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

CRIMINAL APPEAL NO.397 OF 2013
AND
CRIMINAL APPEAL NO.398 OF 2013

CRIMINAL APPEAL NO.397 OF 2013
Sau.Sushma Gajanan Makeshwar,
aged-40 years, occupation-service,
resident of Wathoda Shukleshwar,
taluka and district Amravati. ….. **Appellant.**

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

The State of Maharashtra,
through Deputy Superintendent of Police,
Anti Corruption Bureau, Amravati,
taluka and district Amravati. ….. **Respondents.**

Shri A.S.Mardikar, Senior Counsel assisted by
Shri Soumitra Kanetkar, Advocate for the Appellant.
Shri A.J.Gohokar, Additional Public Prosecutor for the Respondent/State.

CRIMINAL APPEAL NO.398 OF 2013
Raju Mahavirprasad Agarkar,
age-38 years, occupation-service,
r/o Dhamangaon Railway,
taluka Dhamangaon Rly,
taluka and district Amravati. ….. **Appellant.**

:: **<u>V E R S U S</u>** ::

The State of Maharashtra,
through Deputy Superintendent of Police,
Anti Corruption Bureau, Amravati,
taluka and district Amravati. ….. **<u>Respondents.</u>**

Shri Naman Bhangde, Counsel for the Appellant.
Shri A.J.Gohokar, Additional Public Prosecutor for the Respondent/State.

<u>CORAM</u> : <u>URMILA JOSHI-PHALKE, J.</u>
<u>CLOSED ON</u> : <u>30/06/2025</u>
<u>PRONOUNCED ON</u> : <u>24/07/2025</u>

<u>COMMON JUDGMENT</u>

1. By these appeals, the appellants (the accused persons) have challenged judgment and order dated 6.7.2013 passed by learned Additional Sessions Judge & Special Judge, under the Prevention of Corruption Act, 1988, Amravati (learned Judge of the trial court) in Special ACB Case No.2/2008.

2. By the said judgment impugned in these appeals, appellant - Sushma Gajanan Makeshwar (accused

Sushma) is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (the PC Act) and sentenced to undergo rigorous imprisonment for two years and to pay fine Rs.2000, in default, to undergo rigorous imprisonment for three months.

She is further convicted for offence punishable under Section 13(1)(d) read with 13(2) of the PC Act and sentenced to rigorous imprisonment for three years and to pay fine Rs.2000/-, in default, to undergo rigorous imprisonment for three months.

Appellant - Raju Mahavirprasad Agarkar (accused Raju), is convicted for offence punishable under Section 12 of the PC Act and sentenced to undergo rigorous imprisonment for two years and to pay fine Rs.2000/-, in default, to undergo rigorous imprisonment for three months.

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

Chetan Pardakhe (the complainant), is resident of Dhamangaon Rly, district Amravati. His grandmother Vatsalabai has bequeathed old house in favour of his mother Jayabai. Said Vatsalabai died in the year 2000. However, the house property was standing in her name and, therefore, he applied for construction of the said house as the house was in dilapidated condition and, therefore, the house is demolished. He filed an application to Nagar Parishad, Dhamangaon Rly seeking permission to construct the house. At the relevant time, accused Sushma was serving as Chief Executive Officer of the Nagar Parishad, Dhamangaon Rly. and accused Raju was serving as Accounts Officer in the said Nagar Parishad.

4. As per allegations in complaint, the complainant approached accused Sushma seeking permission to construct the house. Accused Sushma has demanded amount Rs.3000/- for obtaining the same permission in the month of January 2006. On 11.1.2006, at about 6:00 pm, the complainant met her at her residence and paid her Rs.1000/- and shown his inability to pay more amount due to his poor financial condition. After negotiation, he was asked to pay Rs.1500/- on 17.1.2006. As the complainant was not wiling to pay the amount, he approached the office of Anti Corruption Bureau (the bureau) on 16.1.2006 and lodged a report.

