Shobhavati Indrajeet Pandey,
aged about 69 years, occupation:- housewife,
2. Shri Pawan s/o Indrajeet Pandey,
aged about 43 years, occupation:- service,
3. Shri Sandeep s/o Indrajeet Pandey,
aged about 37 years, occupation:- service,
4. Shri Pradeep s/o Indrajeet Pandey,
aged about 36 years, occupation:- service,
5. Shri Manan s/o Indrajeet Pandey,
aged about 29 years, occupation:- service,

All r/o plot No.18, Godhani Road,
Mata Mandir, Zingabai Takli,
Nagpur.

..... **Appellants.**

:: VERSUS ::

State of Maharashtra,
through the Inspector of Anti Corroboration
Bureau, Nagpur. **Respondent.**

Shri S.R.Gupta, Counsel for the Appellant.
Shri C.A.Lokhande, Additional Public Prosecutor for the
State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 11/07/2025

PRONOUNCED ON : 01/08/2025

JUDGMENT

1. By this appeal, the appellant (accused) has challenged judgment and order dated 8.12.2004 passed by learned Judge, Special Court, designated under Prevention of Corruption Act, Nagpur (learned Judge of the trial court) in Special Case No.18/1993.

2. By the said judgment impugned in the appeal, the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act (the P.C.Act) and sentenced to undergo rigorous imprisonment for 1 year

3

and to pay fine Rs.500/-, in default, to undergo rigorous imprisonment for 2 months.

He is also convicted for offence punishable under Section 13(1)(d) read with 13(2) of the PC Act and sentenced to undergo rigorous imprisonment for 2 year and to pay fine Rs.1000/-, in default, to undergo rigorous imprisonment for 4 months.

3. Brief facts of the prosecution case can be summarized, thus:

The accused at the material time was working as Police Constable and attached to Saoner Police Station, district Nagpur. Rajendrasingh Lalansingh Chauhan (the complainant) was resident of Saoner. His daughter was attending tuition classes, but the wife of one Shriram Mishra is alleged to be taunting her that she was not attending tuition classes, but going for cleaning utensils.

4

On that count, there was altercation between the complainant and Shriram Mishra. The complainant visited house of Shriram Mishra, abused him, and threatened him and, therefore, Shriram Mishra lodged a report with the Saoner Police Station. The complaint was handed over to Head Constable Shivlal Yadav for enquiry. The accused was working as Assistant at the relevant time. It is alleged that one Mr.Bhagat had contacted the complainant and asked him to settle the matter between him and Shriram Mishra by paying Rs.1000/-. The complainant was not ready for the same. Thereafter, the accused allegedly visited his house on 6.1.1993, 11.1.1993 and demanded the amount. On 11.1.1993, the complainant has shown his inability to pay Rs.1000 and offered Rs.500/-. The accused informed the complainant that Head Constable Shivlal Yadav was displeased with his conduct and he should arrange the

5

amount. Otherwise, he would be prosecuted. As the complainant was not willing to pay the amount, he approached the office of the Anti Corruption Bureau at Nagpur (the bureau) and lodged the complaint.

4. On receipt of the complaint, the officers of the bureau called two panchas. The panchas verified contents of complaint and the same were also read over to them. After following due procedure, it was decided to conduct a raid and panchas and the complainant were called. The complainant has produced five currency of Rs.100/- before officers of the bureau and numbers of the currency notes were noted. The demonstration as to use and characteristics of phenolphthalein powder and sodium carbonate was explained to the complainant as well as the panchas. The instructions were given to the panchas that pancha No.1 Punjaji Ramji Ghotikar shall remain with the complainant and observe the events.

6

Whereas, pancha No.2 shall stay along with raiding party members. It was informed to the complainant that he has to hand over the amount only on demand. Accordingly, pre-trap panchanama was drawn.

5. After the pre-trap panchanama, the complainant, both panchas, and raiding party members proceeded towards bus stand where the accused called the complainant. The complainant and pancha No.1 proceeded to meet the accused and other raiding party members were around the bus stand by hiding themselves. As per the allegations, the accused demanded the amount and the complainant handed over the same. The accused was caught after the complainant had given signal to the raiding party members. Pancha No.1 disclosed as to the demand and the acceptance. The hands of the accused were examined and the tainted amount was recovered from the pant pocket of the

7

accused. Accordingly, post-trap panchanama was drawn. The officer of the bureau lodged the report about the said incident and seized relevant documents. The sanction was obtained to prosecute the accused. After completion the investigation, chargesheet was filed against the accused.