5. After receipt of the report, the officers of the bureau called two panchas namely Jaya Kadam and Pramod Mankar from the office of the Deputy Director, Vocational Education and Training Centre at Amravati. In presence of the panchas, the complainant has narrated

the incident which was verified by the panchas from FIR. After following due procedure, it was decided to conduct a raid and the panchas and the complainant were called on 17.1.2006. On 17.1.2006, demonstration as to use and characteristics of anthracene powder and ultra violet lamp was shown to them. The tainted amount, i.e. three currency of Rs.500, were obtained from the complainant. The anthracene powder was applied on them and it was kept in the shirt pocket of the complainant. Pancha No.1 Jaya Kadam was asked to accompany the complainant in the office of accused No.1. The complainant and both panchas were instructed that pancha No.1 to remain along with the complainant and observe events. Whereas, pancha No.2 was instructed to stay along with other raiding party members. The complainant was asked to give a signal by folding sleeves of his right hand after acceptance of the amount. Accordingly, pre-tap panchanama was drawn. The complainant, both panchas, and other raiding party members proceeded to Dhamangaon Rly. Before approaching the office of accused No.1, again complainant and pancha No.1 were instructed. The mother of the complainant also along with them. The complainant and pancha No.1, at about 12:15 pm, went in the office of accused No.1 and enquired about the work of the complainant on which accused No.1 asked the complainant whether he has brought the amount. He has replied affirmatively. Accused No.1 asked him to hand over the amount to accused No.2, working in the Accounts Section. Thereafter, the complainant approached accused No.2 and handed over the amount as asked by accused No.1 and gave signal to the raiding party members, on which accused No.2 was caught. The amount was recovered from the table of accused No.2 kept below the resister.

Accused No.1 was also arrested. The hands of accused No.2 as well as the complainant were observed under the ultra violet lamp. Accordingly, post-trap panchanama was prepared. The officers of the bureau lodged the report about the said incident, seized relevant documents and after obtaining the sanction, on completion of investigation, submitted chargesheet against the accused persons.

6. Learned Judge of the trial court has framed the charge against the accused persons vide Exh.3. The contents of the charge are explained to them to which they have denied the same and claimed to be tried. In support of the prosecution case, the prosecution has examined four witness, which are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Chetan Pardakhe, the complainant	34

2	Jaya Kadam, pancha No.1	46
3	Kiran Dhote, the Investigating Officer	69
4	T.C.Benjamin, Principal Secretary of Urban Development Department, on sanction	93

7. Besides the oral evidence, the prosecution placed reliance on complaint Exh.35, seizure memos Exhs.36 and 37, pre-trap panchanama Exh.47, seizure memos Exhs.48 and 49, post-trap panchanama Exh.50, Municipal Council Form No.1 Exh.52, letter to the Deputy Director of Vocational Education Exh.70, letter to the Superintendent of Police (Rural) Exh.71, seizure memo Exh.72, report Exh.73, FIR Exh.74, letters by the Regional Director Exhs.75 and 76, map Exh.78, letter by the Chief Officer to the mother of the complainant Exh.79, property card Exh.80, sanction order Exh.94, and the Government Resolution Exh.96.

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

9. I have heard learned Senior Counsel Shri A.S.Mardikar for accused Sushma; learned counsel Shri Naman Bhangde accused Raju, and learned Additional Public Prosecutor Shri A.J.Gohokar for the State. They took me through the entire evidence so also the judgment impugned in the appeals.

10. Learned Senior Counsel for accused Sushma submitted that the judgment impugned is not in accordance with law. There was no valid sanction and the prosecution also failed to prove the demand and acceptance of the bribe amount. He submitted that the entire sanction order nowhere reveals application of mind by Sanctioning Authority PW4 T.C.Benjamin. As far as

the first demand by accused Sushma is concerned, the same is not corroborated by any evidence. The genuineness of the demand is not verified by the investigating officer before conducting the raid. The grandmother of the complainant died in the year 2000. The application is filed in her name. The said application was not signed by the mother of the complainant. The cross examination of the complainant shows that he was not aware why there was was delay in processing the application. He was also not aware as to what is status of progress of the application. He specifically admitted that till filing of the application, the house was not transferred in the name of his mother. He was not aware that the permission could not be granted for want of compliance of the papers. Till date of trap, he was not having knowledge as to the noting taken while processing his application. After submitting the application, only on two

.....12/-

occasions, he went in the office for enquiry. He was not aware whether Junior Engineer has visited for spot inspection. He admitted that he is not aware the processing of the application commenced after the spot inspection. Even, till the date of recording of his evidence, the property was standing in the name of his grandmother. Admittedly, the tainted notes are not found in possession of accused Sushma. Proof of demand and acceptance are *sine qua non* to prove the offence. There is no corroboration as to the demand by shadow pancha PW2 Jaya Kadam also. In view of that, the judgment impugned in the appeals is liable to be set aside.