6. Learned Judge of the trial court framed the charge vide Exh.11. In support of the charge, the prosecution has examined as many as 8 witnesses namely :

PW Nos.	Names of Witnesses	Exh. Nos.
1	Meharbhan Kanoji Rathod, the Sanctioning Authority	17
2	Rajendrasingh Lalansingh Chauhan, the complainant	20
3	Punaji Ramji Ghotikar, pancha No.1	25
4	Rambhau Popte, pancha No.2	31
5	Vikas Tidke, carrier	32
6	Brahmanand Salve, the police officer, who registered the crime	36
7	Arvind Kulkarni, Police Constable	38

8	Sunil Jaiswal, the Investigating Officer	39
---	--	----

7. Besides the oral evidence, the prosecution relied upon sanction order Exh.18, complaint Exh.21, pre-trap panchanama Exh.26, seizure memo Exh.27, post-trap panchanama Exh.28, map Exh.29, seizure memo Exh.30, invoice challan Exh.33, FIR Exh.37, requisition to call panchas Exh.40, complaint Exh.44, requisition to the Chemical Analyzer Exh.45, Chemical Analyzer's Report Exh.49.

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

9. Heard learned counsel Shri A.R.Gupta for the accused and learned Additional Public Prosecutor Shri C.A.Lokhande for the State.

9

10. Learned counsel for the accused filed his written submissions and submitted that neither the complainant nor the panchas supported the prosecution case. As far as the demand is concerned, the same is not established by the prosecution as the evidence on record shows that it was the complainant who thrust the amount in the pant pocket of the accused. The cross examination of the complainant as well as the panchas shows that no demand was made, but the complainant himself has handed over the said amount to the accused forcefully. The sanction is also not accorded as per the law and, therefore, the prosecution miserly failed to prove the charges against the accused.

11. Learned Additional Public Prosecutor for the State also filed his submissions on record and submitted that in order to settle the matter, the accused has demanded the amount and persuaded the complainant to fulfill the

10

said demand. There is presumption in favour of the prosecution. Pancha No.2 PW4 Rambhau Popte deposed about the demand and acceptance by the accused. Thus, the prosecution has proved the case against the accused beyond reasonable doubt and, therefore, no interference is called for.

12. In order to prove the sanction order, the prosecution placed reliance on the evidence of Sanctioning Authority PW1 Meharbhan Rathod examined vide Exh.17, who accorded the sanction. As per his evidence, at the relevant time, he was working as Superintendent of Police (Rural), Nagpur. The accused, attached to the Saoner Police Station, on 11.10.1993, received bunch of papers of investigation along with draft sanction order from the DCP (ACB) Nagpur for according sanction for prosecution. He perused the investigation

11

papers and accorded the sanction Exh.18, which bears his signature.

During his cross examination, it came on record that the accused was not appointed by him. The accused was appointed prior to 1992. One Shriram Mishra has filed the complaint at Saoner Police Station against the accused, which was non-cognizable offence. The said complaint was handed over for enquiry to Head Constable Shivrul Yadav. The accused was not having powers to arrest the complainant. He received draft sanction order with sealed cover. He has not produced draft sanction order. He specifically admitted that he made some corrections in draft sanction order and prepared the sanction order against the accused.

13. On the basis of the above evidence of Sanctioning Authority PW1 Meharbhan Rathod, the prosecution

12

claimed that the prosecution has proved the sanction. As per the prosecution, Sanctioning Authority PW1 Meharbhan Rathod, after application of mind, accorded the sanction. Perusal of the sanction order reveals that first paragraph talks about designation of the accused. In second paragraph, the grievance of the complainant is mentioned. In fourth paragraph, it is mentioned that upon reading papers of the investigation, he is of the opinion that sanction is to be accorded and accordingly he has granted the sanction. Thus, the entire sanction order nowhere discloses that he has perused the said document, applied his mind and, thereafter, accorded the sanction.

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

13

15. The Hon'ble Apex in the case of **Mohd.Iqbal Ahmad vs. State of Andhra Pradesh, 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.

16. The Hon'ble Apex Court, in another decision, in the case of **CBI vs. Ashok Kumar Agrawal, 2014 Cri.L.J.930** has held that sanction lifts the bar for

14

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

15

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.

17. The Hon'ble Apex Court in the case of **State of Karnataka vs. Ameerjan, (2007)11 SCC 273** held that it is

16

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.

18. 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, 2021 SCC OnLine Bom 237.**

17

19. This court in the case of **Vinod Savalaram Kanadkhedkar vs. The State of Maharashtra, 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.

20. 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

18

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.

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

22. After going through the evidence of Sanctioning Authority PW1 Meharbhan Rathod, though he stated that he has applied his mind and perused the investigating papers in the sanction order, in his substantial evidence before the court he had not whispered that it was he who applied his mind by perusing the investigating papers.

Though the sanction order discloses that he carefully read the papers of investigation and satisfied himself, there is no reference which papers he had received and he had applied his mind. There is no reference which documents are considered by him and on what basis he came to conclusion that the sanction is to be accorded to launch prosecution against the accused.

23. Besides the issue of the sanction, the prosecution alleged that the accused, serving as the Police Head Constable, demanded the gratification amount and accepted the same.

24. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW2 Rajendrasingh Chauhan, whose evidence shows that there was altercation between him and Shriram Mishra as said Shriram's wife taunted his

20

daughter by saying that she is going for cleaning utensils. The complainant visited the house of the said Shriram Mishra and abused him and, therefore, report was lodged against the complainant. He was called in the Saoner Police Station through Shri Bhagat. It was informed him that no report was lodged against him and, therefore, he returned back. After two days, Head Constable Shivlal Yadav enquired with him that there was quarrel between the complainant and Shriram Mishra which was pacified by Head Constable Shivlal Yadav and the accused. After 3-4 days, Shri Bhagat gave him a message that he was called in the police station and accordingly, he went to the police station whereat the accused demanded Rs.1000/- for settling dispute. Thereafter, there was continuous demand and, therefore, on 13.1.1993 he approached the office of the bureau along with journalist Arun Rushiya and lodged the complaint.

21

25. The complainant has also narrated about the procedure carried out by the officers of the bureau prior to conducting the raid. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, they all proceeded to the bus stand where the complainant was called by the accused. At the relevant time, Shri Dubey, the complainant, and Head Constable Shivlal Yadav were present. The accused said that he will do his work and, thereafter, the complainant handed over the amount to the accused. The evidence shows that the accused was reluctant in accepting the amount, but he thrust the amount in his pocket and, thereafter, the raiding party members, on receipt of the signal, arrested the accused.

26. Learned APP cross examined the complainant as he has not supported the prosecution case. However, the complainant denied that the accused made enquiry with

22

him whether he brought the amount. He also denied that the accused demanded the amount and, thereafter, accepted the same by right hand and kept it in right side pocket. The evidence of the complainant further shows that he has filed complaint on the advise of journalist Arun Rushiya. The said journalist advised him that as he informed him that the police are harassing him, he told that he should give report and then he would be saved from police harassment. The further cross examination shows that the accused has not demanded the amount from him, but he has handed over the said amount to the accused and thereafter he gave signal to the trap party.

27. To corroborate the version of the complainant, the prosecution has examined pancha No.1 PW3 Punjaji Ghotikar, who categorically narrated about the events took place during the pre-trap panchanama. As far as the demand is concerned, his evidence shows that as per the

23

instructions from the officer of the bureau, he along with the complainant went to the bus stand and at the relevant time the accused was not present. The accused came after some time. Two persons were along with him. The accused wrote compromise between the complainant and other persons. Thereafter, they went to have a tea. The complainant has taken out the amount from pocket and handed over the same to the accused. There was no communication between the complainant and the accused about the said amount. The complainant has taken out the amount from shirt pocket and kept the same in the accused's shirt's pocket.

Though the said witness is cross examined, as far as the demand is concerned, he has not supported during the cross examination by APP also and denied that the complainant has taken out the amount and the accused

24

has received the same. He also denied that the amount was demanded and thereafter it was handed over.

28. Pancha No.2 PW4 Rambhau Popte, has also narrated about various activities carried out during pre-trap panchanama. As far as the demand and acceptance is concerned, admittedly, he was not along with the complainant. His evidence shows that he and officers of the bureau were at the bus stand near the tea stall. The complainant and pancha No.1 were at some distance. The complainant enquired about the accused as he was not there. After some time, the accused came there. The complainant gave envelope of note to the accused and the pancha gave signal.

Thus, the evidence of pancha No.2 nowhere discloses as to the demand by the accused and acceptance in pursuance of the said demand.

25

The cross examination of this witness shows that he was not knowing as to the work which the pancha has to do.

29. The evidence of Investigating Officer PW8 Sunil Jaiswal is not on the demand and acceptance. His evidence is only to the extent that the complainant approached him and lodged the complaint and, thereafter, he drawn pre-trap panchanama. As to the post-trap panchanama, his evidence shows that after the complainant and pancha No.1 proceeded towards the bus stand, he along with pancha No.2 was at the bus stand hiding himself. After one hour, two civilians came and had a talk with the complainant. After some time, they again went and within 2-3 minutes they again came on different vehicles. Thereafter, the complainant and pancha No.1 went to the accused and the complainant handed over the amount to the accused. On receiving

26

the signal, he went and caught the accused. He enquired and pancha No.1 disclosed that it was the accused who demanded the amount and accepted the same. After disclosure by the pancha, the accused was caught and his hand wash was obtained. The clothes of the accused were seized and relevant panchanamas were drawn.