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

1. Central Bureau of Investigation vs. Ashok Kumar Aggarwal, reported in (2014)14 SCC 295;

2. Neeraj Dutta vs. State (Government of NCT of Delhi), reported in (2023)18 SCC 251;

3. Meena (Smt.) w/o Balwant Hemke vs. State of Maharashtra, reported in (2000)5 SCC 21;

4. Panalal Damodar Rathi vs. State of Maharashtra, reported in AIR 1979 SC 1191;

5. Criminal Appeal No.149/1999 (Rustam s/o Ukarda Jadhav vs. State of Maharashtra, thr.PSO Karanja, decided by this court on 8.10.2014.

6. Criminal Appeal No.219/2005 (Rahul s/o Mahadeo Wankhede vs. State of Maharashtra, thr.Anti Corruption Bureau, Nagpur) decided by this court on 28.10.2014;

7. Criminal Appeal No.541/2004 (Pradip Nagpurkar vs. State of Maharashtra) decided by this court on 30.10.2014, and

8. Bismillakha s/o Salarkha Pathan vs. State of Maharashtra, reported in 2003(5) Mh.L.J.243.

12. Learned counsel for accused Raju reiterated the and endorsed the same submissions of learned Senior Counsel. In addition to that, he submitted that shadow pancha PW2 Jaya Kadam admitted that when they approached accused Raju, he was not present on his table and the amount was kept by them on the table. Thus, there is no evidence as to the acceptance. Mere recovery of tainted amount, in absence of any proof of demand and acceptance, cannot be said to be sufficient to convict the accused.

13. In support of his contentions, learned counsel for accused Raju placed reliance on following decision:

> **1. N.Vijaykumar vs. State of Tamil Nadu, reported in (2021)3 SCC 687, and**
>
> **2. V.Sejappa vs. State by Police Inspector, Lokayukta, Chitradurga, reported in (2016)12 SCC 150.**

14. *Per contra,* learned Additional Public Prosecutor for the State submitted that not only complainant PW1 Chetan Pardakhe but also shadow pancha PW2 Jaya Kadam proves that there was demand and in pursuance of the said demand, the amount was accepted by accused Raju. Thus, the prosecution has proved the demand as well as the acceptance. He further submitted that as far as submissions of learned Senior Counsel for accused Sushma, as to the demand and acceptance, are concerned, the amount was recovered from the table of accused Raju. The allegations of demand by the complainant is corroborated by shadow pancha PW2 Jaya Kadam. The sanction order is also valid and accorded after application of mind. Learned Judge of the trial court has considered all the aspects and, therefore, no interference is called for in the judgment impugned in the appeals.

15. 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 ground that it was accorded without application of mind and mechanically and, therefore, it is not valid sanction.

16. In order to prove the sanction order, the prosecution placed reliance on evidence of Sanctioning Authority PW4 T.C.Benjamin vide Exh.93. As per his evidence, he was the Principal Secretary of Urban Development Department in the year 2008. He received documents related to accused Sushma and accused Raju for sanctioning the prosecution against them. He studied the proposal received from the office of the bureau, applied his mind, and on satisfying himself, accorded the sanction Exh.94. He further testified that as per Government Resolution dated 3.4.2000 of the General Administrative Department, Government of Maharashtra,

if the co-accused are from the same department, regardless to the group, he belongs a single order can be issued by the Administrative Department of the Government of Maharashtra.

17. The cross examination of Sanctioning Authority PW4 T.C.Benjamin shows that it is not specifically mentioned in Exh.94 that he has personally gone through the documents. He clarified that as he signed, there is presumption that he has gone through the documents. He is aware about the documents required for sanction for construction of house. He admitted that for getting permission of the construction, a property should stand in the name of that person. If the application is in the name of dead person, the same cannot be accepted. He admitted that site visit of Engineer is necessary for sanction. He specifically admitted that if these conditions are not fulfilled, the permission cannot be granted. He

further admitted that draft sanction order was received by his department and sanction order Exh.94 and the draft sanction order are identical.

18. On the basis of the above evidence, the prosecution claimed that the prosecution has proved the sanction order.

19. Perusal of the sanction order reveals that in first paragraph, designations of accused Sushma and accused Raju are mentioned and they are public servants within the meaning of the public servant.

In third paragraph, it is mentioned that the Government Maharashtra, having fully examined the material before it and considered all facts and circumstances disclosed therein, is fully satisfied that a *prima facie* case made out against the accused persons and it is necessary to accord sanction in the interests of justice. The accused persons should be prosecuted in the court of competent jurisdiction for the said offences. Accordingly, he accorded the sanction.

20. Thus, the entire sanction order nowhere discloses that it is Sanctioning Authority PW4 T.C.Benjamin who has perused the documents, applied his own mind, and, thereafter, accorded the sanction.

21. 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.

22. 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.

23. The Hon'ble Apex Court, in another decision, in the case of **Central Bureau of Investigation vs. Ashok Kumar Aggarwal** *supra*, cited by learned Senior Counsel for accused Sushma, has held that sanction lifts the bar for prosecution and, therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. There is an obligation on the sanctioning

authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. It has been further held by the Honourable Apex Court that the record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the 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.

24. 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.

25. 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.**

26. 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.

27. 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 the evidence 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 public servant concerned should receive protection under the said Act by refusing to accord sanction for his prosecution or not.

28. 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.

29. After going through the evidence of Sanctioning Authority PW4 T.C.Benjamin, though he stated that he has applied his mind and perused the investigation papers, the sanction order nowhere discloses that it was he who applied his mind by perusing the investigation papers. The wordings used in the sanction order are that the Government Maharashtra, having fully examined the

material before it and considered all facts and circumstances disclosed therein, is fully satisfied that a *prima facie* case made out against the accused persons and it is necessary to accord sanction in the interests of justice.

Perusal of the sanction order shows that he has not disclosed on what basis he came to conclusion that the sanction has to be accorded. The sanction order only shows that the Sanctioning Authority has applied his mind and accorded the sanction.

The evidence of the Sanctioning Authority nowhere discloses as to which documents are considered while according the sanction. The satisfaction for according the sanction is not reflected from the said sanction order.

30. 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.

31. After going through the evidence of Sanctioning Authority PW4 T.C.Benjamin, admittedly, the sanction order nowhere reflects who has applied mind and which documents are considered by the sanctioning authority and on what basis the sanctioning authority came to the conclusion that the sanction is to accorded to launch prosecution against the accused persons.

32. Besides the issue of the sanction, the prosecution claimed that accused Sushma has demanded gratification

amount and accused Raju has accepted the same. To prove the demand and acceptance, the prosecution mainly placed reliance on the evidence of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam.

33. The evidence of complainant PW1 Chetan Pardakhe reflects that his grandmother bequeathed her house situated at Dhamangaon by Will to his mother. At the relevant time, it was in the name of his grandmother. As the house was in dilapidated condition, he was intending to reconstruct it for which permission of the Dhamangaon Municipal Council was required. He submitted an application to the said Municipal Council for permission to reconstruct the house along with the map in the year 2005. He deposited the requisite amount of Rs.2500/- and development charges of Rs.1814/- and obtained receipts. At the relevant time, accused Sushma

was working as Chief Officer of the Municipal Council and accused Raju was working in the Accounts Department. As there was delay in processing the application, he contacted in January 2006 to accused Sushma. It is alleged that for granting permission, she has demanded amount Rs.3000/-. On 11.1.2006 he paid Rs.1000 by visiting her house and shown his inability to pay the rest of the amount. After negotiation, accused Sushma shown her willingness to accept Rs.1500/- and asked him to come on 17.1.2006. As the complainant was not willing to pay the amount, he approached the office of the bureau and lodged the complaint.