The cross examination of Investigating Officer PW8 Sunil Jaiswal shows that he has recorded statements of Ramkishor Bhagat, Ramdukhi Vishwa Sharma and Sudam Dubey. He further admitted that on perusal of index Exh.52 it reveals that statements of those witnesses were recorded, but those were not supporting to the prosecution, hence, the same were not produced before the court. He further admitted that draft order was sent to the Sanctioning Authority which was received back by him.

27

30. PW5 Vikas Tidke, acted as carrier, carried muddemal to the Chemical Analyzer.

31. PW6 Brahmanand Salve, the Police Officer, who has registered the crime, and PW7 Arvind Kulkarni, who has taken entry in the station diary, are examined who are formal witnesses.

32. Having appreciated the evidence of complainant PW2 Rajendrasingh Chauhan; pancha No.1 PW3 Punjaji Ghotikar, and Pancha No.2 PW4 Rambhau Popte, it nowhere shows that any demand was made by the accused and in pursuance of the said demand the amount was accepted. Not only the evidence of the complainant but also the evidence of the both panchas shows that it was the complainant who handed over the said amount, rather he has thrust the amount in the shirt pocket of the accused and the accused removed it and kept in his

28

pant pocket. As the amount was thrust in his shirt pockets, he removed the same and kept in the pant pocket. The entire evidence of these witnesses nowhere supports the prosecution case that any demand was made by the accused and in pursuance of the said demand there was an acceptance.

33. The entire evidence of the prosecution shows that the message was given to the complainant by the accused through one Bhagat. Prior to the trap, the accused was accompanied by Shriram Mishra and Dubey. The evidence of the investigating officer also shows that he has recorded the statements of witnesses, but it is not part of chargesheet as the same are not supporting the prosecution. Thus, an attempt was made by the investigating officer to conceal the evidence which is supporting the prosecution.

34. It is well settled that while deciding the offence under P.C.Act, complainant's evidence is to be scrutinized meticulously.

35. In the case of **Bhiva Doulu Patil vs. State of Maharashtra, reported in 1963 Mh.L.J. (SC) 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.”

36. 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.

37. In the present case, admittedly, the consistent evidence shows that there was no demand by the accused, but the amount was thrust by the complainant. As far as earlier demand by the accused is concerned, which is not corroborated by any evidence. The investigating officer has not verified the genuineness as to the allegation regarding the demand.

38. In the case of **Tryambak Lilaji Binnar vs. State of Maharashtra, 2002(3) Mh.L.J. 293** this court held that the prosecution has chosen not only not to examine him but it appears that even his statement was not recorded during the course of investigation and no attempt was made by the Investigating Officer to get himself satisfied regarding the complainant's assertion of demand having

31

come from the appellant for illegal gratification. While considering the evidence of prosecution it is necessary to bear in mind the importance of evidence of prior demand which if trustworthy makes the trap a legitimate to eradicate corruption otherwise it could be an illegitimate trap.

39. In the case of **State of Punjab vs. Sohan Singh, (2009)6 SCC 444** also the Hon'ble Apex Court considered the aspect of non examination of independent witness and held that independent witness drawn by the raiding party not examined on the ground that he was won over.

40. It is well settled that mere possession and recovery of currency notes from accused without proof of demand would not establish an offence under Section 7 as well as Section 13(1)(d) read with 13(2) of the P.C.Act.

32

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

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

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

33

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.”

42. In the present case, as noted above, the evidence as to the demand of illegal gratification is not satisfactory and convincing and since proof of demand is

34

sine qua non for convicting the accused in such cases, in the present case, it cannot be said that the prosecution has been successful in proving its case beyond reasonable doubt.

43. In the case of **The 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

35

of demand is *sine qua non* for convicting an accused, in such cases the prosecution has to prove charges against accused. Whereas, burden on accused is only to show probability and he is not required to prove facts beyond reasonable doubt.

44. 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

36

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 may stage.

45. 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

37

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.

46. Thus, the earlier demand, as well as the demand at the time of trap, was not established by the prosecution.

47. It is well settled that while deciding the offence under P.C.Act, the complainant's evidence is to be scrutinized meticulously. There could be no doubt that the evidence of complainant should be corroborated in

38

material particulars. The complainant cannot be placed on any better footings than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.

48. As far as the applicability of presumption is concerned, the constitution bench of the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**, reported in 2023 SCC OnLine SC 280 has 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

39

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 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.

49. In the instant case, as observed earlier, prior demand as well as the acceptance by the accused is not proved by the prosecution.

50. 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

40

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 relevant facts and material and accord the sanctions.

51. 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.

52. In view of the above, the appeal deserves to be allowed as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 8.12.2004 passed by learned Judge, Special Court, designated under

41

Prevention of Corruption Act, Nagpur in Special Case No.18/1993 is hereby quashed and set aside.

(3) The accused is acquitted of the offences for which he is convicted and sentenced.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!