On lodging the complaint, the officer of the bureau called two panchas. He narrated the contents of his complaint to the panchas and panchas have verified the contents of the complaint. Thereafter, demonstration as to use and characteristics of anthracene powder and ultra violet lamp was shown and necessary instructions were also given. After completing necessary formalities, pre-trap panchanama was drawn. Thereafter, the complainant along with shadow pancha PW2 Jaya Kadam and other raiding party members including pancha No.2 proceeded to Dhamangaon. At the relevant time, his mother was also along with him. He along with the said shadow pancha approached the office of accused Sushma. As per his allegations, accused Sushma asked him whether he has brought the amount. On replying in the affirmative, she asked to pay the same to accused Raju. Therefore, he approached accused Raju and accused Raju asked about the amount and he accepted the amount and kept those notes below the register on the table. Thereafter, the complainant has given pre-determined signal on which pancha No.2 and other raiding party members came in the office and caught accused Raju as well as accused Sushma. The money was seized. The application dated 15.10.2005 filed in the name of grandmother of the complainant is at Exh.52. The said application is filed on behalf of the mother of the complainant. The map was also annexed with the said application. The receipt of receiving the application was of dated 2.12.2005.

The cross examination of the complainant shows that he had submitted record of nazul about ownership and other relevant documents. Admittedly, the application was filed after the death of grandmother of the complainant who died in the year 2000. His cross examination further shows that his grandmother had two legal heirs, his mother and aunt Malubai. It further came in the evidence that he is not aware whether said Malubai had given no objection for transferring the property of his grandmother to anybody's name and proclamation of that objection was published. He admitted that till submission of the application, the house was not transferred in the name of his mother. He had no knowledge that the sanction could not be granted for want of compliance of the papers. He is also not aware whether his maternal aunt published a public note so that no one can enter into the transaction with the present complainant. He admitted that in all the papers submitted there is no reference of his name. The application is also not signed by him. He further admitted that the application is to be given to the Junior Engineer of the Municipal Council. Junior Engineer Mukulwar had come to his house for spot inspection, but he shown his unawareness as to whether work of scrutiny and spot inspection is of a Junior Engineer. He was also not aware as to the noting taken while processing his application. Only on two occasions, he visited the office for enquiry. He is also not aware at what stage his application is pending. He has also shown his unawareness as to what activity accused Sushma has to carry out and at what stage the application is produced before her for the sanction.

34. Perusal of the cross examination of complainant PW1 Chetan Pardakhe shows that there was no occasion for him to talk or contact with accused Raju. He further admitted that when he went to the table of accused Raju, he was there for some time and thereafter, he left his table. The admission further shows that after signal given by him, pancha and team of the bureau went in the chamber of accused Sushma.

35. Perusal of the record shows that on 13.12.2005 a letter was issued by Chief Executive Officer of the Municipal Council that complainant PW1 Chetan Pardakhe has not deposited the requisite amount. The

endorsement on the said application shows that on 17.1.2006 the application was forwarded to the Junior Engineer for inspection of the spot. Thus, on 17.1.2006, i.e. on the day of trap, the application was forwarded to the Junior Engineer for inspection. The receipts Exh.81 of payments of Rs.1814/- and Rs.2500/- are also on record and it bears no date.

36. To corroborate the version of complainant PW1 Chetan Pardakhe, the prosecution has adduced the evidence of shadow pancha PW2 Jaya Kadam, acted as pancha No.1 in the said trap proceeding. She reiterated the entire events took place in her presence during the pre-trap panchanama. As far as the demand is concerned, her evidence shows that at about 12:00 pm, one madam entered in the premises of Nagar Parishad and the complainant informed her that she is the Chief Executive Officer. After 10 minutes, she along with the complainant

and mother of the complainant went inside the chamber. The complainant enquired about his work and accused Sushma asked him whether he brought money and the complainant replied in the affirmative. She asked the complainant to meet accused Raju and, therefore, they went to accused Raju. The complainant told about the work to accused Raju and accused Raju asked the complainant whether he deposited the amount on which the complainant answered in affirmative. Thereafter, accused Raju went in the chamber of the Chief Executive Officer and after returning, he asked to pay Rs.1000/- as told by the Chief Executive Officer. After taking out three tainted notes, the complainant had given two notes to accused Raju and accused Raju kept those notes below the register. Thereafter, on giving the sign, the other raiding party members came there. She was enquired whether the amount was kept and she pointed out that the amount was kept below the register. The hands of accused Raju were checked in the ultra violet lamp on which the glaze was found and glaze was also found on the table of accused Raju. The officers of the bureau then took out the register and the register was also checked in the light of ultra violet lamp. The amount and relevant documents were seized.

37. The cross examination of shadow pancha PW2 Jaya Kadam shows that on Exh.51, i.e. the application, there was no remark/report of the Engineer. She admitted that unless the Engineer gives his report, the map is not sanctioned. The application was in the name of owner as Vatsalabai. However, application Exh.52 does not bear the signature of said Vatsalabai. There was no document seized showing that the complainant had submitted any application permission of construction in Nagar Parishad, Dhamangaon Rly. She further admitted that in the

complaint there is no allegation about accused Raju. There was no reference in the complaint that the amount was to be paid to accused Sushma at her residence. The cross examination further shows that when it was noticed that accused Sushma was in the office, there was no discussion as to whether to visit her residence or not. They have noticed that accused Sushma was not in her office initially for one and half hour. When she reached in the office, there was heavy rush near her office. There were many persons visiting her office. She further admitted that after rush in the chamber of accused Sushma was reduced, they entered in her chamber. The cross examination further shows that table of accused Raju was in another room. For about 5-10 minutes, the complainant was present near the table of accused Raju when accused Raju was not present in his chamber. The complainant had not shown any receipt of payment to the accused. She specially admitted there was talk between the complainant and accused Raju about the amount to be deposited in the office. She specifically admitted that at that time accused Raju had not taken money from the complainant. The cross examination further shows that when the police reached at accused Raju, the money was found below the register. While taking out the tainted notes, the register was lifted. The backside of the register was checked in U.V.Lamp. The specific admission given by her shows the tainted notes have not been seized from accused Raju. In the panchanama Exh.48 it is not mentioned that accused Raju placed the tainted notes notes below the register. She specifically admitted that after the officers of the bureau reached on the spot, initial formalities were completed in the office of accused Raju and, thereafter, they went in the chamber of accused Sushma. No documents from accused Raju as well as accused Sushma were seized. She admitted that accused Sushma has not made demand of Rs.1500/- in their presence, but voluntarily stated that she has only made demand of money.

38. Investigating Officer PW3 Kiran Dhote, has narrated about the entire procedure carried out and about the trap which he conducted. After completion of the formalities, he lodged the report, which is at Exh.73 and FIR is at Exh.74. His cross shows that the complaint of the complainant was in respect of permission of construction of his house. He has not seen the documents in respect of ownership of the complainant. The documents were standing in the name of Vatsalabai, who died in the year 2000. The application was in the name of Vatsalabai. There was no application in the name of the complainant for obtaining permission of construction of house. The property card was also in the name of

Vatsalabai, which is at Exh.8. The tainted notes and clothes of the complainant were not sent to the chemical analysis for detection of anthracene powder. He further admitted that the amount was not accepted as per the report. He has not verified the genuineness of the allegation of demand. He has not recorded version of demand of money through micro tape. The amount was not found with the body of any person. He further admitted that accused Sushma was not concerned with the sanction for construction of house. During the investigation, it revealed to him that during the trap process, accused Raju had been to the chamber of accused Sushma only once. One Mangala Navghare was lady peon standing near the chamber of accused Sushma. During the trap process, she was present in the office and her statement was recorded.

39. Thus, on the basis of the above said evidence, attempt was made to show that as far as the demand is concerned, there is no verification as to the genuineness of the allegation of the demand.

40. It is submitted by learned Senior Counsel for accused Sushma that as far as evidence of the complainant is concerned, the same shows that he was not aware at what stage his application is pending. He admitted that it is the Junior Engineer who has to inspect the spot and the Junior Engineer visited the spot.

41. Exh.79 communication addressed to Vatsalabai, shows that she was directed to comply by depositing the amount which is precondition for granting permission for construction of house.

42. Learned Senior Counsel for accused Sushma has pointed out that after the death of original owner, the

application was filed in her name. Though the evidence of the complainant shows that the demand made was of Rs.1500/-, the amount accepted was Rs.1000/-. Accused Raju, initially, asked about the payment of the requisite fee. Admittedly, the amount was not seized either from possession of accused Sushma or accused Raju. The evidence of the complainant shows that the entire proceeding of trap was conducted in the chamber of accused Sushma. Whereas, evidence of shadow pancha PW2 Jaya Kadam shows that after completion of the proceeding in the office of accused Raju, they went in the office of accused Sushma.

43. Learned Senior Counsel for accused Sushma submitted that there is no corroboration as to the earlier demand. The investigating officer has not verified as to the allegations of demand. Though the mother of the complainant was present along with him at the time of

trap, she was not examined. As per the evidence of the complainant, on negotiation, accused Sushma agreed to accept amount of Rs.1500/-, then why amount Rs.1000/- was kept on the table of accused Raju, which remained to be unexplained. The complainant was not aware as to the progress of his application filed seeking permission to construct the house. His evidence shows that only twice he visited the office of accused Sushma and met accused Sushma on 11.1.2006, but the complaint is lodged on 16.1.2006. There is no explanation as to the said delay. The evidence of the complainant specifically shows that on 11.1.2006 he had been to the house of accused Sushma and at that time he has paid Rs.1000/-. There is no corroboration to this fact also. As per cross examination of the complainant, the alleged trap was conducted in the chamber of accused Sushma. Whereas, as per the evidence of shadow pancha PW2 Jaya Kadam, the entire proceeding of trap was conducted near the table of accused Raju, in another room. Thus, There is inconsistent evidence as far as demand and acceptance is concerned. The possibility of paying the amount towards the fees cannot be ruled out as shadow pancha PW2 Jaya Kadam specifically admitted that accused Raju asked about depositing of the amount. The amount was not recovered either from the possession of accused Sushma or accused Raju. but it was found on the table under the register. The evidence of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam shows that accused Raju was not present on his table for some period. Therefore, possibility of keeping the amount without the knowledge of accused Raju cannot be ruled out.

The evidence of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam is not consistent on material point. It should corroborate to each other on the material particulars.

Learned Senior Counsel placed reliance on the decision in the case of **Panalal Damodar Rathi** *supra*, 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.

44. In the case of **Mukhtiar Singh (since deceased) through his LR vs. State of Punjab, reported in 2017 SCC ONLine SC 742**, it has been 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.

45. In the present case also, the evidence of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam shows the only enquiry by accused Sushma whether money had been brought or not.

46. While deciding the issue involving the offence under the P.C.Act, a fact required to be considered is that the evidence of complainant PW1 Chetan Pardakhe will have to be scrutinized meticulously. The testimony of such person requires careful scrutiny.

47. 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.

48. 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."

49. In the present case, learned Senior Counsel has rightly pointed out that there is variance in the evidence

of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam on material particulars as far as the alleged incident of trap is concerned. It is pertinent to note that though the complainant has approached the office of the bureau and filed the complaint, the same was not filed on 11.1.2006, but it was filed after 4 days of the demand. For the said delayed complaint, there is no explanation. The evidence of the complainant nowhere shows that on 16.1.2006 also he has visited the office of accused Sushma and there was any demand. As per his evidence, the demand was on 11.1.2006.

50. As far as the earlier demand by accused Sushma is concerned, there is no corroboration to the fact that on that day the complainant had been to the house of accused Sushma whereat she has demanded the amount of Rs.3000/-. This fact is not verified by the investigating officer by way of recording the communication between

accused Sushma and the complainant on 17.1.2006 before the trap. The investigating officer has not recorded the statement of house staff of accused Sushma as far as the visit of the complainant to her house is concerned. Thus, there is no corroboration as far as earlier demand is concerned.

51. The evidence of the investigating officer, especially the cross examination wherein specific admission obtained by the defence counsel, shows that he has not verified regarding the demand of bribe amount. He has not recorded the conversation of demand of money through micro-tape. Even, he has not forwarded the tainted notes and the clothes of the complainant for chemical analysis for detection of the anthracene powder.

52. 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)(i)(ii) of the said Act.

53. In the case of **Bismillakha s/o Salarkha Pathan** *supra,* this court held that recovery of the amount was whether the gratification other than legal remuneration has to be established.

54. It is held by the Honourable Apex Court in paragraph 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."

55. 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 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.

56. In the case of **State of Punjab vs. Madan Mohan Lal Verma, reported in 2013(4) Crimes 41 (SC),** it has been held that the law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when

substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person.

57. After appreciating the evidence on record it reveals that as per the prosecution case, accused Sushma demanded the amount for granting permission to construct the house. The application filed by the complainant was in the name of Vatsalabai who was not alive on the day of filing of the application i.e. on 15.10.2005. The communication issued by the Municipal Council in the name of said Vatsalabai Exh.79 shows that

she was asked to comply by producing the documents and by paying the development charges. The complainant has deposited the amount of Rs.1814/-, as per the said receipt on 14.2.2005 itself. As per the evidence of the complainant, initially, he went to the office of accused Sushma in the month of January 2006 and the demand was made to him. As far as the first demand is concerned, he has not given the date. As per his evidence, second demand was on 11.1.2006 when he had been to accused Sushma. There is no corroboration as to his visit at the house of accused Such. The investigating officer has not recorded any statement of the house staff of accused Sushma neither verified the genuineness of allegations that the complainant has visited the house of accused Sushma on 11.1.2006. Though the demand was on 11.1.2006, the complaint was filed on 16.1.2006, i.e. after four days. The evidence of the complainant and pancha No.1 is only to the extent that accused Sushma made enquiry whether he brought the amount.

58. In view of the observation of the Hon'ble Apex Court in the case of **Mukhtiar Singh** *supra, a* stray query, whether he had brought the amount or not, *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.

59. The evidence of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam, as to the place of the trap, is also not consistent. The complainant has shown complete unawareness as to the progress regarding his application.

60. Thus, all these events create doubt about the demand by accused Sushma.

61. As far as acceptance is concerned, the evidence of complainant PW1 Chetan Pardakhe and shadow pancha PW2 Jaya Kadam shows that for some time accused Raju was not present at the table.

Thus, possibility of thrusting of the amount cannot be ruled.

62. 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 work "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 may stage.

63. 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.

64. In the instant case, upon careful consideration of the prosecution evidence, particularly the evidence of complainant PW1 Chetan Pardakhe shadow pancha PW2 Jaya Kadam, I find that the prosecution could not establish beyond reasonable doubt the prior demand that

gratification was demanded by accused Sushma. The earlier demand, as per the prosecution, was on 11.1.2006, which is not corroborated and the FIR is also lodged after four days of the said demand.

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

66. As far as the applicability of presumption is concerned, learned Additional Public Prosecutor for the State placed reliance on the decision of the constitution bench of the Honourable Apex Court in

the case of **Neeraj Dutta vs. State (Govt.of NCT of Delhi)** *supra* 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 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.

67. As observed earlier, that prior demand by accused Sushma is not proved by the prosecution, a doubt a created as to the demand of the amount as it is not corroborated and not verified also.

68. As already observed, while granting sanction the principles for granting sanction are not taken into consideration, the act of granting sanction is a solemn sacrosanct 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 relevant facts and material and accord the sanctions.

69. In the present, the sanction order discloses that the material was examined by the Government of Maharashtra and the satisfaction for according of sanction was also arrived at by the Government of Maharashtra. The sanction order does not specifically mention name of any officer who had actually undertaken the exercise of examining the material and recording a subjective satisfaction in this regard on behalf of the Government of Maharashtra.

70. Thus, the entire exercise carried out, as far as sanction is concerned, is in secrecy and it is not known as to who has applied his mind and accorded the

sanction. A sanction order showing *prima facie* application of mind is a valid sanction.

71. 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 appeals deserve to be allowed, I pass following order:

ORDER

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

(2) The judgment and order dated 6.7.2013 passed by learned Additional Sessions Judge & Special Judge, under the Prevention of Corruption Act, 1988, Amravati in Special ACB Case No.2/2008 convicting and sentencing the accused persons is hereby quashed and set aside.

(3) Accused Sushma Gajanan Makeshwar and accused Raju Mahavirprasad Agarkar are hereby acquitted of offences for which they were charged and convicted.

Appeals stand **disposed** of.

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

!! BrWankhede !!